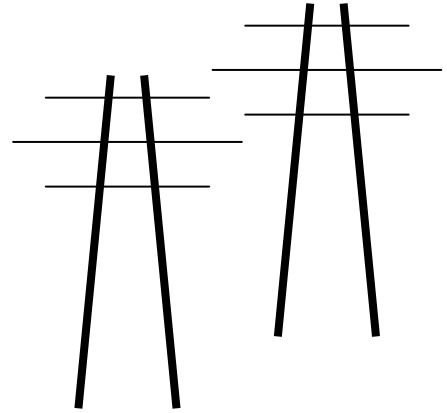


# Legalelectric, Inc.

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November 17, 2014

Burl Haar, Executive Secretary  
Minnesota Public Utilities Commission  
121 – 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101

eFiled and eServed

**RE: Comment of Residents of Getty and Raymond Townships**  
Black Oak/Getty Wind Projects Certificate of Need  
PUC Docket CN-11-471 (see also WS-10-124- & WS-11-831)

Dear Dr. Haar:

Attached please find Initial Comments and also our Petition to Intervene and Petition for a Contested Case.

Thank you for the opportunity to Comment on the Applicant's Petition for Extension in the above-entitled docket.

I have been retained by Residents of Getty and Raymond Townships to represent their interests as some of the neighbors of the Black Oak and Getty wind projects, within and near the project footprint. There are legal issues and issues of material facts in this docket. It is our hope that the Commission will consider the issues raised and refer Applicant's Petition to Office of Administrative Hearings for a Contested Case. In the alternative, we request a public hearing.

Please let me know if you have any questions or require anything further.

Very truly yours,

Carol A. Overland  
Attorney at Law

cc: eService List and Residents of Getty and Raymond Townships

**BEFORE THE  
STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

**Beverly Jones Heydinger  
David C. Boyd  
Nancy Lange  
Dan Lipschultz  
Betsy Wergin**

**Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner**

**In the Matter of the Joint Application of  
Black Oak Wind, LLC and Getty Wind  
Company, LLC for a Certificate of Need  
for an up to 82 MW Large Wind Project  
in Stearns County**

**PUC Docket: IP6853, IP6866/CN-11-471**

**RESIDENTS OF GETTY AND RAYMOND TOWNSHIPS**

**PETITION FOR A CONTESTED CASE – CERTIFICATE OF NEED DOCKET**

Residents of Getty and Raymond Townships hereby petition for a Contested Case in the Certificate of Need docket (CN-10-471). The Certificate of Need docket is currently in limbo as the Certificate of Need operational deadline is December 31, 2014 and the project admittedly cannot be constructed by that date. Residents ask that Applicant's Petition be denied.

Residents of Getty and Raymond Townships request that the Certificate of Need docket be forwarded to the Office of Administrative Hearings as a contested case. Because this docket is in procedural limbo, and Applicants have requested an extension, we ask that the Commission take this opportunity for a close look at the project, issues of ownership, C-BED status, the Power Purchase Agreements, MISO Interconnection Agreements, and the failure of the project Applicants to develop the project in a timely manner.

**A. THE CERTIFICATE OF NEED AND SITING DOCKETS SHOULD BE REFERRED TO OFFICE OF ADMINISTRATIVE HEARINGS FOR CONTESTED CASE BY THE COMMISSION**

The Siting and Routing rules have clear guidelines for contested-case:

Subp. 5. Contested case hearing.

A. Any person may request in writing that a contested case hearing be held on an application for a site permit for a proposed LWECS project. The contested case hearing request must be filed within the time period established for submitting comments on the draft site permit. The person requesting the public hearing shall include, as part of the request, the issues to be addressed in the hearing and the reasons a hearing is required to resolve those issues.

B. The commission shall order a contested case hearing if the commission finds that the person requesting the contested case hearing has raised a material issue of fact and that holding a hearing would aid the PUC in making a final determination on the permit application.

C. The hearing must be conducted according to the rules of the Office of Administrative Hearings.

D. For a contested case hearing, the commission shall identify the issues to be resolved and limit the scope and conduct of the hearing according to applicable law, due process, and fundamental fairness. Alternatively, the commission may request the administrative law judge to identify the issues and determine the appropriate scope and conduct of the hearing according to applicable law, due process, and fundamental fairness.

**II. NEED FOR CONTESTED CASE**

There are material issues of fact in this docket. Residents of Getty and Raymond Townships has been an active and credible participant in the Certificate of Need and two siting dockets at the Commission, and is familiar with the record thus far. Residents of Getty and Raymond Townships request a Contested Case to help build and inform the record regarding the ownership of the project, whether the project has acquired sufficient land rights to site and build the project, whether it qualifies as a Community Based Energy Development project as

originally proposed because of change in ownership structure and composition, the financing for the project., and existence of any PPAs and Generation Interconnection Agreements.

Residents of Getty and Raymond Townships calls attention to what it knows about the Project, from the record thus far, and upon information and belief, and states that material issues in these dockets include:

- This project is not what it claims to be, that many changes and misrepresentations of turbine sites and wind rights acquisitions have been made such that it's difficult to track just what is now proposed. See Dockets, maps presented in record regarding ownership and layout.
- As now proposed, this project is no longer a C-BED project as defined under Minnesota law and is no longer the C-BED project that was granted a Certificate of Need. See CoN Order, Application pages, Applicant filing regarding change in ownership notice.
- Upon information and belief, parties who have signed land contracts with the Applicants have not signed any or all of the several subsequent agreements presented to them. Landowners who have signed are unable to determine what exactly they have agreed to and contracts appear to provide opportunity for Applicant to change use of land, siting of turbines, collector system and/or transmission at will without landowner notification and consent.

As the record is built, other material issues of may well be revealed. All aspects of this project deserve closer scrutiny by the Commission.

Residents of Getty and Raymond Townships's interests in landowner rights, wind project economics and project organizational status, and participatory process are distinct from that of

any other parties. Further, there are no parties to this docket, and because of this, the project has not received sufficient scrutiny. The record of these proceedings must be broadly developed in order to be capable of supporting any decision.

