



BACKGROUND REPORT

**Planning Commission – Public Hearing
January 2016**

Prepared by the Department of Development Services

PROJECT SUMMARY

Fralely Family Restated Irrevocable Dynasty and Fralely Family Irrevocable Dynasty Trust (Apex Clean Energy, Inc., lessees) requests a Commission permit and a Special Exception Permit with possible conditions to construct a utility scale wind energy system in the Forest Conservation (FC) Use District.

PLANNING COMMISSION ACTION

The Planning Commission must make a recommendation to the Board of Supervisors as to the approval, approval with conditions, or denial of these requests. The Planning Commission has the authority to place conditions on a Special Exception Permit as appropriate.

STAFF COMMENTS

In June of 2015, after months of staff work, joint work sessions with the Planning Commission, and public input which included a community meeting and web-based survey, the Botetourt County Board of Supervisors unanimously approved text amendments to incorporate utility-scale wind energy systems in the Zoning Ordinance.

Representatives from Apex Clean Energy, who have secured all the rights to the property for this request, met with representatives of the County's Planning and Zoning office, Development Services, and county administration for two pre-application meetings regarding this request on September 15 and October 23. During that time, staff reviewed components of the proposed application and assisted with the identification of important viewpoints for the visual impact analysis required by the ordinance.

Due to the complexity of utility scale wind energy, the Board of Supervisors issued an RFP for a consultant to review such an application. ANTARES Group, Incorporated was selected as the consultant and has been reviewing the application since the contract was executed. The report findings are included in the packet. As a result of the staff review, and the consultant review, it appears that with additional conditions, Apex Clean Energy can meet the requirements set forth in the ordinance. ANTARES completed a technical review of the applicant and provided the following analysis:

“[ANTARES] found the application to be substantially complete and in compliance with applicable codes and regulations. To the extent that potential gaps were identified in the materials present, ANTARES is of the opinion that this is largely the result of the “preliminary” nature of the conceptual site plan and the current status of the development process. With regard to the environmental, historical and cultural review for the project, permitting processes are currently underway at the State and Federal Level that will address the relevant sections of the Ordinance and SEP process. No major environmental permitting gaps were

identified that would not be addressed during a DEQ and Corps of Engineers permitting process.

It is ANTARES opinion that as the development and permitting process proceeds, the Applicant will be able to supply sufficient details to ensure that ordinance and permitting requirements are met, and the potential impacts resulting from the project will be properly mitigated.

In addition to information which can be conditionally required to be submitted during the site plan review process, ANTARES suggested the following information be provided prior to the hearing:

- Methodology for site monitoring and procedures for addressing noise complaints.
- Clarify the use of warning signage

Apex Clean Energy, in an email to the county on January 5, addressed the usage of warning signage and site monitoring through proposed conditions which have not yet been reviewed by the county attorney. However, the conditions provided in this report address mitigation for noise complaints and the applicant states that warning signage will be installed as appropriate.

Generally staff agrees with all of the findings in the report. Staff's main concern with the application is the conceptual layout of the majority of the features identified as part of this utility-scale wind energy system. Staff expressed concern to ANTARES regarding how the studies and models would change if turbines were sited in different locations, were smaller, or were fewer in number, all which would be considerable changes to the project. It was of the opinion of ANTARES that these changes would not increase the impacts of the project on the neighboring community or for Botetourt County as a whole.

Due to the conceptual nature of the project, the applicant submitted a number of conditions that if approved, are intended to mitigate the impacts of the project on the surrounding environment. In addition, further conditions are recommended by staff and ANTARES Group, Incorporated, the consultants retained by the country to review utility-scale wind energy at the expense of the applicant. The county attorney reviewed and provided feedback regarding all proposed conditions, with the exception of conditions related to Decommissioning, which are pending additional review. Those conditions can be found at the end of this report, prior to draft motions.

