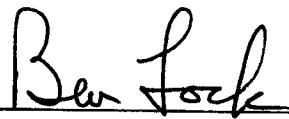


## INDEX OF ATTACHMENTS

Attachment 1	TTUS Summary Approval of NWRC Articles and Bylaws
Attachment 2	TTUS NWRC Draft Bylaws
Attachment 3	Certificate of Formation – Nonprofit Corporation

I, Ben Lock, the duly appointed and qualified Secretary of the Board of Regents, hereby certify that the above and foregoing is a true and correct copy of the Minutes of the Texas Tech University System Board of Regents meeting on January 21, 2010.

  
\_\_\_\_\_  
Ben Lock  
Secretary

Seal

## **Regent Summary-Approval of NWRC Articles and Bylaws**

**Board Action** – Approve Certificate of Formation and By-Laws and authorize formation of the National Wind Resource Center (NWRC) with the Texas Secretary of State.

**Urgency/Special Meeting Justification** – Need NWRC formed and operational by end of January. The consensus of State, Federal and institutional decision makers is that NWRC will be key for advancing TTU's prominence in wind power research and education. Unfortunately, we can only talk about NWRC as a concept at this time.

- i. The Emerging Technology Fund (ETF) Board and others have concerns about awarding funds to an entity not yet formed—credibility risk to their stakeholders
- ii. We need an entity formed before discussing with Department of Energy or others in federal government—credibility issue (they have asked and will ask)
- iii. Academic (University of Iowa, University of California, University of North Dakota, etc.), industrial and economic development partners want to know the entity is legitimate.
- iv. Press Release of NWRC is on hold until we form this entity
- v. A&M is making plans to announce their coastal wind program (not directly competitive with us) which could overshadow the announcement of NWRC if we don't form it soon

**NWRC Seed Grants** - \$250k awarded to date from Lubbock, Amarillo & Abilene economic development corps to be used for creation of NWRC and/or other uses. \$200k requested from Odessa, Sweetwater, Midland and San Angelo economic development corps.

**Background** - The attached draft of the NWRC Certificate of Formation and Bylaws were prepared by TTU's General Counsel's Office with feedback from the University and Chancellor's Office. Outside counsel was consulted regarding whether the NWRC should seek to be qualified as tax exempt under Internal Revenue Code Section 115 (as an organization closely affiliated with state government) or under Internal Revenue Code Section 501(c)(3) (as an organization determined by the IRS to be exempt from federal tax as a public charity, with a corresponding exemption from tax by the Texas Comptroller's Office). Outside counsel has recommended that the NWRC be formed as a 501(c)(3) organization rather than a 115 organization.

**Certificate of Formation** - The Certificate of Formation has been developed to be in line with similar organizations and to provide for the customary powers and limitations of a not for profit organization in Texas, and to qualify for exemption under Internal Revenue Code Section 501(c)(3).

**Bylaws**- Recommended language and structure is focused on ensuring that the NWRC is clearly and unambiguously controlled by Texas Tech University. Article 4, Section 2 provides for a voting class structure which will preserve Texas Tech's control while ensuring that additional non TTU board members (at-large members) can be appointed to encourage meaningful collaboration with national laboratories and key academic partners. Under the Bylaws, Texas Tech will always have five (of a total of nine) board seats which include the Vice President of Research (who is also the Board Chair), the Provost, and the Deans of Agricultural Sciences, Arts and Sciences, and Engineering.

The five TTU Directors have the sole authority to amend the Bylaws and Certificate of Formation, authorize “fundamental actions” as defined by the Texas Business Organizations Code and increase or decrease the number of at-large Directors.

The Regents have the ability to remove any board member and to appoint the four at-large members, and successor board members to be appointed as the result of any board seat vacancy.

Draft 01-14-2010

# NATIONAL WIND RESOURCE CENTER BYLAWS

**National Wind Resource Center  
Bylaws  
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## **National Wind Resource Center**

### **Bylaws**

These Bylaws constitute the rules adopted by the National Wind Resource Center ("Corporation") for the regulation and management of its affairs. The Corporation is a nonprofit corporation organized under the Texas Business Organizations Code, as amended ("TBOC").

