

Agricultural Impact Mitigation Agreement

This AGREEMENT FOR MITIGATION OF IMPACTS TO AGRICULTURAL LAND (“Agreement”) is made and entered into this ___ day of _____, 2014 by and among LIVINGSTON COUNTY, a body corporate and politic under the laws of the State of Illinois (the “County”), and PLEASANT RIDGE WIND ENERGY LLC, a Delaware limited liability company with offices at One South Wacker Drive, Suite 1900, Chicago, Illinois 60606 (“Developer”). The County together with Developer are sometimes referred to herein individually as a “Party” and collectively as the “Parties”. The term “Developer’s Representatives” shall include the Developer’s contractors, sub-contractors, agents, employees, suppliers and designees.

RECITALS

WHEREAS, Developer is in the process of developing a wind-powered electric energy generating facility known as the Pleasant Ridge Wind Farm (the “Project”) in the County, and will submit an application for a Special Use Permit with the County in accordance with the County’s Wind Energy Ordinance, Livingston County Code of Ordinances, Article VIII (the “Ordinance”); and

WHEREAS, in connection with the construction, operation and maintenance of the Project, the Parties desire to address certain issues relating to construction standards and policies; and

WHEREAS, Developer has provided to the County Engineer of Livingston County (“County Engineer”) a site layout plan for the Project that shows proposed tower sites, access roads, intersection improvements, estimated delivery truck volumes, and existing structures and culverts; and

WHEREAS, Developer and the County wish to set forth their understanding and agreement as to the issues relating to the construction and operation of the Project; and

WHEREAS, this Agreement is a condition of the County issuing special use permits as required by the Ordinance; and

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the parties, intending to be legally bound, agree as follows:

Section 1. Definitions. The following definitions will apply throughout this Agreement, except where otherwise specified:

Aboveground

Cable - Electrical power lines installed above grade to be utilized for conveyance of power from the Wind Turbine(s) to the Project substation.

Agricultural land -	Land used for cropland, hayland, pasture land, managed woodlands, truck gardens, farmsteads, commercial ag-related facilities, feedlots, livestock confinement systems, land on which farm buildings are located, and land in government set-aside programs.
Commercial Operation Date -	The calendar date on which the Project is capable of producing power and placing said power on the electrical grid.
Construction -	The installation, preparation for installation, and/or repair of the Project.
Cropland -	Land used for growing row crops, small grains, or hay; includes land which was formerly used as cropland, but is currently in a government set-aside program and pastureland comprised of prime farmland.
Landowner -	Any person with an ownership interest in property that is used for agricultural purposes and that is party to an Underlying Agreement.
Prime farmland -	Agricultural land comprised of soils that are defined by the U.S. Department of Agriculture ("USDA") Natural Resources Conservation Service ("NRCS") as being "prime" soils (generally considered the most productive soils with the least input of nutrients and management).
Topsoil -	The uppermost layer of the soil that has the darkest color or the highest content of organic matter, more specifically defined as the "A" horizon.
Underground Cable -	Electrical power lines installed below grade to be utilized for conveyance of power from the Wind Turbine(s) to the Project substation.
Underlying Agreement -	The written agreement with a Landowner(s) including, but not limited to, an easement, option, lease, or license under the terms of which Developer intends to construct a portion of the Project on the property of the Landowner.
Wind Turbine -	A wind energy conversion unit equal to or greater than 500 kilowatts in total nameplate generating capacity.

Section 2. Construction Standards and Policies

A. Support Structures

1. Only single pole support structures will be used for overland transmission not located adjacent to the Project substation.
2. Where the electric line is adjacent and parallel to highway and/or railroad right-of-way but on privately owned property, the support structures will be placed as close as reasonably practicable and allowable by the County Engineer. The only exceptions may be at jogs or weaves on the highway alignment or along highways or railroads where transmission and distribution lines are already present.
3. The highest priority will be given to locating the electric line parallel and adjacent to highway and/or railroad right-of-way. When this is not possible, commercially reasonable efforts will be expended to place all support poles in such a manner so as to minimize their placement on Cropland (*i.e.*, longer than normal spans will be utilized when traversing Cropland).