APPLICATION INFORMATION

Applicant:	Fralely Family Restated Irrevocable Dynasty and Fraley Family Irrevocable Dynasty Trust (Apex Clean Energy, Inc., lessees)
Request:	Commission Permit and Special Exception Permit, with possible conditions
Tax Map Number:	20-3 and 13-2
Magisterial District:	Fincastle
Report Prepared By:	Nicole Pendleton
PC Meeting:	January 11, 2016
BOS Meeting:	January 26, 2016

LEGAL ADVERTISEMENT

Fincastle Magisterial District: FRALEY FAMILY RESTATED IRREVOCABLE DYNASTY and FRALEY FAMILY IRREVOCABLE DYNASTY TRUST (Apex Clean Energy, Inc., lessees) requests a Commission permit in accord with §15.2-2232 of the Code of Virginia, in addition to a Special Exception Permit, with possible conditions, in the Forest Conservation (FC) Use District to construct a wind energy system, utility-scale, on two parcels, the first

Fralely Family Restated Irrevocable Dynasty and Fraley Family Irrevocable Dynasty Trust (Apex Clean Energy, Inc., lessees)

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being 4350.00 acres and the second being 1520.49 acres. Approximately 200 acres located within the boundaries of these properties will be utilized for up to 25 wind turbines and ancillary equipment and the related construction, operation and maintenance thereof. The turbines will be no greater than 550 feet in height and are proposed to be located along approximately 3.5 miles of the southernmost portion of North Mountain. The entrance will be generally located on the north side of secondary Route 622 (Dagger Spring Road), approximately 5.2 miles east of the intersection of Route 622 and secondary Route 694 (Gala Loop), to be accessed by a proposed gravel road, identified on the Real Property Identification Maps of Botetourt County as Section 13, Parcel 2 and Section 20, Parcel 3.

EXISTING CONDITIONS & BACKGROUND

The property included in this application consists of the entirety of two parcels (13-2 and 20-3), located in the northeast corner of the county. A portion of the property adjoins Rockbridge County. Approximately 200 acres located within the boundaries of these parcels are proposed to be utilized for wind turbines and related facilities. The applicant states that this is less than 3% of the property. These parcels are situated on the southernmost portion of North Mountain, which runs northeast to southeast along the northeastern side of the county. North Mountain is west of the Blue Ridge Mountains and is along the eastern front of the Allegheny/Appalachian Mountains. North Mountain varies in elevation from 1,200 to 3,440 feet with steep slopes, long ridges and continuous valleys. The nearest community is Eagle Rock, which is just over 4 miles to the southwest. Mill Creek is located near the southern boundary of the property. There is a natural gas easement operated by Columbia Gas and existing Virginia Electric and Power Company overhead transmission lines running parallel to a portion of Mill Creek along the southern and eastern boundary of parcel 20-3.

The majority of these parcels are dominated by mature hardwood forest with some areas of younger growth hardwood forest, where previous timber harvests occurred. Several open fields are present along existing and proposed access routes and ridgeline. There is an existing dwelling on the property, and one is currently under construction. In addition, there are three temporary meteorological (MET) towers and a SODAR unit located on the site. These permits were applied for in August 2015, and two of the three have been inspected and finalized. The third MET tower is pending a final building inspection. During these site visits and others, staff observed no construction or clearing being conducted without a permit.

PROPOSED DEVELOPMENT

The applicant is proposing to install up to 25 turbines, with a maximum generating capacity of up to 75 MW of power, on approximately 3.5 miles of the North Mountain ridgeline. In addition to the turbines, an operations and maintenance building will be constructed and operated by approximately 6-8 personnel during normal business hours. This building will house offices and associated equipment for staff. It will likely include a garage for spare components, parts and tools needed for maintenance. The concept plan indicates that the site for this facility will require approximately 5 acres of area and will need to accommodate a building structure "typically up to" 100' X 65' with offices and garage spaces as well as parking. The applicant is proposing that this facility will be located in one of two places as shown on the concept plan. Option 1 is located approximately 500 feet from the property line adjacent to Dagger Springs Road, and approximately 800 feet from Blue Grass Trail. This site would be located adjacent to the proposed inter-connect substation and proposed substation site. Option 2 is identified on sheet 2.01 and 2.01A as being adjacent to Dagger Springs Road directly between the existing house and the cabin under construction on the property.