#### **ARTICLE 1 Registered Office and Registered Agent; Principal Office**

The Corporation shall comply with the requirements of the TBOC, and maintain a registered office and registered agent in Texas. The initial registered agent and registered office are as stated in the Corporation's Certificate of Formation. The Board of Directors may change the registered agent and the registered office as provided by the TBOC. The registered office may, but need not, be identical with the Corporation's principal office in Texas. The Corporation's initial principal office is 2600 Broadway, Holden Hall, Room 103, Lubbock, Texas 79409.

#### **ARTICLE 2 Purpose**

The Corporation's purpose is as set out in the Corporation's Certificate of Formation.

#### **ARTICLE 3 Management**

The business, property, and affairs of the Corporation shall be managed by the Board of Directors.

#### **ARTICLE 4 Board of Directors**

1. **Powers.** The Board of Directors shall manage the business and affairs of the Corporation, subject to the TBOC, the Certificate of Formation, and these Bylaws.
2. **Number and Classes of Directors; Voting.**
  - a. Until the first meeting for electing the Directors occurs, the initial Board of Directors shall consist of the five persons listed in the Certificate of Formation as constituting the initial Board.
  - b. The Board of Directors will consist of a total of nine Directors.
  - c. As permitted by TBOC §22.209, the Board of Directors is divided into two classes of Directors, as follows:
    - i. Five Texas Tech University Directors ("TTU Directors") comprised of Texas Tech University's Vice President of Research (who will

serve as the Board Chair), Provost, Dean of the College of Agricultural Sciences and Natural Resources, Dean of the College of Arts and Sciences, and Dean of the College of Engineering; and

- ii. Four at-large Directors appointed by the TTU Board of Regents, or, if delegated to do so by the Board of Regents, by TTU's Chancellor or President. The at-large Directors may or may not be TTU employees.
  - d. With the exception of the matters described in the following paragraph, all Directors have voting rights as members of the Board of Directors. Matters on which the full Board of Directors vote require a majority vote of the number of Directors present in person or by proxy at a meeting at which a quorum is present, unless a greater number is required by the TBOC or these Bylaws.
  - e. The TTU Directors are the only Directors with voting rights concerning the following matters, which require a vote of at least three-fifths of the TTU Directors:
    - i. Repeal or amendment of these Bylaws;
    - ii. Amendment of the Corporation's Certificate of Formation; Other "fundamental actions" as defined in TBOC §22.164(a), including voluntary winding up, reinstatement, distribution of assets, merger, conversion, and the sale of substantially all the Corporation's assets; and
    - iii. an increase or decrease in the number of at-large Directors; however, in no event shall a decrease have the effect of shortening the term of an incumbent Director.
3. **Term of At-Large Directors.** At-large Directors shall serve terms of two years. An at-large Director may serve for up to three consecutive terms. After serving three consecutive terms, an at-large Director must vacate his or her position for at least one year before seeking reappointment to another term as an at-large Director.
4. **Appointment of At-Large Directors.** Directors filling expired terms shall be appointed by the TTU Board of Regents at the August TTU Board of Regents' meeting. Any Director position to be filled by reason of an increase in the number of at-large Directors shall be filled at the next regular meeting of the TTU Board of Regents or at a special meeting of the Board of Regents called for that purpose.

**5. Resignation and Removal.**

- a. Any Director may resign by delivering written notice to the Secretary or Board Chair. Such resignation shall take effect upon receipt or, if later, at the time specified in the notice. If a TTU Director resigns, the TTU Board of Regents shall appoint a successor who may be a person with an academic background in the same or a similar field as the resigning TTU Director.
- b. Any Director may be removed by the TTU Board of Regents at any time, with or without cause. If a TTU Director is removed, the TTU Board of Regents shall appoint a successor who may be a person with an academic background in the same or a similar field as the removed TTU Director.