B. Aboveground Facilities

Locations for Project facilities shall be selected in a manner so as to minimize, to the extent reasonably practicable, direct adverse impacts to ongoing agricultural activities occurring on the land adjacent to the Project facilities.

C. Guy Wires and Anchors

1. Commercially reasonable efforts will be made to place guy wires and their anchors out of crop and hayland, placing them instead along existing utilization lines and on land not used for row crops or hay. Where this is not feasible, commercially reasonable efforts will be made to minimize guy wire impact on cropland.
2. All guy wires will be shielded with highly visible guards.

D. Underground Cabling Depth

1. Underground electrical cables will be buried with:
 - a. A minimum of 5 feet of top cover where it crosses cropland.

- b. A minimum of 5 feet of top cover where it crosses pasture land or other agricultural land comprised of soils that are classified by the USDA as being prime soils.
 - c. A minimum of 3 feet of top cover where it crosses pasture land and other agricultural land not comprised of prime soils.
 - d. a minimum of 3 feet of top cover where it crosses wooded/brushy land.
2. Notwithstanding the foregoing, in those areas where (i) rock in its natural formation and/or (ii) a continuous strata of gravel exceeding 200 feet in length are encountered, the minimum top cover will be 30 inches.

E. Topsoil Replacement

1. Any excavation shall be performed in a manner to preserve topsoil. Commercially reasonable efforts will be made to store the topsoil near the excavation site in such a manner that it will not become intermixed with subsoil materials.
2. Commercially reasonable efforts will be made to store all disturbed subsoil material near the excavation site and separate from the topsoil.
3. When backfilling an excavation site, the stockpiled subsoil material will be placed back into the excavation site before replacing the topsoil.
4. Section 2.G.1. shall govern procedures pertaining to rock removal from the subsoil and topsoil.
5. Sections 2.H.1. through 2.H.3. shall govern procedures pertaining to the alleviation of compaction of the topsoil.
6. Commercially reasonable efforts will be performed to place the topsoil in a manner so that after settling occurs, the topsoil's original depth and contour (with an allowance for settling) will be restored. The same shall apply where excavations are made for road, stream, drainage ditch, or other crossings. In no instance will the topsoil materials be used for any other purpose unless agreed to otherwise by the Landowner.

F. Repair of Damaged Tile Lines

If underground drainage tile is damaged by Construction, it will be repaired in a manner that assures the tile line's proper operation at the point of repair. The following standards and policies shall apply to the tile line repair:

1. The Developer will work with the Landowner to identify the tile lines traversing the property included within the Underlying Agreement. All tile lines identified in this manner will be staked or flagged prior to Construction to alert Construction crews to the possible need for tile line repairs.
2. Tile lines that are damaged, cut, or removed shall be staked or flagged with stakes or flags placed in such a manner they will remain visible until the permanent repairs are completed.
3. If water is flowing through any damaged tile line, the Developer shall utilize commercially reasonable efforts to immediately and temporarily repair the tile line until such time that the Developer can make permanent repairs. If the tile lines are dry and water is not flowing, temporary repairs are not required if the permanent repairs can be made by the Developer within 14 days (weather and soil conditions permitting) of the time damage occurred; however, the exposed tile lines will be screened or otherwise protected to prevent the entry of foreign materials into the tile lines.
4. Where tile lines are severed by an excavation trench, repairs shall be made using the Illinois Department of Agriculture ("IDOA") Tile Line Repair Drawings, Temporary and Permanent, 2012 (see Figures 1 and 2 attached hereto).
5. There will be a minimum of one foot of separation between the tile line and the underground cable whether the underground cable passes over or under the tile line. If the tile line was damaged as part of the excavation for installation of the underground cable, the underground cable will be installed with a minimum one-foot clearance below or over the tile line to be repaired.
6. The original tile line alignment and gradient shall be maintained. A laser transit shall be used to ensure the proper gradient is maintained. A laser operated tiling machine shall be used to install or replace tiling segments of 100 linear feet or more.
7. During Construction, all permanent tile line repairs must be made within 14 days of identification or notification of the damage, weather and soil conditions permitting. At other times, such repairs