The turbines are proposed to be accessed by a 36 foot wide gravel access road. A heavy equipment/construction access gravel road, also 36 feet in width, is also shown on the concept plan. The concept plan identifies the limits of clearing and grading to 125 feet in width, parallel to the centerline of the

proposed gravel roads. The concept plan identifies clearing in widths of approximately 50 feet in width for the underground electric line connecting turbines identified as 10 through 23, and clearing up to 140 feet for the electric lines connecting turbines identified as 1 through 25 on the concept plan. The eastern transmission corridor to the substation is larger due to the higher number of turbines on more circuits from that string of turbines. The limits of clearing and grading for each turbine is shown on the concept plan as being approximately 150 feet, typically. The applicant will be required to submit a site development plan to include a complete Stormwater Pollution Prevention Plan (SWPPP) for review and approval prior to the commencement of any land-disturbing activity. The contents of the SWPPP shall include but are not limited to an approved erosion and sediment control plan, and approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any control measures necessary to address a TMDL.

Also, an onsite collection and substation system will be located on the site. The wind turbines will be connected via underground electrical lines to the 34.5 kV collector system, which will aggregate the energy from the turbines to a collector substation. The collection substation will include a step-up transformer, circuit breakers, a dead-end for connection to the transmission system, insulators and a control building with electronic control devices for protection and control. An overhead 230 kV overhead line of approximately 200 feet is proposed to connect the Project electricity with the transmission lines owned by Virginia Electric and Power Company.

The applicant states that the exact routing of project access roads, siting of project facilities, and the locations and number of wind turbines are general in nature and subject to the completion of detailed engineering, as well as state and federal permitting. Due to the nature of the project, the production of the electricity will require the turbines to be located along the mountain ridge in order to take advantage of the wind resource. Therefore, the applicant states that the locations of the turbines shown on the concept plan are preliminary. The applicant states that the final locations will meet all the requirements of the Wind Ordinance. The applicant will also be required to meet all other zoning ordinance and building code regulations prior to obtaining building code and site plan approval.

Again, due to the conceptual nature of the project, the applicant submitted a number of conditions that if approved, are intended to mitigate the impacts of the project on the surrounding environment. In addition, further conditions are recommended by staff and Antares Group, Incorporated, the consultants retained by the county, to review utility-scale wind energy at the expense of the applicant.

In addition, significant details will need to be addressed concurrently with site plan review, regarding the construction of the project if approved. The applicant states that the project will be constructed in a single phase. The first step following local, state and federal approval involves the engineering of the access roads and various construction areas, the turbine foundations, and the electrical components in order to obtain site plan and building permit approvals. This process is projected to take 8-10 months. Construction of the on-site roads, tower foundations, and building of the substation can take an additional 8-10 months. The actual installation of the turbines is projected to take 2-3 months. The applicant is projecting to be in operation by the fourth quarter of 2017.

The applicant has been coordinating with the Virginia Department of Transportation (VDOT) regarding the delivery of the components of the wind energy system, and has proposed conditions to provide a plan for pre- and post-construction evaluations. The applicant will include a plan for repairing any damage caused to the delivery routes.

The Concept Plan also identifies a 15-acre corner of the property near the proposed entrance from Dagger Springs Road as the construction lay-down area. This is a large, cleared and grassy area. It is likely that a

mobile batch plant site of 3-5 acres will be constructed within this laydown area to mix concrete for the turbine foundations. Other ancillary equipment, such as a rock crusher, with a footprint of up to 20' X 50', will likely be located on site during construction for utilizing existing resources for road and access construction. Off-site storage is not anticipated at this time. Staff has requested that the applicant provide more detail regarding the construction storage yard and any additional dimensions of equipment, as well as how the construction activities at the lay-down may affect surrounding property owners.

All of the turbines are proposed to be within the required setbacks. The concept plan utilizes a turbine height of 546 feet, as such, the setbacks are 600.6 feet to the nearest non-participating property line and 819 feet to the nearest occupied dwelling on a non-participating landowners property. The concept plan indicates that there are no non-participating houses located within 6,100 feet of any proposed turbines.

ADJACENT AND SURROUNDING USES

Northern Botetourt County is characterized by agricultural and forestry land uses as well as low-density residential uses. This predominantly rural environment features floodplain and lowlands in the upper reaches of the James River, set against pastured valleys and steep wooded mountains. Elevations in the area rise from 1000' near the riverside to above 3000' at the peaks of the mountains. The property is bounded to the North by Jefferson National Forest and to the East by Rockbridge County. A conservation easement lies on an adjacent property to the west.

