



Botetourt County, Virginia
Board of Supervisors

February 8, 2016

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Fincastle, Virginia 24090
Phone (540) 473-8223
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**Fraley Family Restated Irrevocable Dynasty
and
Fraley Family Irrevocable Dynasty Trust
P. O. Box 95
Eagle Rock, VA 24085**

Board of Supervisors

Donald M. Scothorn
Chairman

L. W. Leffel, Jr.
Vice Chairman

Todd L. Dodson

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John B. Williamson, III

RE Request in the Fincastle Magisterial District for a Commission permit in accord with §15.2-2232 of the Code of Virginia, in addition to a Special Exception Permit in the Forest Conservation (FC) Use District to construct a wind energy system, utility-scale, on two parcels; the first being 4,350.00 acres and the second being 1,520.49 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.

Ladies and Gentlemen:

This letter will certify that the Botetourt County Board of Supervisors affirmed the Botetourt County Planning Commission's approval of the above-referenced Commission Permit and approved the Special Exceptions Permit at its regular meeting held on January 26, 2016, with the conditions as attached.

This action was taken after advertisements and public hearings of the Botetourt County Planning Commission and the Botetourt County Board of Supervisors in accordance with requirements of the Botetourt County Zoning Ordinance.

Before constructing any structures on this property, please secure all necessary building, electrical, plumbing, mechanical, and erosion permits required under the applicable Botetourt County Codes.

If you have any questions regarding this matter, please feel free to contact my office.

Sincerely,



Gary Larrowe
County Administrator

Attachment

cc w/att: Mrs. Nicole Pendleton, Planning Manager/Zoning Administrator
Mr. Rodney Spickard, Commissioner of Revenue
Mr. Robert Collins, Residency Administrator, VDoT
Mr. Patrick Gauldin, Erosion & Sediment Control Administrator
Mr. Tyson Utt, Apex Clean Energy, Inc., lessee
Ms. Adena M. Patterson, Senior Land Use Planner, McGuireWoods, LLP

REVISED January 11, 2016

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 (the "Property"). These conditions are binding upon the owner, applicant, and their heirs, assigns, and any other successor or successor in interest (the "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 4, 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. No amendment to the special exception permit will be required for changes to the concept plan for (i) relocation of exact turbine sites (or changes in turbine specifications), provided turbines remain along the ridge line; (ii) relocation of the underground cables to correspond to the locations of the turbines; (iii) modifications to the proposed gravel roads for access provided such entrance locations from the public roads remain along those sections of the Dagger Springs Road immediately adjacent to the Property; (iv) relocations to the substations and operations and maintenance buildings provided they are setback at least 200 feet from the Property line; (v) any deletion of project roads, or other cleared areas or reduction in the total number of turbine sites and (vi) any other change that does not constitute a substantial deviation.

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 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 as well as ensuring that any known safety issues be promptly reported to local emergency response crews and law enforcement if necessary.

- b. **Pre-Construction Road Evaluation:** Prior to or contemporaneous with submission of the site plan, the Developer shall submit to 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 and 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 caused by the developer and 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 (to include any requirements by VDOT) or emergency situations. Hours may be extended for purposes of time-sensitive work (i.e. concrete pouring and curing period, erection of turbines during low wind periods) provided that any construction activities resulting in significant noise such as loading or unloading trucks, the use of vehicle warning devices, or the operation of heavy construction equipment at the Property, is conducted a minimum of 500 feet from any residence outside of the project area. The occurrence and nature of any time-sensitive work or 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, 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 posted prior to the issuance of any building permit for the Project. 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 post all sureties provided in the Botetourt County Zoning, Subdivision, Stormwater, and Erosion & Sedimentation Control Ordinances as part of site plan submission, and as a requirement of approval thereof.
- c. **Decommissioning Surety.** The amount of the decommissioning surety shall be determined as part of the final site plan submission, and as a requirement of approval thereof. The surety shall be posted prior to the issuance of any building permit for the Project. Such amount should be determined in a manner consistent with the process used in the Rocky Forge Wind Project Decommissioning Report, prepared by Garrad Hassan America, Inc. "DNV GL", and dated October 1, 2015. The surety should be

for no less than 125% of the total cost estimate after salvage and shall be updated every three years.