### **III. CONCLUSION**

The Residents of Getty and Raymond Townships requests that the Commission Order that the Siting, Certificate of Need, and Power Purchase Agreement dockets for the Black Oak and Getty Wind Project be referred to OAH for a contested case proceeding.



Dated: November 17, 2014

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**BEFORE THE  
STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

**Beverly Jones Heydinger  
David C. Boyd  
Nancy Lange  
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Betsy Wergin**

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**In the Matter of the Joint Application of  
Black Oak Wind, LLC and Getty Wind  
Company, LLC for a Certificate of Need  
for an up to 82 MW Large Wind Project  
in Stearns County**

**PUC Docket: IP6853, IP6866/CN-11-471**

**RESIDENTS OF GETTY AND RAYMOND TOWNSHIPS  
PETITION FOR INTERVENTION**

Residents of Getty and Raymond Townships hereby make this Petition for Intervention as a full party, with all the rights of a party. Residents of Getty and Raymond Townships is an association of a number of directly affected landowners and residents who are within and in the immediate vicinity of the proposed Black Oak and Getty wind projects<sup>1</sup>. Residents of Getty and Raymond Townships make this Petition due to the Commission discussion and Order at the Agenda meeting of October 29, 2014 in the Black Oak and Getty siting dockets. Residents of Getty and Raymond Townships are grateful to see some of the issues we've raised come before the Commission, particularly issues of ownership, C-BED status, the Power Purchase Agreements on which the Certificate of Need depends, and the failure of the project Applicants to develop the project in a timely manner.

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<sup>1</sup> Residents of Getty and Raymond Townships have members who reside and own land in both of these townships, and are some but not all of the residents of Getty and Raymond townships, and do not purport to represent all residents of the townships.

Under the provisions of Minn.R. 1400.6200, subp.1, and 1405.0900, subp. 1, Residents of Getty and Raymond Townships make this Petition for an Order granting intervention in these dockets as a full party, with all the rights of a party, in the above-captioned proceedings, for purposes both of participation and securing rights of appeal. At the same time, we request a Contested Case to develop the record sufficiently to determine whether the Certificate of Need should be extended. If this proceeding goes forward via Comments and not a full contested case, Residents of Getty and Raymond Townships makes this Petition for Intervention for submission of Comments and Briefs as a full party.

Since 2009 when the Black Oak and Getty wind projects were first proposed and developers began contacting landowners, and over these last five years, members of Residents of Getty and Raymond Townships have been directly affected by the application and project proposal, and will be directly affected by the outcome of this proceeding if it goes forward. For over four years now, members of Residents of Getty and Raymond Townships have been steadfastly involved in the Black Oak and Getty wind project dockets, making and filing comments, attending public meetings and hearings, participating in township and county proceedings. Participation in these dockets as a party is necessary, because Residents of Getty and Raymond Townships wish to protect their interests and develop the record. If a Comment only proceeding is Ordered, Residents of Getty and Raymond Townships requests full-party status for submitting Comments and Briefs.

Residents of Getty and Raymond Townships seeks to intervene in this Certificate of Need docket to help build and inform the record regarding the developer's land rights holdings and lack thereof, ownership of the project, whether it is still a Community Based Energy

Development project because of ownership structure and composition, and the financing for the project.

The position of Residents of Getty and Raymond Townships is that the Certificate of Need should not be extended for this project because it is not what it claims or has claimed to be, that misrepresentations of turbine sites and land/wind rights acquisitions have been made; that many landowners who initially did sign land agreements have not executed the many subsequent agreements presented to them; that it is no longer a C-BED project as defined under Minnesota law; that because it is not a C-BED project it is not necessary for Xcel compliance; and that it does not take into account all costs associated with this project, particularly transmission interconnection. As the record is built, layers peeled from the onion, other issues may be revealed. All aspects of this ever-changing project deserve closer scrutiny by the Commission.

Residents of Getty and Raymond Townships's interests in landowner rights, wind project economics and project organizational status, and participatory process are distinct from that of any other parties. The record of these proceedings must continue to be broadly developed in order to be capable of supporting any decision.

Residents of Getty and Raymond Townships meets the criteria for intervention and respectfully requests that it be granted intervention as a full party, with all the rights of a party, in the above-captioned Certificate of Need and Power Purchase Agreement proceedings, whether formal or informal.

November 17, 2014



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**BEFORE THE  
STATE OF MINNESOTA  
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**In the Matter of the Joint Application of  
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Company, LLC for a Certificate of Need  
for an up to 82 MW Large Wind Project  
in Stearns County**

**PUC Docket: IP6853, IP6866/CN-11-471**

**COMMENT OF RESIDENTS OF GETTY AND RAYMOND TOWNSHIPS**

**CERTIFICATE OF NEED DOCKET**

Residents of Getty and Raymond Townships request Commission scrutiny of the Black Oak and Getty wind project. There are legal issues and issues of material facts in this Certificate of Need docket. Individuals in this association of landowners have been participating in the Siting and Certificate of Need dockets to the best of their abilities, but procedure and practice is difficult for laypersons to navigate. This docket has been winding its way through the administrative process, without activity for some time, but now has suddenly resurfaced, and the Residents of Getty and Raymond Townships are focused on participating within the confines of this administrative docket. Residents ask that Applicant's Petition for Extension be denied.

Noting the Applicant's request for an Extension of the Certificate of Need, an admission that the project would not be completed by the Certificate of Need's December 31, 2014 deadline, Residents of Getty and Raymond Townships requested that Commission action on the

siting dockets on the October 29, 2014 agenda be postponed because the Certificate of Need is in limbo. In keeping with the statutory requirement that the Certificate of Need be approved prior to the Siting Permit, logically, a Siting Permit should not be amended where the Certificate of Need is due to expire. However, at the October 29, 2014 meeting, it was announced, without consideration or a vote, that the Certificate of Need was not at issue and that the Commission would address the siting permit without resolution of the pending Petition in the Certificate of Need docket. Further, counsel and the group was admonished by the Chair to acknowledge and utilize the established process for participating in a docket. Therefore, at this time, and in this window of opportunity, Residents of Getty and Raymond Townships formally request a seat at the table in the Certificate of Need docket.