must be made within a commercially reasonable time or as mutually agreed by the Developer and the Landowner.

8. Following Construction activities, the Developer will utilize commercially reasonable practices to restore the drainage in the area to the condition it was before the commencement of the Construction activities. If the Landowner and Developer cannot agree upon a reasonable method to complete this restoration, the recommendations of the appropriate County Soil and Water Conservation District shall be considered by the Developer and the Landowner.
9. Following completion of the work, the Developer will be responsible for correcting all tile line repairs that fail due to Construction, provided those repairs were made by the Developer. The Developer will not be responsible for tile line repairs that the Developer pays the Landowner to perform.

G. Rock Removal

The following rock removal procedures only pertain to rocks found in the uppermost 42 inches of soil, the common freeze zone in Illinois, which were exposed or brought to the site as a result of Construction.

1. Before replacing any topsoil, commercially reasonable efforts will be taken to remove all rocks greater than 3 inches in any dimension from the surface of exposed subsoil.
2. As topsoil is replaced, all rocks greater than 3 inches in any dimension will be removed from the topsoil.
3. If trenching, blasting, or boring operations are required through rocky terrain, commercially reasonable precautions will be taken to minimize the potential for oversized rocks to become interspersed with adjacent soil material.
4. Rocks and soil containing rocks removed from the subsoil areas, topsoil, or from any excavations, will be hauled off the Landowner's premises or disposed of on the Landowner's premises at a location that is mutually acceptable to the Landowner and the Developer.

H. Compaction and Rutting

1. After the topsoil has been replaced, all areas that were traversed by vehicles and Construction equipment will be ripped at least 18 inches deep and all pasture and woodland will be ripped at least 12

inches deep. The existence of tile lines or underground utilities may necessitate less depth. The disturbed area will then be disked.

2. Three passes will be made across any agricultural land that is ripped.
3. All ripping and disking will be done at a time when the soil is dry enough for normal tillage operations to occur.
4. The Developer will restore all rutted land to a condition as close as reasonably practicable to its original condition.
5. If there is any dispute between the Landowner and the Developer as to what areas need to be ripped or the depth at which compacted areas should be ripped, the County Soil and Water Conservation District's ("SWCD") opinion shall be considered by the Developer and the Landowner.

I. Land Leveling

1. Following the completion of Construction of the Project, the Developer will utilize commercially reasonable efforts to restore the disturbed area to its original pre-construction elevation and contour should uneven settling occur or surface drainage problems develop as a result of said activity.
2. If, in the future, uneven settling occurs or surface drainage problems develop as a result of the Construction of the Project, the Developer will provide such land leveling services within 45 days of a Landowner's written notice, weather and soil conditions permitting.
3. If there is any dispute between the Landowner and the Developer as to what areas need additional land leveling beyond that which is done at the time of Construction, the SWCD's opinion will be considered by the Developer and the Landowner.

J. Prevention of Soil Erosion

1. The Developer will work with Landowners to prevent excessive erosion on land that has been disturbed by Construction of the Project. Commercially reasonable methods will be implemented to control erosion. This is not a requirement, however, if the land is bare cropland that the Landowner intends to leave bare until the next crop is planted.

2. If the Landowner and Developer cannot agree upon a reasonable method to control erosion on the Landowner's right-of-way, the recommendations of the SWCD shall be considered by the Developer and the Landowner.