**6. Vacancies of TTU and At-Large Directors.**

- a. Vacancies of a TTU Director shall be filled immediately by appointment of an interim TTU Director. The appointment of an interim TTU Director shall be made by the remaining TTU Directors. The term of the interim TTU Director is until a successor TTU Director is appointed at the next regular meeting of the Board of Regents or at a special meeting of the Board of Regents called for that purpose. The successor TTU Director filling the vacancy shall serve for the remainder of the term of the TTU Director's position that was vacated. The intent of this Bylaw provision is that there is never a vacancy in the TTU Directorships. A vacancy shall also result from the elimination or redefinition of any one of the administrative positions referenced in Article 4 Section 2.c.i.
- b. Vacancies of an at-large Director shall be filled by appointment at the next regular meeting of the Board of Regents or at a special meeting of the Board of Regents called for that purpose. The at-large Director filling the vacancy shall serve for the remainder of the term of the at-large Director's position that was vacated.

- 7. Compensation.** Directors shall not receive salaries or other compensation for their service as Directors, but may be reimbursed for any actual expenses incurred in the performance of their duties for the Corporation. The Board of Directors shall establish a policy governing such potential reimbursements at the time it adopts its annual budget.

**ARTICLE 5 Board of Directors Meetings**

- 1. Place of Board Meetings.** Regular and Special Meetings of the Board of Directors will be held at the Corporation's principal office unless the Board Chair or a majority of the Board designates otherwise in the meeting notice.



2. **Regular and Special Meetings.** Regular meetings of the Board of Directors shall be held semi-annually, or more frequently as deemed necessary by the Board of Directors. Special Meetings may be called by the Board Chair or any of the five TTU Directors.

3. **Notice of Board Meetings.**

- a. Notice of the date, time, and place of Regular and Special Board Meetings shall be given to each Board member at least 10 days prior to the meeting.
- b. Notice may be given personally, or by regular mail, or electronic transmission<sup>1</sup>.
  - i. If mailed, notice is considered to be given on the date notice is deposited in the United States mail with postage paid in an envelope addressed to the person at the person's address as it appears on the Corporation's records; and
  - ii. If transmitted electronically, notice is considered to be given when transmitted to a facsimile number or an electronic message address provided by the person, or to which the person consents, for the purpose of receiving notice.

4. **Alternative Forms of Meetings.**

- a. The Board may hold meetings by using a conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting.
- b. If an alternative meeting form will be used, the notice of the meeting must state the form of communications system to be used for the meeting and the means of accessing the communications system.
- c. If voting is to take place at the meeting, the Secretary must:
  - i. implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified; and
  - ii. keep a record of any vote or other action taken.

5. **Waiver of Notice.** Attendance by a Director at any meeting of the Board of Directors for which the Director did not receive the required notice will constitute a waiver of notice of such meeting unless the Director objects at the beginning of the meeting to the transaction of business on the grounds that the meeting was not lawfully called or convened.

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<sup>1</sup> For purposes of these Bylaws, "electronic transmission" means a form of communication that:

- a. does not directly involve the physical transmission of paper;
- b. creates a record that may be retained, retrieved, and reviewed by the recipient;
- c. may be directly reproduced in paper form by the recipient through an automated process; and
- d. contains or is accompanied by information from which it can be determined that the transmission was authorized by the Director.

6. **Quorum.** A majority of the incumbent Directors (not counting vacancies) shall constitute a quorum for the purposes of convening a meeting or conducting business.
7. **Actions without a Meeting.**
  - a. Any action required or permitted to be taken by the Board of Directors under the TBOC, the Certificate of Formation, and these Bylaws may be taken without a meeting, if each Director entitled to vote signs a written consent stating the action taken.
  - b. Such written consent shall have the same force and effect as a unanimous vote of the Board.
  - c. An electronic transmission of a consent to the taking of an action by the Corporation is considered a signed writing if the transmission contains or is accompanied by information from which it can be determined: that the electronic transmission was transmitted by the Director, and the date on which the Director transmitted the electronic transmission.
  - d. Unless the consent is otherwise dated, the consent is considered signed on the date on which the Director transmitted the electronic transmission.
8. **Duties of Directors.** A Director shall discharge the Director's duties in good faith, with ordinary care, in a manner the Director reasonably believes to be in the best interest of the Corporation and in any other manner as set forth in the TBOC, as amended.
9. **Proxy.** Proxies shall be allowed. Proxies
  - a. must be written;
  - b. may be sent by electronic transmission;
  - c. are revocable unless expressly stated to be irrevocable; and
  - d. are valid up to 90 days (or less than 90 days if expressly provided in the proxy).
10. **Board Chair.** The Board Chair shall preside at all Board meetings, and shall appoint all committee chairs with ratification by the Board, and shall serve as an ex-officio member of all committees (entitled to receive notice of and to attend committee meetings, but not entitled to vote), unless otherwise provided by the Board of Directors. The Board Chair shall, in collaboration with the President, and with the advice of the Board of Directors, shall set the agenda for each meeting of the Board of Directors.