Residents of Getty and Raymond Townships request that the Commission deny Applicant's Petition, refer to Office of Administrative Hearings for a contested case to develop the record on the issues of fact raised herein, and request that the Commission grant the Residents' Petition to Intervene. In the alternative, we request a public hearing.

### **Recusal of Chair Heydinger**

Residents of Getty and Raymond Townships ask that Chair Heydinger recuse herself from discussion, deliberation and decision of matters regarding these Black Oak and Getty wind project dockets before the Commission because she was the initial Administrative Law Judge assigned to handle these dockets at Office of Administrative Hearings.

On December 15, 2011, the Commission ordered informal review and referred the matter to Office of Administrative Hearings for a public hearing and comment summary (Order was applied to all three dockets but eFiled in only CoN docket).<sup>1</sup> A hearing notice for all the Black

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<sup>1</sup> Commission Order and referral to OAH:

Oak/Getty dockets (CoN 11-471, Siting 10-1240 and 11-831) was issued May 11, 2012 for a hearing on May 29, 2012 with ALJ Heydinger as presiding judge.<sup>2</sup> A second hearing notice was issued May 25, 2012, for a hearing on June 26, 2012, also with ALJ Heydinger to be the presiding judge.<sup>3</sup> In both notices, recipients were instructed to send comments to ALJ Heydinger, providing mailing and email addresses.

In the Siting dockets, before the Commission on October 29, 2014, Chair Heydinger did not disclose her earlier assignment to the case as ALJ and did not recuse herself. When this Certificate of Need and any other matters come before the Commission, Residents of Getty and Raymond Townships ask that Chair Heydinger recuse herself from these cases because she was the initial Administrative Law Judge assigned to these dockets.

## **MATERIAL FACTS AT ISSUE**

### **I. IS THIS ONE PROJECT OR TWO?**

In the Siting dockets, this was originally two projects, one of which was claimed to be a C-BED project. There remain two dockets for siting, but the Certificate of Need combines and certified the projects as one 82 MW project. If the two projects indeed are jointly owned, doesn't that impact on ownership and C-BED status require Commission review? Shouldn't these projects' Siting Permit be joined as was done for the Certificate of Need?

### **II. DOES APPLICANT HAVE LAND RIGHTS TO BUILD PROJECT?**

|                                 |        |        |                          |    |     |                                                                          |            |
|---------------------------------|--------|--------|--------------------------|----|-----|--------------------------------------------------------------------------|------------|
| <a href="#">201112-69274-01</a> | PUBLIC | 11-471 | <input type="checkbox"/> | CN | PUC | ORDER--FINDING APPLICATION COMPLETE & INITIATING INFORMAL REVIEW PROCESS | 12/15/2011 |
|---------------------------------|--------|--------|--------------------------|----|-----|--------------------------------------------------------------------------|------------|

<sup>22</sup> May 11, 2012 Hearing Notice:

|                                |        |         |                          |    |     |                                  |            |
|--------------------------------|--------|---------|--------------------------|----|-----|----------------------------------|------------|
| <a href="#">20125-74638-01</a> | PUBLIC | 10-1240 | <input type="checkbox"/> | WS | PUC | NOTICE--NOTICE OF PUBLIC HEARING | 05/11/2012 |
|--------------------------------|--------|---------|--------------------------|----|-----|----------------------------------|------------|

<sup>3</sup> May 25, 2012 Hearing Notice:

|                                |        |         |                          |    |     |                                    |            |
|--------------------------------|--------|---------|--------------------------|----|-----|------------------------------------|------------|
| <a href="#">20125-75012-02</a> | PUBLIC | 10-1240 | <input type="checkbox"/> | WS | PUC | NOTICE--RESCHEDULED PUBLIC HEARING | 05/25/2012 |
|--------------------------------|--------|---------|--------------------------|----|-----|------------------------------------|------------|

A material fact at issue is whether the Applicant has land rights to build and operate the project. The Applicant should be required to demonstrate it has the land rights claimed.

**A. Are the necessary land rights contracts signed?**

There have been several contracts presented to landowners after the initial leases were executed. Several landowners, the full number unknown, have not signed the later contracts presented after that initial lease was signed. Landowners have also been presented with a contract regarding use of a road easement for which the landowners do not have any ownership interest, which means that they do not have rights to use that road. Landowner contracts also specify the megawatts of the project, i.e. 40 or 42 megawatts, two projects, and not 82 megawatts if one project and one Certificate of Need.

Are contracts signed stating the purpose and use of the subject land, i.e., turbine placement, collector system easement, wind rights, purported by Applicant and sufficient to build and operate project?

**B. Are Applicant's claims of land under its control accurate?**

When Applicant produces maps showing land under its control and turbine placement, are those maps accurate? In at least one instance, land claimed to be under lease was not. A landowner made a public comment in writing for the Certificate of Need record that his land was shown in the maps as under control of Applicants when in fact it was not.<sup>4</sup> This landowner also stated for the record that he believes that Applicants are also claiming land of others who have not signed. Many of the landowners that Applicant claims are participants are absentee owners. See attached Absentee Landowners and Resident Signatures Maps. From those Comments

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<sup>4</sup> Written Public Comments:

|                                |        |        |                          |    |     |                |            |
|--------------------------------|--------|--------|--------------------------|----|-----|----------------|------------|
| <a href="#">20128-77849-01</a> | PUBLIC | 11-471 | <input type="checkbox"/> | CN | OAH | PUBLIC COMMENT | 08/14/2012 |
|--------------------------------|--------|--------|--------------------------|----|-----|----------------|------------|

posted in the eDockets record, a resident in the footprint stated:

I am shown in the foot print for wind rights but have not signed. There are others in the foot print who have not signed either. How can they include our acreage in their project without our signatures? The issues referenced in this letter needs to go to the Minnesota Attorney General.

