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December 13, 2025

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SENT BY ELECTRONIC MAIL ONLY

Board of Supervisors of Clinton County, Iowa (boardofsupervisors@clintoncounty-ia.gov)
County Administration Building
1900 N. 3rd Street
Clinton, Iowa 52732

Mike Wolf (Mwolf@clintonca.net)
Clinton County Attorney
612 N. 2nd Street
Clinton, IA 52733

Re: Proposed Changes to Clinton County Wind Ordinance

Dear Clinton County Supervisors and County Attorney Wolf:

As you know, my firm represents Clinton County Wind, LLC (“Clinton County Wind”) regarding the commercial wind energy project (“Project”) in Clinton County (“County”) it has been developing for several years, having invested millions of dollars in reliance on existing, reasonable wind ordinance terms and Iowa law. Disappointingly, the Board of Supervisors (“the Board”) continues to entertain potential ordinance terms that it knows – and has been advised publicly by its own counsel – are unworkable and would prevent wind development within the County. By taking this approach, the County is not setting reasonable evidence-based zoning restrictions. Rather, it is using its ordinance to prevent wind development in the County. We have proposed reasonable evidence-based terms that could be added via amendment and that still largely restrict wind development in the County. As we have shared, the restrictive terms we proposed do not guarantee that a wind project will be built in Clinton County, but they do, however, make a project possible. The terms the County is considering make a project impossible. Clinton County Wind continues to be extremely disappointed to see the Board embrace this approach in considering amendments to the utility scale wind ordinance.

We continue to be concerned with, and question the legality of, the procedures the county is utilizing in passing an ordinance. First, at the first reading on December 8, 2025, the discussion of the various ordinance terms and the opportunity for amendments was repeatedly cut off by Supervisor George, acting as chair. Next, the County failed to incorporate any revised language regarding city waivers that was approved on December 8, in concept, in the second reading on December 10, 2025, even though it was represented by Supervisor George that the updated version from the first reading was available in both written form and on the County’s website, contained the revised language that was approved, and was the version that was being voted on by the Board. The Board voted to dispense with reading the entire amendment, which would have revealed the

December 13, 2025

Page 2

failure to include the waiver language. While the extraordinarily lengthy delays in developing an ordinance that bans wind development have been frustrating to all involved, that is no reason to rush when an actual vote is being taken, and in fact the County should endeavor to ensure all procedural safeguards are followed, given the magnitude of this ordinance's effects. Clinton County Wind is assessing whether its rights have been violated by the County's actions and omissions at this and other stages of the ordinance process.

Aside from the ongoing procedural concerns, we note that the County has embraced terms that its own legal counsel has stated publicly cannot be defended in court. We agree with the County's counsel – the ordinance is not defensible and the County is knowingly putting itself at risk of costly litigation.

As shown by the maps presented by Clinton County Wind representatives Julie Garvin and Kimberly Dickey at the first reading, the setbacks being contemplated would prevent wind development within Clinton County. While the updated definition of riparian ways and wetlands removed some of the obstacles, the cumulative effect of the current proposed setbacks continue to severely limit the ability of any developer to develop a wind project. The setbacks from wooded, grassland and wetland habitats of 40 acres or larger, the Mississippi River, eagles' nests and incorporated city limits remain unworkable. Together, the terms do not allow sufficient buildable area for wind development.

The setbacks are not the only terms in the current draft ordinance amendment that would prevent wind development in Clinton County. Several of the provisions noted in our letter sent July 14, 2025 as having no relation to a legitimate government interest and appearing designed solely to prevent wind development are still included in the current draft ordinance. To reiterate, any one of these terms could prohibit wind development but, when combined, there can be no doubt that the draft ordinance amendment is designed to permanently prohibit wind energy investment in the County.

There is still time to make revisions and pass a legally defensible ordinance in conformance with Iowa law. As you know, a county's home rule authority is limited when there is an irreconcilable conflict with state law. Here, state law explicitly encourages the development of wind energy¹ yet the County's currently proposed ordinance prohibits the development of wind energy. The ordinance irreconcilably conflicts with Iowa law and is facially indefensible. Similarly, an ordinance is only valid if it has any real, substantial relation to the public health, comfort, safety, and welfare. *See Shriver v. City of Okoboji*, 567 N.W.2d 397, 401 (Iowa 1997) (quoting *Neuzil v. City of Iowa City*, 451 N.W.2d 159, 164 (Iowa 1990)). There is no valid evidence that the current ordinance terms, which prohibit wind development, increase the public health, safety, or welfare beyond the restrictive terms Clinton Wind has provided. Rather, they appear designed to appease a vocal minority of individuals who oppose any development in the County (and other counties across Iowa). While the County's actions may be pacifying those individuals in the meanwhile, it

¹ See, e.g., Iowa Code §§ 476.41, 476.42(1), 476.53(1), 476.53(3), 476.53A; see also Iowa Smart Planning Principles (Iowa Code § 18.B1(3)) and the Iowa Energy Plan.

December 13, 2025

Page 3

ultimately must also be accountable to the majority of individuals who support wind development in the County, and particularly so to those whose legal rights are at stake.

Finally, as you consider the effect of the currently proposed terms, we encourage you to review our earlier proposal, which provides strict setback terms that are well above the protections in the existing ordinance (and of many other counties in Iowa) while still allowing for reasonable development of wind within Clinton County. To aid in that review, the feasibility maps that we sent reflect those terms, showing the buildable area with the setbacks proposed in the offer. Compared to the ban on wind that the currently contemplated setbacks establish, the strict terms we proposed allow for very limited development of wind in the County while ensuring robust protection of the County's residents and abundant natural resources.

Passing a reasonable wind ordinance – meaning an ordinance that allows for wind development – will avoid litigation and leaves open the prospect of substantial tax revenues coming into the County. In contrast, passing the currently proposed wind ordinance – which does not allow for wind development – results in the very real prospect of costly litigation and no possibility of the millions of dollars of tax revenues that wind projects deliver. If the Board adopts the currently proposed wind ordinance, the Board will be violating landowners' rights, the Project's rights, and Iowa law, leaving litigation as the only option for protecting those rights. As such, if the ordinance is passed as proposed, Clinton County Wind may have no other choice but to take action to protect its legal rights.

Very truly yours,
BROWN, WINICK, GRAVES, GROSS &
BASKERVILLE, P.L.C.



Samantha C. Norris