## ARTICLE 6 Committees

1. The Board of Directors shall establish a Scientific Advisory Committee, and may establish the following other standing committees:
  - a. National Laboratory Collaboration Committee;
  - b. Finance and Administration Committee;
  - c. Education and Outreach Committee;
  - d. Research Committee; and
  - e. Academic Committee.
2. The Board of Directors shall determine the composition, duties, responsibilities, and rules for such committees.
3. The Board of Directors may designate and appoint additional standing or temporary committees by majority vote of the Board of Directors. Such committees shall have and exercise such prescribed authority as is designated by the Board of Directors. The Directors may authorize these committees to exercise any powers, responsibilities, and duties consistent with the Certificate of Formation and these Bylaws.

## ARTICLE 7 Officers

1. **Roster of Officers.** The Corporation shall have a President, Vice-President, Secretary, and Treasurer. The Corporation may have other officers as elected by the Board of Directors. Any two or more offices, other than the offices of President and Secretary, may be held by the same person.
2. **Election, Removal and Term of Office.** All officers shall serve one-year terms. The election shall be conducted at the Board of Directors' first meeting of the fiscal year, or as soon as practical thereafter. Officers shall remain in office until their successors have been elected. Officers may serve up to three consecutive terms in the same office. The election of officers shall be by majority vote of the Board of Directors. Any officer may be removed at any time, with or without cause, by a majority of the Board of Directors, at a Regular or Special Meeting called for that purpose. Any officer under consideration of removal must first be notified about the consideration by written notice at least five days prior to the meeting at which the vote takes place.
3. **Vacancies.** If, for any reason, a vacancy occurs during the term of office for any elected officer, the Board of Directors shall elect a new officer to fill the remainder of the term as soon as practical, by majority vote of Directors present at a Regular or Special Meeting called for that purpose.

4. **President.** The President shall be the principal executive officer of the Corporation and responsible for the start up, sustained R&D activities, partnership development, and internal (within TTU) and external engagement within Texas and nationally of the Corporation. The President is subject to the control of the Board of Directors, shall supervise and control all of the business and affairs of the Corporation and all other officers. The President's job performance will be reviewed annually by the Board of Directors. The President will be a faculty member within Texas Tech University..
5. **Vice-President.** The Vice President shall be responsible for specific areas of the Corporation's activities as assigned by the Board of Directors, and work closely with the President in such areas. In the event of the President's absence, inability, or refusal to act, the Vice-President shall perform the President's duties.
6. **Secretary.** The Secretary shall perform, or direct and oversee the performance of, all duties incident to the office of Secretary, and such other duties as may be required by law, by the Certificate of Formation, or by these Bylaws, including the following:
  - a. attest to and keep the Corporation's Bylaws and other legal records at the principal office of the Corporation;
  - b. take or appoint another person to take the minutes of all meetings of the committees and Board of Directors, and shall keep copies of all minutes at the principal office of the Corporation;
  - c. keep a record of the names and addresses of the Directors at the principal office of the Corporation;
  - d. with the approval of the Board of Directors, set up procedures for any elections held by the Corporation;
  - e. keep a record of all votes cast in such elections;
  - f. ensure that all records of the Corporation, minutes of all official meetings, and records of all votes, are made available for inspection by any member of the Board of Directors at the principal office of the Corporation during regular business hours;
  - g. see that all notices are duly given in accordance with these Bylaws or as required by law;
  - h. see that all books, reports, statements, certificates, and other documents and records of the Corporation are properly kept and filed.

In the event of the Secretary's absence, inability, or refusal to act, the Vice President shall perform the Secretary's duties.