Hearing Public Comment, p. 8.<sup>5</sup>

In how many other instances is this true? The Commission should take notice that the Applicant's statements of land rights acquisition for this project has been questioned in Comments provided in the public comment period and determine whether Applicant's claims are accurate.

**C. Is remuneration to landowners equitable? Landowners don't think it is!**

Landowners report a wide range of lease payments ranging from, upon information and belief, \$7,500 to \$17,000 annually. The range is significant enough that while the upper bound can be enticing, the Applicant's lowering of potential payments after the initial offer is problematic. Many contract amendments have been presented to landowners, such that there is confusion about what exactly has been agreed to and the cumulative impact of multiple agreements.

**III. CHANGES IN CIRCUMSTANCES – SIZE, TYPE, TIMING AND OWNERSHIP?**

Getty Wind Company, LLC has announced a change in ownership effective November 11, 2014 in a letter dated November 14, 2014. Getty states that it is an "upstream" change which does not affect ownership as defined by the Commission.

**A. Ownership - Is this project still a C-BED project?**

Residents of Getty and Raymond Townships do not agree that the change in "upstream" ownership has no effect, and instead, this type of change of ownership does have an impact,

<sup>5</sup>

|                                |        |        |                          |    |     |                |            |
|--------------------------------|--------|--------|--------------------------|----|-----|----------------|------------|
| <a href="#">20128-77849-01</a> | PUBLIC | 11-471 | <input type="checkbox"/> | CN | OAH | PUBLIC COMMENT | 08/14/2012 |
|--------------------------------|--------|--------|--------------------------|----|-----|----------------|------------|

particularly where Getty was ostensibly a Community Based Energy Development project until this time.

For a project to be a Community Based Energy Development (C-BED) project, certain requirements must be met:

*"Community-based energy development project" or "C-BED project" means a new renewable energy project that either as a stand-alone project or part of a partnership under subdivision 8:*

*(1) has no single qualifying beneficiary, including any parent company or subsidiary of the qualifying beneficiary, owning more than 15 percent of a C-BED wind energy project unless: (i) the C-BED wind energy project consists of only one or two turbines; or (ii) the qualifying beneficiary is a public entity listed under paragraph (c), clause (4);*

*(2) demonstrates that at least 51 percent of the net present value of the gross revenues from a power purchase agreement over the life of the project are qualifying revenues; and*

*(3) has a resolution of support adopted by the county board of each county in which the project is to be located, or in the case of a project located within the boundaries of a reservation, the tribal council for that reservation.*

*(i) "Value-added portion" means the difference between the total sales price and the total cost of components, materials, and services purchased from or provided outside of Minnesota.*

Minn. Stat. §216B.1612, Subd. 2(h).

In granting the Certificate of Need, the Commission relied to some extent on the C-BED status of the Getty project, the claimed 18 Minnesota owners and investors, local contractor beneficiaries, and the Stearns County letter of support of the project.

If the project ownership has indeed changed, as evidenced in the November 14, 2014 letter from Blake Nixon, as “President, Getty Wind Company, LLC” (he is also President of Geronimo<sup>6</sup>) to the Commission, then the Commission’s reliance on Getty’s C-BED status should be reviewed and qualifying beneficiaries and qualifying revenues be identified.

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<sup>6</sup> See Geronimo’s site: [http://www.geronimoenergy.com/team/team\\_bios2/blake\\_nixon.html](http://www.geronimoenergy.com/team/team_bios2/blake_nixon.html)

## **B. Ownership - a change in ownership? Another change in ownership?**

On October 27, 2014, two days before the Commission meeting regarding the siting permits for this project, the Applicants filed its request for Extension of Certificate of Need. Just last week, Applicants filed a letter stating that there was a change in ownership. But what isn't in the record is that some time ago, the Applicant presented landowners with a "Landowner Estoppel Certificate" for execution, "in connection with the sale of 100% of the membership interests in Lessee by Geronimo Wind Energy, LLC" from Black Oak Wind, LLC, to Southern Turner Renewable Energy. See attached Landowner Estoppel Certificate (redacted). It appears that this sale was not completed, but the details are unknown.

Under Minnesota Rules, as above, "a change in power plant ownership smaller than the lesser of 80 megawatts or 20 percent of the capacity approved in a certificate of need issued by the commission does not require recertification." Minn. R. 7849.0400, Subp. 2(c). The project under this Certificate of Need is 82 MW, over the 80 megawatt threshold. Further, "the commission shall order further hearings if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision under the criteria specified in part 7849.0120." Minn. R. 7849.0400, Subp. 2(h).

Would the Commission, had it known that the project was not a C-BED project and was fully owned by Geronimo resulted in a different decision? The Commission must make this determination.

## **C. Timing – Request for Extension**

Applicant has reported a change in circumstances admitting that it is not able to meet the Certificate of Need in-service date, and has requested an extension. At least six project Certificates of Need and Siting Permits have been revoked by the Commission in the last few

years, typically because the project was not constructed by the in-service date, and then was not built after one or two extensions. Are the Applicant's reasons for the delay in construction legitimate, or is the delay a sign that the project is not viable? Has there been any verification of the Applicant's claims?

Applicant states it now has a Power Purchase Agreement with Minnesota Municipal Power Association. This PPA with MMPA has not been filed in this docket and has not received Commission review.

Applicant also claims that MISO studies for this project, G858 and H071, are not yet complete, and the final Generation Interconnection Agreement is not yet executed. The MISO queue reflects that G858 and H071 were not queued for interconnection until January 7, 2013. While Applicant states that the System Impact Study including these and other projects in queue is scheduled to be completed the "first of November," it is not yet posted on the MISO queue site<sup>7</sup>.

In the Applicant's Petition, they ask for exemption if the Commission determines that additional hearings are necessary, and which would happen only if the Commission finds that the change, if known, could have resulted in a different decision. Applicants request the Commission allow the project an extension without scrutiny, a request that the Commission back off from its charge.

