

Agreement Regarding Diamond Trail Wind Project in Iowa County

WHEREAS: Diamond Trail Wind Energy LLC ("Diamond Trail"), an affiliate of Invenergy LLC, is developing a wind energy project in Iowa County that will consist of approximately 78 wind turbines and associated equipment and collection lines (the "Project"); and

WHEREAS: It is anticipated that the Project will be sold to MidAmerican Energy Company ("MidAmerican") subject to an existing Asset Purchase Agreement upon completion of certain development milestones; and

WHEREAS: As described below, Diamond Trail and MidAmerican are willing, as expressed at meetings of the Iowa County Board of Supervisors ("Supervisors", and collectively with Diamond Trail and MidAmerican, the "Parties") to make certain commitments to the Supervisors; and

WHEREAS: Diamond Trail has been working with Iowa County officials and landowners for approximately three years on this Project; and

WHEREAS: During that three years, and continuing through the date of this Agreement, Iowa County has no zoning ordinances or other ordinances that would restrict the siting of wind turbines or wind energy projects; and

WHEREAS: Diamond Trail has designed, engineered and planned this Project in reliance on the current state of the law in Iowa County, and Diamond Trail and MidAmerican have invested over \$10 million to date in this Project based on that reliance; and

WHEREAS: The Parties are, nonetheless, aware of certain concerns expressed by some Iowa County residents; and

WHEREAS: The Supervisors seek to balance the needs, interests and concerns of all citizens of Iowa County, including the over 300 county landowners who have entered agreements with the Project and others who favor the Project, the citizens who have voiced their opposition to the Project, the taxpayers and those who would benefit from the increased tax base and tax revenue the Project would bring to the county, as well as the state of Iowa's express public policy in favor of wind energy development in Iowa Code §§ 476.41-43; and

WHEREAS: In the absence of any Iowa County ordinances affecting the siting of wind turbines or wind energy projects, the preferred option to address these issues is an agreement with Diamond Trail and MidAmerican; and

WHEREAS: Diamond Trail and MidAmerican already have an agreement between them to develop the Project to meet certain siting standards, which were provided to the Supervisors in a public meeting; and

WHEREAS: The Supervisors' independent research and receipt of public input confirms that the standards voluntarily used by Diamond Trail and MidAmerican are consistent with those used in other jurisdictions; and

WHEREAS: Diamond Trail and MidAmerican are willing to make a similar set of setbacks enforceable by the Supervisors through this Agreement between the Parties.

THEREFORE, the Parties agree as follows:

1. Diamond Trail and MidAmerican will design and construct the Project using the following distances for setbacks from Features/Criteria of or on the land:

Feature/Criteria	Setback ^(a) for Smaller Turbine	Setback for Larger Turbine	Measured From	Measured To
Participating Residences	1500	1500	Center of Turbine	Nearest Point of Residence
Non-Participating Residences	1500	1600	Center of Turbine	Nearest Point of Residence
Participating Shared Property Line of Different Owners	200	300	Center of Turbine	Property Line
Non-Participating Property Lines	600	650	Center of Turbine	Property Line
Public Roads	600	650	Center of Turbine	Center of Road
Incorporated Cities ^(b)	5280	5280	Center of Turbine	Corporate Limit
Microwave Paths	300	350	Center of Turbine	Beam Path Centerline
Public Rights of Way Unrelated to Roads	600	650	Center of Turbine	Edge of Right of Way Area
Overhead Utility Lines (Transmission)	600	700	Center of Turbine	Center of Line
Overhead Utility Lines (Distribution)	185	250	Center of Turbine	Center of Line
Natural Gas Pipelines	500	600	Center of Turbine	Center of Line
Railroads	550	650	Center of Turbine	Centerline of Track
Cemeteries	1500	1500	Center of Turbine	Edge of Area

Hog, Cattle and Chicken Farming Confinement Buildings	1200	1300	Center of Turbine	Edge of Structure
The Iowa River	15,840	15,840	Center of Turbine	Center of Channel
FAA Registered Airport Runway	15,840	15,840	Center of Turbine	Edge of Runway
Publically owned Parks or Lakes	1500	1600	Center of Turbine	Edge of Area

Notes: (a) All measurements in this table are in feet.

(b) Subject to statutory right of cities under certain circumstances to exercise zoning control up to two miles outside of city limits.

2. For purposes of the setback distances, the following definitions will apply:

"*Smaller Turbine*" refers to a turbine less than 500 feet in height from the ground at the base to the highest point reached by the tip of a blade.

"*Larger Turbine*" refers to a turbine 500 feet or greater in height from the ground at the base to the highest point reached by the tip of a blade.

"*Participating Residence*" means the primary human dwelling on any parcel where the owner(s) of the parcel have entered a voluntary agreement with Diamond Trail or MidAmerican regarding the Project.

"*Participating Property Line*" means the boundary line defining any parcel of land where the owner(s) of the parcel have entered a voluntary agreement with Diamond Trail or MidAmerican regarding the Project, regardless of the presence of a Participating Residence on such parcel.

"*Non-Participating Residence*" means the primary human dwelling on any privately-owned parcel of land where the owner(s) of such parcel have not entered a voluntary agreement with Diamond Trail or MidAmerican regarding the Project.

"*Non-Participating Property Line*" means the boundary line defining any parcel of land where the owner(s) of the parcel have not entered a voluntary agreement with Diamond Trail or MidAmerican regarding the Project, regardless of the presence of a Residence.

"*Transmission*" when used in reference to Overhead Utility Lines means a line operating at or above 69 kV and subject to a franchise from the Iowa Utilities Board.

"*Distribution*" when used in reference to Overhead Utility Lines means a line which is not franchised by the Iowa Utilities Board.

3. The Parties agree that these setbacks shall apply to any Features/Criteria listed above that were in existence as of May 3, 2019, the date on which the Supervisors voted to pursue this Agreement.

4. The Parties stipulate that the Supervisors may, at some future date, adopt one or more ordinances that would regulate the development and location of wind turbines or wind energy projects; and the Supervisors agree, however, that no such future ordinances will apply to this Project.

5. Diamond Trail and MidAmerican agree that eminent domain will not be used for the siting of any turbines or underground collection lines that are part of this Project.

6. This Agreement does not supersede or replace the understanding that MidAmerican will provide the county separate agreements for road use and for decommissioning, the latter based on the agreement used in Union County.

7. This Agreement may be enforced by an action for specific performance, which shall be the sole remedy under this Agreement.

8. Diamond Trail and MidAmerican stipulate that this Agreement runs with the Project and will ensure that any future transfer of the Project includes a requirement that the transferee accept and abide by these terms.

[SIGNATURES ON FOLLOWING PAGE]

For Diamond Trail Wind Energy LLC:

Signature

Jonathan Saxon
Name

Vice President
Title

6-5-19
Date

APPROVED
By MSB at 1:20 pm, Jun 05, 2019

For Iowa County Board of Supervisors:

Signature

Kevin Heitshusen
Name

Vice Chairman
Title

5-24-2019
Date

For MidAmerican Energy Company:

Signature

MICHAEL C FEHR
Name

VP, RESOURCE DEVELOPMENT
Title

6/10/19
Date