7. **Treasurer.** If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of the Treasurer's duties in the amount and with the surety or sureties as the Board of Directors determines. The Treasurer shall perform, or direct and oversee the performance of, all duties incident to the office of Treasurer, and such other duties as may be required by law, by the Certificate of Formation, or by these Bylaws, including the following
- a. have charge and custody of and be responsible for all funds of the Corporation;
  - b. receive and give receipts for money due and payable to the Corporation from any source, and deposit that money in the name of the Corporation; and
  - c. perform all of the duties incident to the office of Treasurer, and such other duties as required by the President or the Board of Directors.

## **ARTICLE 8 Charitable Immunity and Indemnification**

1. **Charitable Immunity.** Nothing in these Bylaws should be construed as a waiver or reduction of charitable immunity available to any person under the TBOC, the Act, or any other applicable law. These bylaws should not be construed to enlarge the liability of any person beyond what is provided by law.
2. **Insurance.** The Corporation may provide indemnification insurance for its governing persons, and the Board of Directors shall select the amount and limits of such insurance coverage. The Board of Directors should consider liability insurance coverage requirements, if any, contained in the TBOC, the Texas Charitable Immunity and Liability Act of 1987 (the "Act"), and other applicable law when determining and selecting insurance policy limits, coverage, and terms.
3. **Indemnification.** The Corporation's governing persons shall be indemnified, and their liability limited to the fullest extent authorized by the TBOC, the Act, and other applicable law. As permitted by the TBOC, the Corporation may indemnify a governing person, former governing person, or delegate who was, is, or is threatened to be made a respondent in a proceeding for a judgment and expenses, other than a judgment, that are reasonable and actually incurred by the person in connection with a proceeding if it is determined (in accordance with TBOC §8.103) that:
  - a. the person:
    - i. acted in good faith;
    - ii. reasonably believed:

1. in the case of conduct in the person's official capacity, that the person's conduct was in the Corporation's best interests; and
2. in any other case, that the person's conduct was not opposed to the Corporation's best interests; and
- iii. in the case of a criminal proceeding, did not have a reasonable cause to believe the person's conduct was unlawful;
- b. with respect to expenses, the amount of expenses other than a judgment is reasonable; and
- c. indemnification should be paid.
- d. Action taken or omitted by a governing person or delegate with respect to an employee benefit plan in the performance of the person's duties for a purpose reasonably believed by the person to be in the interest of the participants and beneficiaries of the plan is for a purpose that is not opposed to the best interests of the enterprise.

## **ARTICLE 9 Operations**

1. **Execution of Documents.** Unless specifically authorized by the Board of Directors or as otherwise required by law, all final contracts, deeds, conveyances, leases, promissory notes, or legal written instruments executed in the name of and on behalf of the Corporation shall be signed and executed by the President and the Board Chair (or such other person designated by the Board of Directors), pursuant to the general authorization of the Board.
2. **Disbursement of Funds.**
  - a. Financial transactions in excess of \$5,000 and up to \$25,000 not included in the annual budget require majority approval of the Board of Directors or Finance and Administration Committee, if a majority of the Board of Directors is not immediately available to vote on the transaction.
  - b. Financial transactions in excess of \$25,000 not included in the annual budget require majority approval of the Board of Directors.
  - c. In all other transactions, the President may disburse the funds of the Corporation in accordance with budget approved by the Board of Directors, the purposes of the Corporation as set out in the Certificate of Formation, and these Bylaws.
  - d. The \$5,000 and \$25,000 thresholds may be increased or decreased from time to time by majority vote of the Board of Directors.
3. **Records.** The Corporation shall keep correct and complete records of account and minutes of the proceedings of Board of Directors and Committee meetings.

The Corporation shall keep at its principal place of business the original or a copy of its Bylaws, including amendments, certified by the Secretary of the Corporation.

4. **Inspection of Books and Records.** All books and records of the Corporation may be inspected by any Director for any purpose at any reasonable time on written demand. The Corporation shall keep correct and complete books and records of account.
5. **Deposits.** All funds of the Corporation shall be deposited to the credit of the Corporation in banks, trust companies, or other depositories that the Board of Directors selects.
6. **Fiscal Year.** The Corporation's fiscal year begins on September 1 and ends on August 31.