K. Repair of Damaged Soil Conservation Practices

Soil conservation practices (such as terraces, grassed waterways, etc.), which are damaged by the Construction and/or Deconstruction of a Commercial Wind Energy Facility, will be restored to their preconstruction condition as close as reasonably practicable.

L. Damages to Private Property

The Developer will reasonably compensate Landowners for damages caused by the Developer. Damage to Cropland will be reimbursed to the Landowner as prescribed in the applicable Underlying Agreement.

M. Clearing of Trees and Brush

1. If trees are to be removed for the Construction of the Project, the Developer will consult with the Landowner to determine if there are trees of commercial or other value to the Landowner.
2. If there are trees of commercial or other value to the Landowner, the Developer will allow the Landowner the right to retain ownership of the trees with the disposition of the trees to be negotiated prior to the commencement of land clearing.
3. Unless otherwise restricted by Federal, state or local regulations, the Developer will follow the Landowner's desires regarding the removal and disposal of trees, brush, and stumps of no value to the Landowner by burning, burial, etc., or complete removal from any affected property.

N. Interference with Irrigation Systems

1. If the Construction of the Project interrupts an operational (or soon to be operational) spray irrigation system, the Developer will establish with the Landowner an acceptable amount of time the irrigation system may be out of service.
2. If, as a result of Construction or Deconstruction of a Commercial Wind Energy Facility, an irrigation system interruption results in crop damages, the Landowner will be compensated for all such crop damages per the applicable Underlying Agreement.

3. If it is feasible and mutually acceptable to the Developer and the Landowner, temporary measures will be implemented to allow an irrigation system to continue to operate across land on which the Project is also being Constructed.

O. Access Roads

1. Access roads will be designed to not impede surface drainage and will be built to minimize soil erosion on or near the access roads.
2. Subject to the provisions of the Decommissioning Agreement to be entered into by the County and the Developer, access roads may be left intact through mutual agreement of the Landowner and the Developer unless otherwise restricted by Federal, state, or local regulations.
3. If the access roads are removed, commercially reasonable efforts will be expended to assure that the land shall be restored to equivalent condition(s) as existed prior to their construction. All access roads that are removed shall be ripped to a depth of 18 inches. All ripping will be performed consistent with Sections 2.H.1. through 2.H.3.

P. Weed Control

1. The Developer will provide for weed control in a manner that prevents the spread of weeds onto adjacent lands used for agricultural purposes. Spraying will be done by a pesticide applicator who is appropriately licensed for doing such work in the state of Illinois.
2. The Developer will be responsible for reimbursing all reasonable costs incurred by owners of land adjacent to the Project where it has been determined that weeds have spread from land impacted by the Project; reimbursement is contingent upon written notice to the Developer and failure to respond within 45 days after notice is received.

Q. Pumping of Water from Open Excavations

1. In the event it becomes necessary to pump water from open excavations, the Developer will pump the water in a manner that will avoid damaging adjacent agricultural land, crops, and/or pasture. Such damages include, but are not limited to: inundation of crops for more than 24 hours, deposition of sediment in ditches

and other water courses, and the deposition of subsoil sediment and gravel in fields and pastures.

2. If it is impossible to avoid water-related damages as described in Section 2.Q.1. above, the Developer will compensate the Landowner for damages to crops as prescribed in the applicable Underlying Agreement.
3. All pumping of water shall comply with existing drainage laws, local ordinances relating to such activities, and the provisions of the Clean Water Act, 33 U.S.C. §1251, *et seq.*

R. Advance Notice of Access to Private Property

1. The Developer will provide the Landowner or tenant with a minimum of 24 hours prior notice before accessing his/her property for the purpose of Construction of the Project.
2. Prior notice shall first consist of a personal contact or a telephone contact, whereby the Landowner or tenant is informed of the Developer's intent to access the land. If the Landowner or tenant cannot be reached in person or by telephone, the Developer will mail or hand deliver to the Landowner or tenant's home a dated, written notice of the Developer's intent. The Landowner or tenant need not acknowledge receipt of the written notice before the Developer can enter the Landowner's property.