Without review of the PPA and without an executed Generation Interconnection Agreement, significant milestones in the progress of a wind project, the Commission has no basis for a belief that the project will be built, much less built by the end of the 2015 calendar year. Instead, without verification of the Applicant's claims of a PPA and GIA, the Commission has no

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<sup>7</sup> The most recent System Impact Report posted:  
[https://www.misoenergy.org/\\_layouts/MISO/ECM/Redirect.aspx?ID=161885](https://www.misoenergy.org/_layouts/MISO/ECM/Redirect.aspx?ID=161885)



basis for a determination that there would or would not have been a different decision if known at the time the Certificate of Need was first granted.

Because so many permits have been revoked or not extended, and Applicants are asking for an extension of the in-service deadline, we ask that the Commission take a close look at this Request for Extension.

#### **D. Size and Type – Request for changes**

In the routing dockets, Black Oak/Getty asked for and received Commission approval for a different layout, and a different size, type and number of turbines. Through the nearly four years since the Black Oak/Getty Certificate of Need application was filed, there have been many permutations of the size and type of turbines, and more variations of where those turbines might be planted. The many multiple maps were addressed in the DNR's comments, with commenters working to keep up with the changes in Applicant's plans. See attached DNR Comments from Certificate of Need and Siting dockets. No USFWS Comments have been filed.

In addition to the many changes in project layout, turbine placement, and size and type of turbine, the Avian and Bat Protection Plan, filed as a part of this Certificate of Need docket,<sup>8</sup> is fundamentally flawed. Regarding the acoustic monitoring and report, the DNR comments specify, for example:

Equipment failure resulted in a total of 180 lost detector nights (page 6). The east tower was nonoperational 40% (80 detector nights) of the time due (page 7). It is difficult to interpret the implications of this equipment failure on describing peak activity or species composition without further details. Presumably, given the above numbers, equipment failure occurred at all of the towers? When did the failure(s) occur? Was it a one-time event or did the equipment fail periodically throughout the survey period? Along these lines, the percentages reported in Table 1 are misleading as the acoustic equipment at each of the towers was not collecting data for the same duration.

|                                |        |        |                          |    |                                                 |                        |            |
|--------------------------------|--------|--------|--------------------------|----|-------------------------------------------------|------------------------|------------|
| <a href="#">20127-76674-02</a> | PUBLIC | 11-471 | <input type="checkbox"/> | CN | BLACK OAK WIND, LLC AND GETTY WIND COMPANY, LLC | COMMENTS--ABPP         | 07/11/2012 |
| <a href="#">20127-76674-05</a> | PUBLIC | 11-471 | <input type="checkbox"/> | CN | BLACK OAK WIND, LLC AND GETTY WIND COMPANY, LLC | COMMENTS--REDLINE ABPP | 07/11/2012 |

DNR Comment, Feb. 11, 2013<sup>9</sup>. Six months of lost time, 40% non-operational monitor – this is not adequate monitoring. See also DNR Comments in Certificate of Need<sup>10</sup> and Siting.<sup>11, 12</sup>

Many concerns were raised by the DNR that call into question the results of this “monitoring,” and the DNR requested specific information be provided. While there was a redlined version of the Avian and Bat Protection Plan, there is no record of these monitoring studies having been redone to correct flaws such as those pointed out by the DNR.

The Commission should require a corrected and updated Avian and Bat Protection Plan.

#### **IV. CONCLUSION**

Residents of Getty and Raymond Townships request that the Commission refer Applicant’s Petition to Office of Administrative Hearings for a contested case to develop the

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|                                |        |        |                          |    |                                           |          |            |
|--------------------------------|--------|--------|--------------------------|----|-------------------------------------------|----------|------------|
| <a href="#">20132-83757-01</a> | PUBLIC | 11-831 | <input type="checkbox"/> | WS | MINNESOTA DEPARTMENT OF NATURAL RESOURCES | COMMENTS | 02/12/2013 |
|--------------------------------|--------|--------|--------------------------|----|-------------------------------------------|----------|------------|

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|                                |        |        |                          |    |                                           |          |            |
|--------------------------------|--------|--------|--------------------------|----|-------------------------------------------|----------|------------|
| <a href="#">20128-78121-01</a> | PUBLIC | 11-471 | <input type="checkbox"/> | CN | MINNESOTA DEPARTMENT OF NATURAL RESOURCES | COMMENTS | 08/24/2012 |
|--------------------------------|--------|--------|--------------------------|----|-------------------------------------------|----------|------------|

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|                                 |        |        |                          |    |     |          |            |
|---------------------------------|--------|--------|--------------------------|----|-----|----------|------------|
| <a href="#">201211-80359-01</a> | PUBLIC | 11-831 | <input type="checkbox"/> | WS | DNR | COMMENTS | 11/05/2012 |
|                                 |        |        |                          |    |     |          |            |

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|                                  |        |        |                          |    |                                           |          |            |
|----------------------------------|--------|--------|--------------------------|----|-------------------------------------------|----------|------------|
| <a href="#">201410-103718-01</a> | PUBLIC | 11-831 | <input type="checkbox"/> | WS | MINNESOTA DEPARTMENT OF NATURAL RESOURCES | LETTER   | 10/10/2014 |
| <a href="#">201410-103718-03</a> | PUBLIC | 11-831 | <input type="checkbox"/> | WS | MINNESOTA DEPARTMENT OF NATURAL RESOURCES | LETTER   | 10/10/2014 |
| <a href="#">201410-103718-02</a> | PUBLIC | 11-831 | <input type="checkbox"/> | WS | MINNESOTA DEPARTMENT OF NATURAL RESOURCES | LETTER   | 10/10/2014 |
| <a href="#">20149-103428-01</a>  | PUBLIC | 11-831 | <input type="checkbox"/> | WS | MINNESOTA DEPARTMENT OF NATURAL RESOURCES | COMMENTS | 09/30/2014 |
| <a href="#">20149-103428-02</a>  | PUBLIC | 11-831 | <input type="checkbox"/> | WS | MINNESOTA DEPARTMENT OF NATURAL RESOURCES | COMMENTS | 09/29/2014 |
| <a href="#">20149-103428-03</a>  | PUBLIC | 11-831 | <input type="checkbox"/> | WS | MINNESOTA DEPARTMENT OF NATURAL RESOURCES | COMMENTS | 09/29/2014 |
| <a href="#">20132-83757-01</a>   | PUBLIC | 11-831 | <input type="checkbox"/> | WS | MINNESOTA DEPARTMENT OF NATURAL RESOURCES | COMMENTS | 02/12/2013 |
| <a href="#">20128-78117-01</a>   | PUBLIC | 11-831 | <input type="checkbox"/> | WS | MINNESOTA DEPARTMENT OF NATURAL RESOURCES | COMMENTS | 08/24/2012 |