ZONING

The subject parcels, and all adjacent property, lie in the Forest Conservation (FC) Use District. The purpose of the FC District is intended to preserve and enhance the natural appearance and function of the county's ridges, valleys and forest lands, to maintain the high quality of air and water resources, and low density of development. Utility-scale wind energy systems, subject to the standards of [Section 25-446](#), are permitted only by SEP in the FC Use District. Please review to the technical support provided by ANTARES in regards to how each component of the requirements set forth in the supplemental regulations governing utility scale wind energy systems in Section 25-446 are proposed to be met.

Several additional sections of the Zoning Ordinance regulate the type of development proposed by this request. First, the purpose of [Section 25-583. – Special exceptions](#). is designed to provide for discretionary review of requests which could have the potential for a deleterious impact upon the health, safety and welfare of the public, and in the event such uses are approved, provides the Board of Supervisors with the authority to impose conditions that are designed to avoid, minimize or mitigate potentially adverse effects upon the community or other properties in the vicinity.

There are over 30 factors to be given reasonable consideration for the granting of an SEP; these factors relate to fire safety, noise, light, signage, groundwater supply and soil capacity, and the effect of the SEP on environmentally sensitive land or natural features, wild life habitat and vegetation, water and air quality, the provision for desirable employment and enlargement of the tax base, locations of floodplain and steep slopes, security features, and others.

The provisions for permitting utility scale wind energy systems by SEP were incorporated in the zoning ordinance through text amendments that were unanimously recommended by the planning commission and unanimously approved by the Board in June of 2015. Those amendments set out a series of additional considerations for an SEP application, as well as imposes additional regulations throughout the development

process, including during site plan and building permit review, as well as imposes additional requirements and regulations that, if not met, would constitute a violation of the Zoning Ordinance.

Due to the complexity of utility scale wind energy systems, the Board of Supervisors issued an RFP for a consultant to review such an application. ANTARES Group, Incorporated was selected as the consultant and has been reviewing the application since the contract was executed. The report findings are included in the packet. As a result of the staff review, and the consultant review, it appears that with additional conditions, Apex Clean Energy can meet the requirements set forth in the ordinance.

2010 COMPREHENSIVE PLAN

The 2010 Comprehensive Plan identifies future land uses in this area as Conservation.

This category is meant to identify steep slopes, lands protected by conservation easements, 100-year floodplains, and properties within the Carvins Cove watershed. Future development in these areas should be prohibited or extremely limited. The applicant states that this category recognizes areas that may be difficult to develop in traditional ways, but can serve other purposes and benefits to the County.

In addition, the comprehensive plan identifies economic development as a primary goal for the county. A strong, diversified tax base is a key element of the goal (p.43). Wind energy is a new source of revenue for the county that is part of a growing global industry. In relation to environmental considerations, specific environmental impacts which should be addressed for new development are listed on page 80. These include elements specifically mentioned in the zoning ordinance including required assessments of vegetative removal, potential grading and erosion resulting from the project, and visual modeling to assess impact on viewsheds. Slope is also addressed and provides for the consideration of appropriate development on parcels with extreme topography.

While the project does not specifically impact the air quality of the county in the short term, the importance of air quality to the county is notable within the context of renewable energy projects. Renewable energy projects produce considerably less emissions than other kinds of energy production. An economy which incorporates and capitalizes upon renewable energy is a key element of air pollution reduction in the Commonwealth and nationally. Air quality is specifically mentioned on page 75.

Lastly, the Comprehensive Plan makes mention of the importance of preserving viewsheds. Page 50 outlines the importance of preserving scenic views for the county, specifically stating that “visibility of wireless towers and other tall structures” should be minimized in accordance with this goal. In addition, there is a goal of limiting ridgeline development as well.

The importance of conformance with the Comprehensive Plan, which is a necessary consideration for the granting of an SEP, as well the granting of the Commission Permit, is one that must be looked at collectively, rather than by examining each aspect of the plan or its pages separately. The purpose of the Comprehensive Plan is “to promote balanced growth and development while protecting the County’s natural environment and cultural resources. This shall be accomplished through the application of sound planning principals and the implementation of complementary development controls” (2).