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. The training expenses provided by the Developer shall not exceed the amount that the County otherwise reasonably would expend pursuant to the public procurement process.

7. *Operations and Maintenance Plan.* As part of its final site plan submission, and as a precondition of approval thereof, the Developer shall submit an operation and maintenance plan based on the warranties and specifications of the various equipment used for the turbine operations. The operations and maintenance plan 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 4, 2016, which is attached hereto and expressly incorporated herein as a condition of approval of this Special Exception Permit. The operations and maintenance plan shall be updated prior to commercial operation and the following information shall be made available to a third party inspector. The plan shall include, but not necessarily be limited to:

- a. Construction and commissioning information as is reasonably available for quality assurance and quality control.
- b. Confirmation of turbine manufacturer maintenance warranty periods and recommended operation and maintenance intervals.
- c. Periods of all scheduled maintenance and a general list of included activities.
- d. Inventories, for parts onsite.
- e. Methods of data collection and record keeping for on-site activities.
- f. Plan for end of warranty activities including any inspections and condition reports.
- g. An operations and maintenance contracting plan to address the period beyond the initial one to three year operations and maintenance scope.

8. *Sound.* The Developer shall submit a post-construction sound model, including actual test data, to demonstrate that with final wind turbine siting, when all turbines have been constructed and are commercially operational, sound levels will not exceed 60 dB(A) at the project boundaries, except during short-term exceptional circumstances, such as severe weather.

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 final DEQ 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.

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 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.* As part of its final site plan submission, and as a precondition of approval thereof, the Developer shall submit a detailed decommissioning plan which shall substantially conform to the general decommissioning plan entitled Rocky Forge Wind Project Decommissioning Report, prepared by Garrad Hassan America, Inc. "DNV GL", and dated October 1, 2015,. Such plan shall contain, at a minimum:

- a. Procedures and processes for:
 - i. Removal of the wind turbines, cabling, electrical components, and associated facilities to four feet below grade and decompaction of soils to a depth of four feet.
 - ii. Salvaging topsoil and natural debris for post-construction site restoration.
 - iii. Removal of turbine foundation pedestals and concrete transformer pads removed to a depth of four feet. The remainder of the spread footing may remain in place.
 - iv. Disassembling the Project's substation and components, which shall not include any facilities that may be maintained or needed by the owner/operator of the electric transmission facilities.
 - v. Reuse, salvage, or proper off-site disposal of the various components of the system.
 - vi. Regrading to preconstruction conditions and drainage patterns subject to relief from such requirement if such regrading would create a greater environmental impact than leaving the grade unchanged.
 - vii. Replacing soil and organic material.

- viii. Replanting and erosion control measures meeting or exceeding the requirements of the Botetourt County Stormwater and Erosion & Sedimentation Control ordinances, as amended.
- b. A schedule for decommissioning and restoration of site, including triggering events. The landowner may, upon request to and approval of the zoning administrator, retain or maintain any post-construction elements that are otherwise in conformance with the Botetourt County Code, such as landscaping, grading, roads, crossings, or structures after decommissioning.
- c. In addition to any other decommissioning requirements set forth in this Condition, if one or more wind turbines is permanently taken out of service or is inoperable for 12 consecutive months, the turbine tower, rotors, and transformers shall be removed unless consent is granted by the zoning administrator for a longer time period. The below ground or ground-level structures (e.g., electrical collection cables and junction boxes) may remain in place until the Project is fully decommissioned.

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, after receiving the Project contact's response to such complaint, the zoning administrator determines the complaint is founded and as such, constitutes a violation of the conditions of this Special Exception Permit, or the zoning ordinance, the Developer shall remedy any such nonconformity within 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.