record on the issues of fact raised below and grant their Petition to Intervene. In the alternative, we request a public hearing. These changes in size, type and layout just approved by the Commission in the Siting dockets should also be carefully addressed in this Certificate of Need docket. Residents request that Applicant's Petition for Extension and Exemption be denied.



Dated: November 17, 2014

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Townships  
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Red Wing, MN 55066  
(612) 227-8638  
overland@legalelectric.org

# **Landowner Estoppel Certificate**

### LANDOWNER ESTOPPEL CERTIFICATE

|                                                                                  |                                                                                                                                                                                                                                                      |
|----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Owner:</b>                                                                    |                                                                                                                                                                                                                                                      |
| <b>Description of Lease (including any amendments and recording information)</b> |                                                                                                                                                                                                                                                      |
| <b>Rent Paid Through:</b>                                                        |                                                                                                                                                                                                                                                      |
| <b>Mortgages affecting Premises:</b>                                             | None                                                                                                                                                                                                                                                 |
| <b>Farm or other tenancies affecting Premises:</b>                               | <input type="checkbox"/> None<br>Tenant: _____<br>Address: _____<br>City/State/ZIP: _____<br>Phone No.: _____<br>Lease date: _____ <input type="checkbox"/> Junior to Wind Lease<br><input type="checkbox"/> Verbal <input type="checkbox"/> Written |

#### **BACKGROUND**

This Owner Estoppel Certificate (this "Estoppel") is executed and delivered as of date set forth below by Owner in favor of Black Oak Wind, LLC, a Minnesota limited liability company ("Lessee") and Southern Turner Renewable Energy, LLC, a Delaware limited liability company ("Buyer"). This Estoppel is being delivered in connection with the sale of 100% of the membership interests in Lessee by Geronimo Wind Energy, LLC, a Minnesota limited liability company ("Seller") to Buyer (such transaction, the "Transfer"). Owner and Lessee are parties to that certain Land Lease and Wind Easement described above (collectively, the "Lease"). Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Lease. Owner acknowledges and agrees that no consent of Owner is required with respect to the Transfer.

#### **ESTOPPEL**

Buyer has required that the Seller obtain the confirmation and agreement of Owner as to certain matters related to the Lease. Based on the foregoing, and recognizing that Buyer and its successors and assigns will rely hereon, Owner hereby confirms, agrees and certifies to Buyer, Lessee and their respective successors and assigns as follows:

1. The Lease is in full force and effect and has not been modified or amended in any way except as described in the lease amendments described above. The Lease constitutes the entire agreement between Owner and Lessee, and Owner agrees that no understandings, representations or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of the Lease, except for the written amendment described above and except for any separate agreement referenced in the Lease and in the form attached to the Lease.

2. Owner is not in default under the Lease and has not breached the Lease. To the best of Owner's knowledge, (i) Lessee is not in default under the Lease and has not breached the Lease, and (ii) no facts or circumstances exist which, with the passage of time or the giving of notice or both, would constitute a default or breach by either such party under the Lease. There are no disputes between Owner and Lessee relating to the Lease.

3. There are no actions, whether voluntary or otherwise, pending against Owner under the bankruptcy, debtor reorganization, moratorium or any similar laws of the United States, any state thereof or any

other jurisdiction. There are no proceedings pending or, to the best of Owner's knowledge, threatened against or affecting Owner in any court or by or before any court governmental authority or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Owner to perform its obligations under the Lease.

4. All payments due under the Lease, including the Development Rent Payments, have been paid in full through date set forth below. The "Construction Date" under the Lease has not yet occurred.

5. Owner is the owner of all mineral rights, including any surface rights, with respect to the Premises. Owner has not mortgaged the Premises, and there are no farm or other tenancies affecting the Premises, except as set forth above. No meteorological towers are located on the Premises.

IN WITNESS WHEREOF, Owner has caused this Estoppel to be duly executed and delivered as of the date set forth above. The undersigned is authorized to execute this certificate on behalf of Owner.