#### **CERTIFICATE OF SECRETARY**

I certify that the above Bylaws were duly adopted by the Board of Directors on \_\_\_\_\_, 2010.

\_\_\_\_\_  
Secretary, National Wind Resource Center

**Form 202—General Information  
(Certificate of Formation – Nonprofit Corporation)**

**The attached form is drafted to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.**

**Commentary**

A nonprofit corporation is governed by titles 1 and 2 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A, of the BOC governs the formation of a nonprofit corporation and sets forth the provisions required or permitted to be contained in the certificate of formation. Nonprofit corporations may be incorporated for any lawful purpose. Corporations formed for the purpose of operating a nonprofit institution, including an institution devoted to a charitable, benevolent, religious, patriotic, civic, cultural, missionary, education, scientific, social, fraternal, athletic, or aesthetic purpose, may be formed and governed only as a nonprofit corporation under the BOC and not as a for-profit corporation. In a nonprofit corporation, no part of the income of the corporation may be distributed to a member, director or officer of the corporation.

Please note that this form cannot be used to form a corporation authorized by or under a special state statute, such as a water supply corporation, a cemetery corporation or an industrial development corporation.

*Taxes:* Nonprofit corporations are subject to a state franchise tax and federal income taxes unless an exemption from those taxes is granted. For franchise tax information visit the web site of the Comptroller of Public Accounts at [www.window.state.tx.us/taxinfo/franchise/index.html](http://www.window.state.tx.us/taxinfo/franchise/index.html). For information on state tax exemption, including applications and publications, visit the Comptroller's Exempt Organizations web site at [www.window.state.tx.us/taxinfo/exempt/index.html](http://www.window.state.tx.us/taxinfo/exempt/index.html) or call (800) 252-5555. For information relating to federal income tax filing requirements, exemptions, federal employer identification numbers, tax publications and forms call (800) 829-3676 or visit the Internal Revenue Service (IRS) web site at [www.irs.gov](http://www.irs.gov).

*This form does not include any additional statements or provisions that the Texas Comptroller of Public Accounts or the IRS may require as a condition to granting a tax-exempt status. Please refer to IRS publication 557, "Tax-Exempt Status for Your Organization," and Comptroller publication 96-1045, "Guidelines to Texas Tax Exemptions," for further information before completing this form.*

**Instructions for Form**

- **Article 1—Entity Name and Type:** Provide a corporate name. An organizational designation may be used, but is not required. Under section 5.053 of the BOC, if the name chosen is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at [www.sos.state.tx.us/tac/index.shtml](http://www.sos.state.tx.us/tac/index.shtml). If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to [corpinfo@sos.state.tx.us](mailto:corpinfo@sos.state.tx.us). A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based



on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person's rights to the name.

- **Article 2—Registered Agent and Registered Office:** The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The corporation cannot act as its own registered agent; do not enter the corporate name as the name of the registered agent.

*Consent:* Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the certificate of formation. *The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent.* (BOC § 5.207)

*Office Address Requirements:* The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

- **Article 3—Management:** Except as provided by section 22.202 of the BOC, the affairs of a nonprofit corporation are governed by a board of directors.

Board of Directors: The board of directors may be designated by any name appropriate to the customs, usages, or tenets of the corporation. If managed by a board of directors, three directors are required. A director must be a natural person; there are no residency requirements for directors. Set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.).

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for directors, use a business or post office box address rather than a residence address if privacy concerns are an issue.

Managed by Members: A nonprofit corporation is considered to have vested the management of the corporation in the board of directors unless otherwise provided in the certificate of formation. This certificate of formation also may be used to create a nonprofit corporation that is managed solely by its members. If management of the corporation is to be vested in the nonprofit corporation's members, a statement to that effect must be included in the certificate. If the nonprofit corporation is to be governed *solely* by its members, check the appropriate statement and proceed to Article 4 of this form. *The fact that the individuals named on the board of directors are also members of the nonprofit entity does not mean that the corporation is governed by its members.*

**Article 4—Members:** If the corporation will not have members, the certificate of formation must include a statement to that effect. If management of the affairs of the corporation is vested in its members, you also must check statement A in Article 4 of this form. Checking statement B in Article 4 is inconsistent with a corporation that is managed by its members and will result in a rejection of the instrument.

