6325 "O" Street, Apt 104
Lincoln, NE 68510

June 30, 2015

Mr. Stephen Henrichsen
Development Review Manager
Lincoln / Lancaster County Planning Department
555 S. 10th Street, Suite 213
Lincoln, NE 68508

REFERENCE: Comments & Suggested Changes to the Draft Commercial Wind Energy Zoning Regulations

Dear Mr. Henrichsen:

Thank you for your efforts to develop regulations which will reasonably protect the interests of both residents and landowners so that a proposed Commercial Wind Energy Conversion System (CWECS) does not adversely affect their ability to enjoy, use and possibly develop their land, both in the near term and 30-40 years from now.

For the past 100 years, our family has owned a farm in northern Gage County. For this reason, and because we were approached by Volkswind to sign an easement agreement to develop a CWECS in the area, we have closely followed the proposed Hallam Windfarm project. We have spent considerable time reviewing material provided by Volkswind, touring the recently completed windfarm in the Diller – Steele City area, speaking with various landowners (both in favor of and opposed to the proposed development) and attending several of the public outreach meetings you hosted.

To date, we have not signed agreements with Volkswind, which would grant them a 5-10 year option to develop a windfarm on our (and surrounding) land and a 30 year lease to operate a CWECS on our (and surrounding) land. This is primarily because the agreements we reviewed were largely one-sided, provided minimal compensation to land owners for the option granted, and placed assorted restrictions and obligations on the landowner without definitively depicting what portions of the proposed system (if any) would be placed on the land, and where. We also empathize with many of the residents and landowners who are concerned a CWECS would significantly alter the character of the area and their ability to enjoy and use their land, without adverse impacts.

For these reasons, we request the following changes to your DRAFT Zoning Regulations / Text Amendment. We have categorized our suggested changes as either 1) substantive changes to protect the interests and future land use(s) of adjacent landowners, or 2) minor changes to clarify the DRAFT language, without significantly altering what we believe is the intent of your proposed regulatory language.

Substantive Changes to Protect the Interests and Future Use of Land Owned by Adjacent Landowners

- Page 2 (h). Add a paragraph 6 to read, "For a vacant non-participating property (of any size) the setback shall be 1,000 feet or 3 times the hub height plus the rotor radius, whichever is greater, measured to the property line". As an alternative approach, re-word (h) 1) to read, "For non-participating properties the setback shall be 1,000 feet or 3 times the hub height plus the rotor radius, whichever is greater, measured to the property line".

- Page 3 (i). Revise the first sentence to read, "Noise: No CWECS or combination of CWECS machine(s) shall be located so as to cause an exceedance of any of the following, as measured at the closest exterior wall of any dwelling or the closest property line of a non-participating property owner".

- Page 2 (g). Revise this paragraph to read, "Any turbine(s) shall not impact a vacant or occupied property (of any size) to the extent that, which because of the location of the turbine(s), ten percent of the property owner's land is within the CWECS setback or noise impact area, unless the affected land owner has a contractual agreement with the CWECS operator to permit such".

- Page 2 (d). Revise this paragraph to read, "Any proposed CWECS machine which is within a half mile of any non-participating property shall provide shadow flicker modeling data showing the expected effect of shadow flicker on non-participating properties. Shadow flicker shall not fall upon any non-participating property for more than 30 minutes in any one day, nor more than a total of 30 hours per calendar year. If shadow flicker exceeds these limits, measures shall be taken to reduce the effects of shadow flicker, which may include shutting down machine(s) during periods of shadow flicker".

Our rationale for the above substantive modifications follows:

- We strongly believe that land without a residence should be buffered by the same setback distances as an existing residence – so as to not constrain the future use, enjoyment or development of land - anywhere on a non-participating property. Anything less than 1000 feet or three times the hub height plus the rotor radius, whichever is greater, would represent a "taking" in that it would limit the future use(s) and value of the land.

- While we agree that a current landowner should be able to enter into an agreement with the CWECS operator to waive a stipulated setback requirement, <u>all</u> landowners should be afforded the same level of protection as an existing dwelling – again, so as to preserve their future use, enjoyment and value of their land.

- While much of the land in the rural area south of Lincoln may not be ready for acreages today, the County should not permit a development that would adversely affect the potential for such, since:

    - The proposed Volkswind project is within easy commuting distance of Lincoln. While this type of development works well in sparsely populated areas like Steele City or eastern Colorado, this type of development would significantly alter the character and quality of the environment on the outskirts of Lincoln.

    - The proposed towers are not 30 to 50 feet tall; they may be 500 feet tall! If a wind turbine was erected the proposed setback distance from a non-participating landowner's property line, it would look like a 100 foot tall tower, <u>placed on top of the state Capitol</u>, as viewed from the intersection of 14th & K Streets. A 500 foot setback from a non-participating owner's property line is not adequate.

    - This type of infrastructure project would have a lifespan of 30-40 years, or more. Thus, the County should exercise caution and increase the setback requirements, as outlined above. This would ensure that all property owners are able to enjoy and use their land as otherwise permitted, both in the near term and a generation or more from now.

<u>Minor Suggested Edits to Clarify the Wording and Applicability of the Proposed Regulations</u>

- Page 1 (a). Suggest changing sentence 2 to read, "When a special permit application covers multiple premises, the CWECS lease or easement holder may sign the application rather than the land owner that has executed an agreement with the CWECS to develop a CWECS".

- Page 1 (b). At the end of this paragraph, clarify where the nameplate with contact information is to be located, e.g. presumably on the door or in an accessible location so an interested party would know who to contact.

- Page 1 (c). Suggest changing the two sentences to read, "Upon removal of the tower, there shall be a minimum of four feet of soil between the ground level and cement base. Upon decommissioning, each tower shall be allowed up to one year to complete the removal and site restoration work".

- Page 2 (e). Clarify what you mean by the words "identified" and "natural resources", e.g. federally listed threatened or endangered species, state species of concern, candidate species, etc. Possibly today your only concerns are with land habitat, however, it would seem given the footprint of a CWECS could be 10,000 acres, and the 30-40 year life a CWECS, clarity regarding exactly which resources are to be protected would be beneficial.

- Page 2 (f). Suggest revising the end of sentence 2 to read, "… Spring Creek Prairie, shall also be protected from visual or noise impacts".

- Page 2 (h) 1). In this paragraph as well as in another place or two there is a statement to the effect, "3 times the hub height plus the rotor radius". While this is not a huge deal it would be best to clarify whether this means,
    - 3 times (hub height + the rotor height) , e.g. 3 x (300+100) = 1200 feet or
    - 3 times hub height, plus the rotor height, e.g. (3x300) + 100 = 1000 feet.

- Page 2 (h) 40. You may want to clarify where this is measured to, e.g. the closest edge of the road right-of-way?

- Page 2 (h) 5). This paragraph refers to "the district". Where is "district" defined? Also, suggest rewording this paragraph so it is consistent with the (new) paragraph (h) 6) described in the first bullet on the first page of this letter.

Our hope is that the above minor editorial suggestions will minimize the potential for a future misunderstanding due to ambiguous wording in the regulations.

We do appreciate your efforts to secure public input and we encourage you to make the changes outlined above, for the reasons noted. If you have any questions please email us at heckmanjl@gmail.com

Sincerely,

James L. Heckman, P.E.

Leland L. Heckman

Leland L. Heckman