\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_

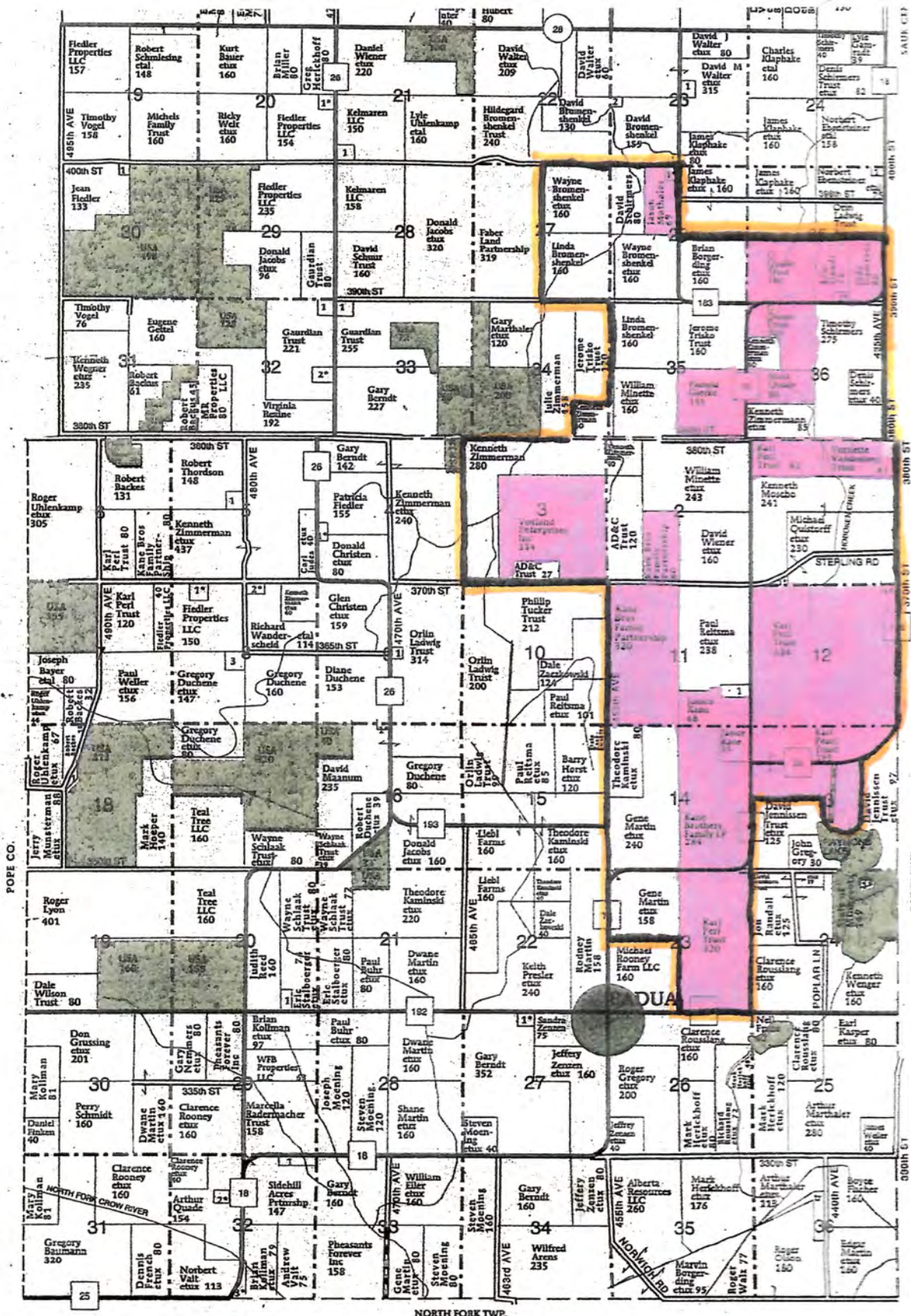
**MAPS**

**Absentee Owners**

**and**

**Resident Signatures**





- RAYMOND TOWNSHIP**
- SECTION 1**  
1. Horst, Barry 9
- SECTION 4**  
1. Raper, Marvin 5
- SECTION 5**  
1. MBC Drainage LLC 10
- SECTION 9**  
1. Jordan, Peter 10  
2. Duchene, Patrick 6  
3. Duchene, Leon 13

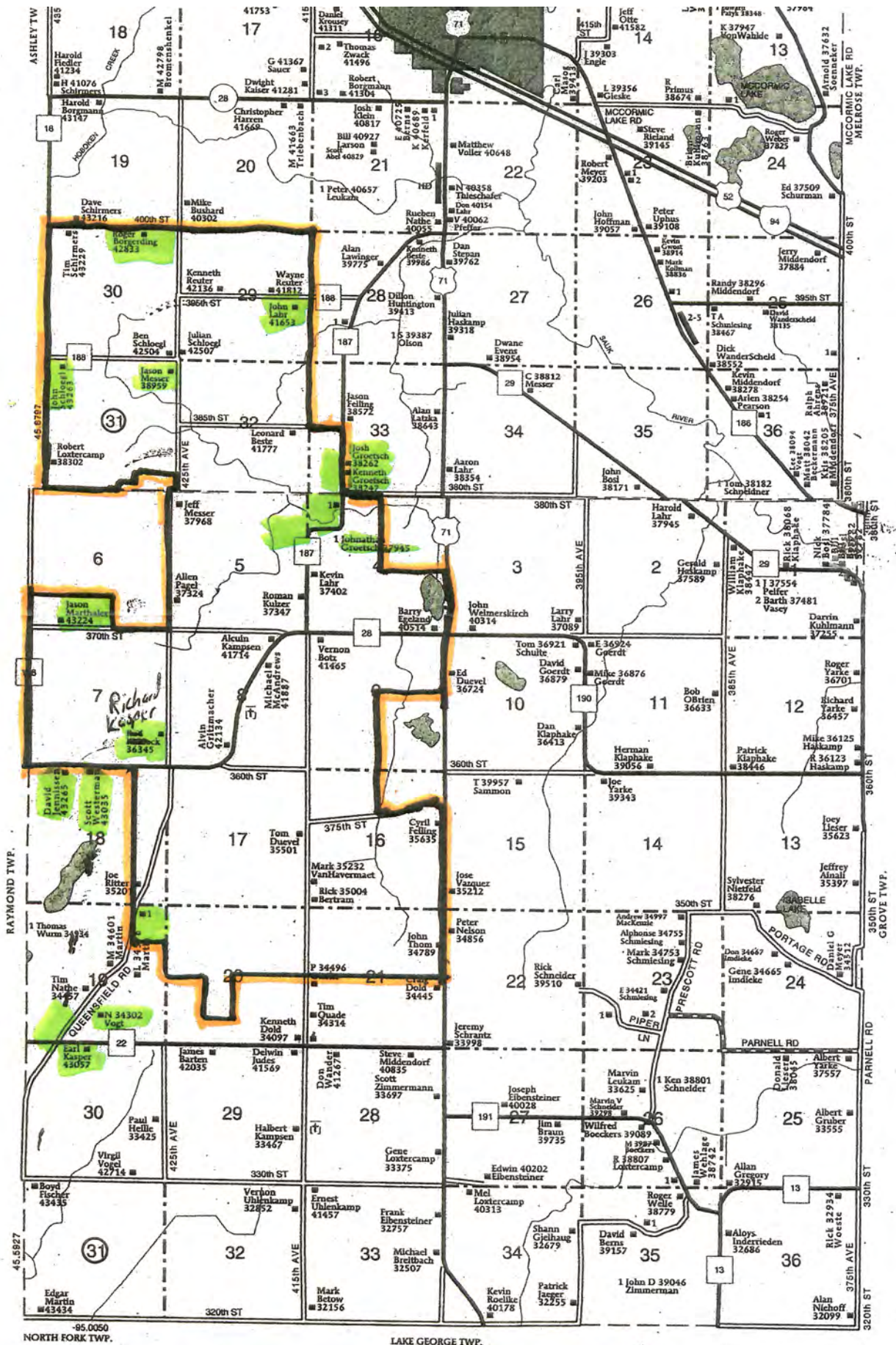
- SECTION 9**  
1. Ladwig, Larry 6
- SECTION 11**  
1. Wenkar, Mark 14
- SECTION 12**  
1. Horst, Barry 6
- SECTION 16**  
1. Ruogemer, Stephen 5
- SECTION 18**  
1. Hooper, James 7
- SECTION 29**  
1. Wain, Mark 6