UTILITIES

The Operations and Maintenance facility will be served by private water and sewer. The electric lines on the property are owned by Virginia Electric and Power Company (VEPCO), now Dominion Power.

TRAFFIC

2014 VDOT traffic data for this segment of Dagger Spring Road indicates that there is an Annual Average Daily Traffic (AADT) of approximately 40 vehicles.

VDOT

VDOT comments are included for your review.

FIRE AND RESCUE

The Eagle Rock and Glen Wilton Fire and Rescue Stations will provide fire and rescue services to this property. The Glen Wilton Fire and Rescue station is located approximately 15 miles from the entrance of the subject property, while the Eagle Rock Fire and Rescue station is located approximately 9 miles from the property entrance.

SCHOOLS

The number of students for the school system will not be directly impacted by this request.

PUBLIC COMMENT

No public comments have been submitted at this time. Additional comments may be forthcoming at the public hearings.

SUGGESTED CONDITIONS

If approved, staff suggests the following conditions. These conditions were derived from proffered conditions as submitted by the applicant, as well as by ANTARES, staff and were reviewed and edited by the county attorney.

The following conditions are imposed by the Board of Supervisors of Botetourt County as express conditions on the approval of the SEP for a utility scale wind energy system on Botetourt County Tax Map Parcels 20-3 and 13-2. These conditions are binding upon the owner, applicant, and their heirs, assigns, and any other successor or successor in interest ("Developer"), as if fully set forth in the codified text of the Botetourt County Zoning Ordinance.

1. *Conformance with Concept Plan.* All development on Botetourt County Tax Map Parcels 20-3 and 13-2 shall substantially conform to the Rocky Forge Conceptual Plan prepared by Timmons Group and dated October 28, 2015, with revisions to sheet C1.00, C2.02, C2.02A, C2.03, and C2.03A, dated January 5, 2016, which is attached hereto and expressly incorporated herein as a condition of approval of this Special Exception Permit. Any substantial deviation from the concept plan, as determined in the sole discretion of the zoning administrator, shall require an amendment to this special exception permit through new public hearings before the Planning Commission and the Board of Supervisors and approval by the Board of Supervisors.

2. *Total Number of Turbines.* No more than 25 turbines, whether they are in actual operation or not, shall be located on the Property.

3. *Construction Traffic Management Plan & Mitigation Measures.* As part of its final site plan submission, and as a requirement of approval thereof, the Developer shall provide a construction traffic management plan, which shall include, but not necessarily be limited to:

- a. A construction traffic management plan (CTM) for:
 - i. Traffic control, including lane closures, flagging procedures, directional and informational signage, and designated access points for deliveries and employee access;
 - ii. Designated delivery and parking areas;
 - iii. Designated routes for deliveries of equipment and materials on primary and secondary roads, as well as routes for any railroad deliveries;
 - iv. Dust mitigation plans;
 - v. Road monitoring and policing on Dagger Springs Road, Gala Loop Road, and Botetourt Road (Route 220), which shall include cleaning roadways of mud tracked onto the road from construction-related traffic.
- b. Pre-Construction Road Evaluation: Prior to or contemporaneous with submission of the site plan, the Developer shall submit the Virginia Department of Transportation (VDOT) an evaluation of the condition of the road surface and road shoulders for any delivery routes identified in the CTM. The Pre-Construction Road Evaluation shall include an evaluation of planned commercial entrances to be approved by VDOT. The Pre-Construction Road Evaluation shall also include an estimate for the cost of any repairs to public roads or highways that may be caused by construction activities related to the Project. Surety shall be posted for such repairs as hereinafter set forth. The Pre-Construction Road Evaluation must be approved by VDOT prior to or as part of the site plan approval process.
- c. Post-Construction Road Evaluation: After completion of construction, the Developer shall submit a post-construction evaluation of the road surfaces and road shoulders on the delivery routes identified in the CTM. The Post-Construction Road Evaluation shall be submitted to VDOT for approval. The Post-Construction Road Evaluation shall include a plan for repairing any damage identified therein, and the Developer shall be responsible for causing such identified repairs to be completed within the timeframe set by VDOT.