S. Indemnification

The Developer will indemnify all Landowners, their heirs, successors, legal representatives, and assigns from and against all claims, injuries, suits, damages, costs, losses, and reasonable expenses resulting from or arising out of Construction, including damage to the Project or any of its appurtenances, except where claims, injuries, suits, damages, costs, losses, and expenses are caused by the negligence or intentional acts, or willful omissions of such Landowners, their heirs, successors, legal representatives, and assigns, whereby said Landowners will indemnify the Developer, its successors, legal representatives, and assigns from and against said claims, injuries, suits, damages, costs, losses, and reasonable expenses.

Section 3. Miscellaneous

- A. Remedies and Enforcement. Each of the parties hereto covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by either the County or the Developer (the "Defaulting Party"), where the default is not caused by the party seeking to

enforce the Agreement (the “Non-Defaulting Party”) and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right of specific performance and injunctive relief. The remedy of specific performance and injunctive relief shall not be exclusive and the Non-Defaulting Party may seek any other remedy available at law or in equity;

- B. Due Authorization. Developer hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the Developer. The County hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County;
- C. Severability. If any provision of this Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable;
- D. Amendments. No amendment or modification to this Agreement or waiver of a Party’s rights hereunder shall be binding unless it shall be in writing and signed by both Parties. Notwithstanding, each Party understands that from time to time due to a change in circumstance or other unforeseen events, it may become necessary to modify, augment or delete certain terms of this Agreement. At the request of either party, the other party agrees to meet and discuss any requested changes in good faith;
- E. Notices. All notices shall be in writing and sent (including via facsimile or email transmission) to the parties hereto at their respective addresses, email addresses or fax numbers (or to such other address or fax number as any such party shall designate in writing to the other parties from time to time);

Developer:

Attention: Kevin Parzyck
Pleasant Ridge Wind Energy, LLC
c/o Invenergy, LLC
One South Wacker Drive, Suite
1900
Chicago, IL 60606
Fax: (312) 224-1444
Email:
KParzyck@invenergyllc.com

with a copy to:

Michael S. Blazer
Jeep & Blazer, LLC
24 N. Hillside Avenue, Suite A
Hillside, IL 60162
Fax: (708) 236-0830
Email: mblazer@enviroatty.com

Livingston County

With Copy to:

David Winters
Livingston County Engineer
1705 S. Manlove Street
Pontiac, IL 61764
Fax: (815) 842-3305
Email: lchd.david@frontier.com

Current Chairman of the Livingston
Livingston County Courthouse
112 W. Madison Street
Pontiac IL 61764
Fax: (815) 844-6401

- F. Assignment. This Agreement may not be assigned without the written consent of the other Party;
- G. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be as effective as delivery of a manually signed counterpart to this Agreement;
- H. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois, irrespective of any conflict of laws provisions;
- I. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors, assignees and legal representatives;
- J. Termination. Prior to the commencement of Construction, Developer has the unilateral right to terminate this Agreement without further liability to the County other than to reimburse the County for the costs incurred by the County during the special use application review process, public hearings and the post public hearing approval process. If thereafter, Developer elects to discontinue the Project, Developer shall have the right to terminate this Agreement at any time by providing thirty (30) days prior written notice to the County.
- K. Incorporation by Reference. Any contingencies included as special conditions to the issuance of a Special Use Permit as a result of the hearing on the application for the Project to the extent applicable to this Agreement shall be incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

Pleasant Ridge Wind Energy, LLC

By _____

Its _____

THE COUNTY OF LIVINGSTON

By: Marty Fannin
Chairman, Livingston County Board

ATTEST:

Kristy A. Masching, Livingston County Clerk