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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:

My firm represents Clinton County Wind, LLC (“Clinton County Wind”) regarding its commercial wind energy project (“Project”) in Clinton County (“County”). The Board of Supervisor’s (“Board”) previous support of a commonsense utility scale solar ordinance allowed for extensive economic development in the County and sent a clear signal that Clinton County was open for business. Now, Clinton County Wind is extremely disappointed to see the Board embrace the opposite approach in considering amendments to the utility scale wind ordinance.

Clinton County Wind began working with interested landowners in the County in late 2019 and early 2020. Since then, Clinton County Wind has invested well over \$5.5 million in the County by launching and sustaining a comprehensive development initiative which encompasses a broad spectrum of technical assessments and regulatory activities, all necessary to permit a project in the county under the existing ordinance.

In June 2024, the Board passed a resolution establishing a moratorium on the approval of rezoning applications for commercial wind energy projects. After the Planning and Zoning Commission (“P&Z”) recommended an amendment to the zoning ordinance, the Board voted to codify the moratorium on July 29, 2024. The ordinance amendment provided for an automatic repeal of the moratorium on September 30, 2024, unless extended before its expiration by a resolution of the Board until no later than December 31, 2024. The amendment also contemplated up to two additional extensions, allowing the moratorium to be extended through June 30, 2025, but did not contemplate any additional extensions.

In addition to the moratorium on approval of rezoning applications for commercial wind energy projects, on December 16, 2024, the Board, by resolution, placed a moratorium on applications for Meteorological towers, Sodar equipment, and any other equipment related to the development of

utility-scale wind turbines until March 30, 2025. This moratorium was extended through June 30, 2025, at which point it expired. This additional moratorium served no purpose other than to prevent wind developers from continuing to complete studies within the County. As such, Clinton County Wind was prevented from gathering further necessary data to evaluate the Project from a commercial standpoint.

After Clinton County Wind learned the County intended to attempt to further extend its moratorium by amending its ordinance via resolution and without a recommendation from P&Z or the required readings, Clinton County Wind expressed its concerns over the phone and in an email to County Attorney Wolf on June 20, 2025, which is enclosed. The Board elected to disregard the County's ordinance, state law, and the other procedural deficiencies raised, and proceeded to attempt to improperly extend the moratorium. Now, the County is planning to enact a new moratorium, thus continuing to prevent any wind energy project from applying for a permit.

The potential further delay is compounded by the fact that Supervisor Srp recused himself from all discussions on August 26, 2024. In revising an ordinance that would apply to *all* wind projects in Clinton County, the Board is performing its quasi-legislative function. As such, there would need to be evidence of an unalterably closed mind in order for him to be conflicted out of participating. *Iowa Farm Bureau Federation v. Environmental Protection Com'n*, 850 N.W.2d 403, 420 (Iowa 2014). Potentially participating in a prospective project that may be impacted by an ordinance amendment sometime in the future does not rise to the level of an unalterably closed mind, and does not conflict Supervisor Srp from participating in *any* discussions relating to how wind should be regulated in the County. These concerns were addressed with County Attorney Wolf on a phone call at the time of the recusal and addressed again in the June 20 email, yet Supervisor Srp has not reengaged in the ordinance process. Supervisor Srp's ongoing recusal has only added to the dysfunction and delay surrounding the ordinance amendment process.

The role of a moratorium is to preserve the status quo while a new ordinance is being drafted. *Geisler v. City Council of City of Cedar Falls*, 769 N.W.2d 162, 166 (Iowa 2009). From the time the moratorium was put into place in June of 2024 until its initial expiration on September 30, 2024, the Board held only two meetings to discuss potential revisions. This lack of initial action suggests there was no intention to complete ordinance revisions during the initial moratorium period, and that the County always intended to use the longest moratorium period possible. The meetings since that time have not resulted in any movement toward a reasonable ordinance amendment. Now, rather than reach a resolution that balances anti-wind concerns with allowing for responsible development, the County seeks to yet again prolong its ban on wind projects while considering an ordinance that prevents any wind development.

In the past year, Clinton County Wind has sent several redlines of the ordinance. Additionally, in September of 2024, Clinton County Wind sent a letter to the Board addressing several concerns referenced below. Beyond that, representatives from Clinton County Wind have participated in each of the meetings held by the Board and the P&Z, provided studies conducted by experts in their fields and widely accepted educational materials on safety, industry best practices and have shared its experience successfully developing and operating dozens of wind projects in Iowa and

across the country. Clinton County Wind also provided the Board with access to experts in their respective fields to assist the Board in drafting the ordinance amendment.

Instead of considering this information, the Board and P&Z have embraced non-scientific and arbitrary terms provided by wind energy opponents, terms that are intended to and will in fact, stop development of any wind project in the County. Based on the continued delay in passing an ordinance amendment, much less one that will allow wind project development in the County, the message seems clear that the County intends to block all wind project development indefinitely. Not only is this troubling for wind energy projects, and businesses looking to locate in counties with access to, and policies in support of, renewable energy, but it is also contrary to Iowa law. Please see the enclosed summary of applicable Iowa law.

Numerous terms in the current draft ordinance amendment have no relation to a legitimate government interest and appear designed solely to prevent wind development. Please see the enclosed list of unworkable terms in Clinton County's draft ordinance amendment. 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. In addition, the continual extensions of a moratorium prevent advanced stage projects, like Clinton County Wind, from proceeding to permitting even while they are forced to expend resources to keep projects viable. Anti-development advocates commonly use delay as a tactic to try to kill projects and it appears increasingly likely that the County's actions may ultimately have that result: further delays in passing a reasonable ordinance will jeopardize the Project altogether due to commercial terms and timeline certainty required by offtakers, which could include public utilities that serve Iowa customers.

Even if the County passes an ordinance amendment that will allow for reasonable and responsible wind energy development – which the current draft does not – the County's delays in acting are also detrimental to the residents of the County, as it is depriving them of the millions of dollars of economic activity and tax revenues that Clinton County Wind will provide. The preliminary Economic Impact Analysis for the Project is enclosed, setting forth the economic benefits the County would enjoy from the Project.

While we are disappointed that the County refused to consider our ordinance revisions and our attempts to reach a resolution, the Board can still do the right thing and either: (1) not enact a new moratorium (which allows the existing ordinance to continue to be in effect) and negotiate a development agreement with Clinton County Wind for additional terms that would still allow for development; or (2) adopt an ordinance amendment with reasonable terms that allow for wind development in the County prior to September 30, 2025. With each of these options, the Board can include terms that are stronger than those in the current ordinance and are reasonably related to a legitimate government interest, ensuring they still allow for reasonable and responsible development of wind. If neither of these options happens, the Board will be violating landowners' rights, the Project's rights, and Iowa law, and 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

Encls.

List of Unworkable Terms in Clinton County's Draft Wind Ordinance Amendment
Summary of Iowa Law Applicable to Renewable Energy and Local Zoning Authority
Email to County Attorney Wolf on June 20, 2025
Setback Map
Clinton County Setback Map
Preliminary Economic Impact Analysis