4. *Hours of Construction.* The hours of construction shall be limited to 7 a.m. to 8 p.m., except when otherwise required by the terms of state or federal permits or emergency situations. The occurrence and nature of any emergency situation shall be reported by telephone, email, or other expeditious method as soon as reasonably practicable, in no case later than 48 hours after the occurrence of such event.

5. *Site Plan & Construction Surety.* The following sureties shall be submitted in the form of a surety or a letter of credit prior to final approval of the site plan, in an amount satisfactory to the zoning administrator and in a form acceptable to the county attorney:

- a. Repair Surety. A surety in the full amount of estimated and approved costs of complying with the Pre-Construction Road Evaluation shall be provided. Such bond

shall be released within six months following certification of final completion of any such necessary repairs and final inspection and acceptance.

- b. Construction Sureties. The Developer shall provide all sureties provided in the Botetourt County Zoning, Subdivision, Stormwater, and Erosion & Sedimentation Control Ordinances.
- c. Decommissioning Surety. The decommissioning surety shall be no less than \$3,861,000, and shall be updated as set forth in Botetourt County Code § 25-446, as amended.

6. *Emergency Response Plan.* As part of its final site plan submission, and as a requirement of approval thereof, the Developer shall submit a written plan for emergency response and coordination with local anticipated first responders, to include, at a minimum, the Botetourt County Department of Fire & EMS. If, in the sole discretion of the Botetourt County Chief of Fire & EMS, special training, conducted in Botetourt County, will be necessary for first responders due to the unique or unusual nature of the Project, such training shall be conducted locally and at the Developer's expense. The Plan shall include, at a minimum, response procedures including 24-hour points of contact, and identify points of access for emergency vehicles. The Emergency Response Plan shall be subject to review by the Botetourt County Chief of Fire & EMS, and his approval shall be a precondition to approval of the site plan.

7. *Operations and Maintenance Plan.* As part of its final site plan submission, and as a precondition of approval thereof, the Developer shall submit a detailed operation and maintenance plan which shall substantially conform to the concept plan entitled Rocky Forge Conceptual Plan, prepared by Timmons Group and dated October 28, 2015, with revisions to sheet C1.00, C2.02, C2.02A, C2.03, and C2.03A, dated January 5, 2016, which is attached hereto and expressly incorporated herein as a condition of approval of this Special Exception Permit. The detailed operations and maintenance plan shall include, but not necessarily be limited to:

- a. Detailed construction and commissioning documentation for overall quality assurance and quality control and for reference during operation.
- b. Copies of all manufacturer's operating manuals for the turbines and appurtenant equipment, including warranties and maintenance intervals.
- c. Spare parts inventories, including spare parts to be stored onsite.
- d. Methods of record-keeping and data collection for operations and maintenance.
- e. Plan for end of warranty inspections and third-party inspections.
- f. Proposed operations and maintenance contracting plan beyond original equipment manufacturer's initial one to three year operations and maintenance scope.

8. *Sound.* The Developer shall provide, prior to commencing operation of energy-generation at the Property, submit a post-construction sound model, including actual test data, to demonstrate that with final wind turbine siting, sound levels will not exceed 60 dB(A) at the project boundaries. In no case may sound levels at the boundaries of the Property exceed 60 dB(A).

9. *Flicker Model.* Prior to or contemporaneous with submission of its site plan, and as a precondition of approval thereof, the Developer shall submit an updated shadow flicker model to demonstrate that with final wind turbine siting, shadow flicker at Residences 2 and 3, as identified in the shadow flicker study entitled Shadow Flicker Analysis for the Rocky Forge Wind Project, prepared by AWS Truepower and dated October 16, 2015], will remain below the threshold of 30 minutes per day on any day and 30 hours in total annually.

10. *Permit-by-Rule Process.* Prior to submission of a site plan, and as a condition of approval thereof, the Developer shall pursue and obtain a permit from the Virginia Department of Environmental Quality (DEQ) through the Permit by Rule process, set forth in Va. Code §§ 10.1-1197.5 *et seq.*, as amended. The Developer shall submit to the zoning administrator all applications, public and agency comments, and the final permit text. The final permit text shall be submitted to the zoning administrator, by certified mail, not later than seven days following its issuance. Such permit is expressly made a part of this special exception permit, and is a condition hereof. If the provisions of the permit-by-rule are inconsistent with the provisions of this special exception, no site plan shall be approved, but instead the Developer must seek an amendment to this special exception permit in order to conform it to the permit-by-rule.