- **Article 5—Purpose:** State the purpose of the corporation in the space provided. A nonprofit corporation may be formed for any lawful purpose or purposes not expressly prohibited under title 1, chapter 2, or title 2, chapter 22, of the BOC, which may be stated as “any or all lawful purposes” in the space provided. While the BOC allows formation with a general purpose, please note that other laws, including the Texas Tax Code and the Internal Revenue Code, may require that the certificate of formation include a more specific purpose statement as a basis for granting a license or a tax-exempt or tax-deductible status. An additional text area is provided to include any additional language or additional provisions that may be needed. In addition, the “Supplemental Provisions/Information” section may be used if the additional text area provided in this section is not sufficient.
- **Supplemental Provisions/Information:** Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions. This space also may be used to provide for additional statements or provisions needed by the Texas Tax Code or Internal Revenue Code as a basis for granting a tax-exempt or tax-deductible status.

**Manner of Distribution:** Section 22.304 of the BOC provides that after all liabilities and obligations of the corporation in the process of winding up are paid, satisfied, and discharged in accordance with chapter 11 of the BOC, the property of the corporation shall be applied and distributed as follows:

- Property held by the corporation on a condition requiring return, transfer, or conveyance because of the winding up or termination shall be returned, transferred, or conveyed in accordance with that requirement; and
- The remaining property shall be distributed only for tax-exempt purposes to one or more organizations that are exempt under Section 501(c)(3), or described by Section 170(c)(1) or (2) of the Internal Revenue Code as provided in a plan of distribution adopted by the corporation under the BOC unless the certificate of formation provides otherwise.

*If the corporation is not applying and distributing its property in accordance with section 22.304, the certificate of formation must include a statement describing the manner of distribution in the Supplemental Provisions/Information section of this form. If the space provided is not sufficient, an addendum may be included and attached to this form.*

**Duration:** Pursuant to section 3.003 of the BOC, a Texas nonprofit corporation exists perpetually unless provided otherwise in the certificate of formation. If formation of a corporation with a stated period of duration is desired, use the “Supplemental Provisions/Information” section of this form to provide for a limited duration.

- **Organizer:** Only one organizer is required for the formation of a nonprofit corporation. An organizer may be any person having the capacity to contract for the person or for another; that is, a natural person 18 years of age or older, or a corporation or other legal entity. There are no residency requirements for an organizer.
- **Effectiveness of Filing:** A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state

the manner in which the event or fact will cause the instrument to take effect and the date of the 90<sup>th</sup> day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file with the secretary of state a statement regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as "in existence" on the records of the secretary of state.

- **Execution:** The organizer must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer is an affirmation that the person named in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011, effective January 1, 2010)

*A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.*

- **Payment and Delivery Instructions:** The filing fee for a certificate of formation for a nonprofit corporation is **\$25**. Fees may be paid by personal checks, LegalEase debit cards, or MasterCard, Visa, and Discover credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas, 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

- **Registered Agent/Office:** A corporation is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the corporation.
- **Periodic Reports:** Under section 22.357 of the BOC, the secretary of state may require a nonprofit corporation to file a report not more often than once every four years. The secretary of state will send notice to the corporation at its registered office as to the time the report is due. Failure to file the report when requested to do so by the secretary will result in the involuntary termination of the corporation.
- **Information for Public Inspection:** Records, books and annual reports of the corporation's financial activity are required to be maintained at the registered office or principal office for three years after the close of a fiscal year. The corporation shall make those documents available to the

public for inspection and copying during regular business hours and may charge a reasonable fee for preparing a copy of those records. Failure to maintain those records, prepare an annual report or make the record or report available to the public is a Class B misdemeanor. These provisions do not apply to those corporations exempted under section 22.355 of the BOC. Also note that a nonprofit corporation supported in whole or in part by public funds or that spends public funds is considered a governmental body under chapter 552 of the Government Code (Public Information Act) and thus subject to the provisions of that Act regarding access to public information. In addition, a property owner's association may also be subject to the Public Information Act pursuant to section 552.0035 of the Government Code.

Revised 12/09

**Form 202  
(Revised 12/09)**

Submit in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512/463-5709  
**Filing Fee: \$25**



This space reserved for office use.