- SECTION 24**  
1. VanBock, Marti 7
- SECTION 27**  
1. Martin, Dwane 8
- SECTION 32**  
1. Martin, Lyndon 9  
2. Quade Jr, Arthur 5  
3. Kollman, Brian 8

 Black Oak Wind farm fee prs

 Absentee Landowner

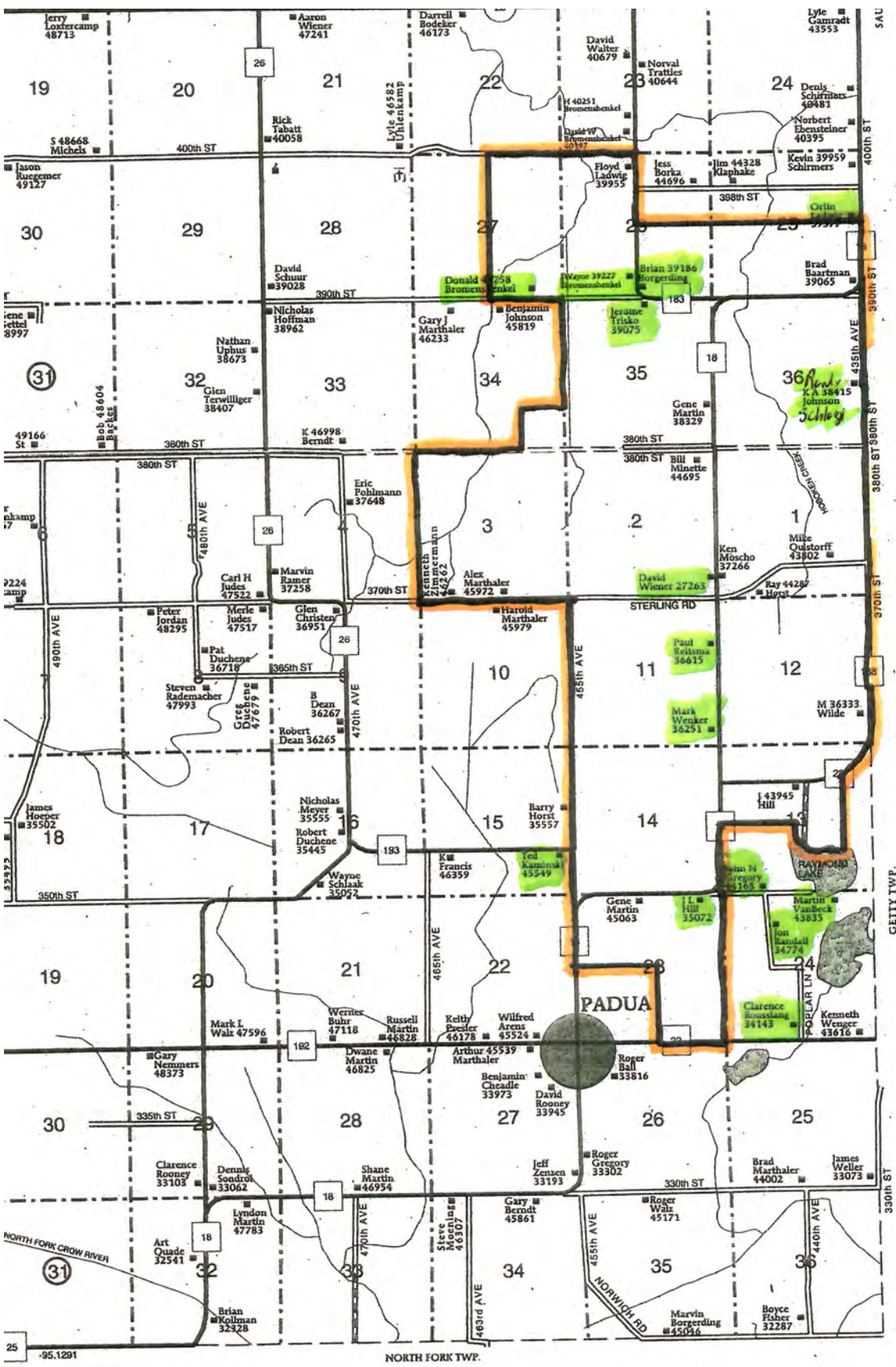




Resident Signatures

Getty Wind FootPrint





Black Oak Wind Farm FootPrint

Resident Signatures

# Avian & Bat Protection Plan

## Figures 4-6

Note eagle nest between the two projects

A second eagle nest to NE is not shown