11. *Vegetation Restoration Plan.* Prior to or contemporaneous with submission of its site plan, and as a precondition of approval thereof, the Developer shall provide a vegetation restoration plan that identifies the exact areas to be restored, methods of restoration, species to be planted, and a monitoring plan to ensure the successful establishment of vegetation.

12. *Stormwater Management and Erosion & Sedimentation Control.* The Developer shall comply with all provisions of state law and the Botetourt County Code relating to stormwater and erosion and sedimentation control.

13. *Decommissioning Plan.* Conditions regarding the Decommissioning Plan are pending further review by the county attorney.

14. *Maintenance and Reporting.* Developer shall operate the Project in accordance with the detailed Operations & Maintenance Plan. Once a year, no later than July 1 of each calendar year, the Developer shall submit to the zoning administrator a report that outlines the status of the Project. The Report shall include current contact information for a 24-hour, seven-day-a-week person the public may contact with inquiries and complaints as set forth in the condition related to mitigation, below.

If any change occurs in the ownership of the Project, the Developer shall provide notice to the zoning administrator within 10 days thereafter and update the information for the project contact.

If the Developer receives a notice of violation, is served with legal process, or otherwise receives notice of commencement of any investigation by any state or federal regulatory agency for any actual or alleged violation of laws relating to the operation of the Project, the Developer shall notify the zoning administrator promptly in writing, in no case later than 14 days after the Developer receives actual notice of such event.

15. *Mitigation.* The project contact shall investigate, in coordination with the zoning administrator, any complaint relating to:

- a. Sound or noise;
- b. Signal interference to any television, radio, or other communication device;
- c. Shadow flicker; or
- d. Construction or operations.

If, in the sole discretion of the zoning administrator, such complaint is determined to be founded, the Developer shall remedy any such nonconformity with a reasonable period of time as determined by the zoning administrator.

16. *Compliance with Laws.* The construction, maintenance, and operation of the Project shall comply with all provisions of federal, state, and local law.

17. *Remedies.*

- a. Notice of Violation. If the zoning administrator determines that a violation of any provision of this special exception has been violated, the zoning administrator may issue a notice of violation which shall specify therein a reasonable period of time during which to remedy such violation. If the violation remains unremedied at the expiration of such time, the zoning administrator may pursue all remedies available under law, including criminal, civil, and injunctive relief.
- b. Revocation. Upon notice and public hearing as set forth in Va. Code § 15.2-2204, for any violation or reasonably apprehended violation of this special exception permit or any other provision of law, the Board of Supervisors may revoke this special exception permit.

DRAFT MOTIONS

Commission Permit

Approval:

I move that the Commission Permit be forwarded to the Board of Supervisors with a recommendation of approval on the basis that the proposed request is consistent with the comprehensive plan and the purposes and intent of the zoning ordinance.

Denial:

I move that the Commission Permit be forwarded to the Board of Supervisors with a recommendation of denial for the following reasons...

...and on the basis that the proposed request is **NOT** consistent with the comprehensive plan and the purposes and intent of the zoning ordinance.

Special Exception Permit

Approval, with conditions:

I move that the Special Exception Permit for a wind energy system, utility-scale, on Botetourt County Tax Map Parcels 20-3 and 13-2, be forwarded to the Board of Supervisors with recommendation for approval subject to the conditions as included in the background report prepared by staff, and as updated and presented at the public hearing:

[or with modifications]

And on the basis that the requirements of Section 25-583 of the Zoning Ordinance have been satisfied, and that the proposal would serve the public necessity, convenience, general welfare, and is good zoning practice.

Denial:

I move that the Special Exception Permit for the property of a wind energy system, utility-scale on Botetourt County Tax Map Parcels 20-3 and 13-2, be forwarded to the Board of Supervisors with recommendation for denial on the basis that the requirements of Section 25-583 of the Zoning Ordinance have not been satisfied due to the following reasons:_____