**Certificate of Formation  
Nonprofit Corporation**

**Article 1 – Entity Name and Type**

The filing entity being formed is a nonprofit corporation. The name of the entity is:

National Wind Resource Center

**Article 2 – Registered Agent and Registered Office**

(See instructions. Select and complete either A or B and complete C.)

☐ A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

☒ B. The initial registered agent is an individual resident of the state whose name is set forth below:

David	L	Miller	
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>

C. The business address of the registered agent and the registered office address is:

1901 University Ave., Room 308	Lubbock	TX	79410
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

**Article 3 – Management**

The management of the affairs of the corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

*A minimum of three directors is required.*

Director 1				
Taylor		Eighmy		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
2600 Broadway, Holden Hall, Rm 103	Lubbock	TX	79409	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 2				
Robert (Bob)	V	Smith		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
Administration Building, Room 104 15 <sup>th</sup> and Akron Streets	Lubbock	TX	79409	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 3				
John	M	Burns		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
Goddard Range Wildlife Bldg, Room 108, 15 <sup>th</sup> and Detroit Streets	Lubbock	TX	79409	USA
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

OR

☐ The management of the affairs of the corporation is to be vested in the nonprofit corporation's members.

#### Article 4 – Membership

(See instructions. Do not select statement B if the corporation is to be managed by its members.)

- ☐ A. The nonprofit corporation shall have members.
- ☒ B. The nonprofit corporation will have no members.

#### Article 5 – Purpose

(See instructions. This form does not contain language needed to obtain a tax-exempt status on the state or federal level.)

The nonprofit corporation is organized for the following purpose or purposes:

A. The corporation is organized and will be operated exclusively for charitable, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

B. More particularly, the corporation's charitable, educational, and scientific purposes are to promote, support, and perform research, development, and education projects to find and disseminate solutions to key scientific and technical issues related to wind energy and renewable energy.

C. To further its charitable, educational, and scientific purposes, the corporation is authorized and empowered to:

1. employ personnel, including scientific researchers and staff members;
2. seek and obtain contracts, grants, and gifts for the advancement of its research and educational projects;
3. aid, assist, supplement, and complement its research and educational projects through and in cooperation with academic institutions; local, state, and federal government agencies; and private industry; and
4. engage in any other activities that further the stated purposes of the corporation, and are not prohibited by organizations exempt under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

*The following text area may be used to include any additional language or provisions that may be needed to obtain tax-exempt status.*

Article 5. (continued)

D. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members (if any), trustees (if any), directors, officers, or other private persons or entities, except that the corporation is authorized and empowered to pay reasonable compensation for services rendered, and to make payments and distributions in furtherance of the corporation's purposes.

E. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

F. Despite any other provision of this Certificate of Formation of Nonprofit Corporation, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

G. Upon the dissolution of the corporation, any assets remaining shall be distributed to Texas Tech University, to be used for such educational purposes as designated by the Board of Regents. If Texas Tech University is not in existence at the time of dissolution, to the state of Texas, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

**Supplemental Provisions/Information**

(See instructions.)

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

**Additional Directors:**

**Director 4**

Jon C. Strauss

Whitacre College of Engineering

100 Engineering Center, 9th and Boston Streets, Lubbock, TX 79409

**Director 5**

Lawrence Schovanec

2600 Broadway, Holden Hall, Rm 202, Lubbock TX 79409

To the extent permitted by Tex. Bus. Org. Code §7.001, as amended, a governing person of the corporation is not liable to the corporation or its members, if any, for monetary damages for an act or omission by the person in the person's capacity as a governing person.

**Organizer**

The name and address of the organizer:

David L. Miller

*Name*

1901 University Ave., Room 308

Lubbock

TX

79410

*Street or Mailing Address*

*City*

*State*

*Zip Code*

**Effectiveness of Filing** (Select either A, B, or C.)

A. ☒ This document becomes effective when the document is filed by the secretary of state.

B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_

C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

The following event or fact will cause the document to take effect in the manner described below:

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

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

\_\_\_\_\_  
Signature of organizer

David L. Miller

\_\_\_\_\_  
Printed or typed name of organizer