

**APPROVED**

**Carbon County  
Section 5.11 – Wind Energy  
Overlay-District Regulations**

**Approval Date: April 5, 2011**

## **Section 5.11 WIND ENERGY FACILITIES-OVERLAY DISTRICT**

### **a. Overview**

This Section provides the regulatory framework for Wind Energy Facilities. The regulations within this Section are in addition to relevant development standards and regulations in other parts of this Zoning Resolution and apply to all areas of Carbon County. Unless otherwise provided, the requirements of this Section are in addition to the zone district requirements set forth in Chapter IV. This is an overlay district which allows for the review and permitting of wind energy facilities and distribution facilities in the County with a conditional use permit issued under this section 5.11.

### **b. Intent and Purpose**

The Wind Energy Facilities Overlay District is intended to provide for public safety and to prevent hazards from the construction of commercial and non-commercial Wind Energy Facilities in Carbon County.

This Section has been adopted for the following purposes:

- 1) To permit and encourage carefully planned and compatible Wind Energy Facilities throughout the County;
- 2) To assure that any development and production of wind-generated electricity in Carbon County is safe and consistent with the Comprehensive Land Use Plan;
- 3) To acknowledge that these facilities are clearly visible and cannot be hidden from view, however, design consideration should include minimizing the degradation of the visual character of the area;
- 4) To facilitate economic opportunities for local residents;
- 5) To promote the supply of wind generated electricity in support of Wyoming's goal of increasing energy production from renewable energy sources.

### **c. Definitions**

1. "Applicant(s)" means the person who submits to the County, an application for a conditional use permit for any Wind Energy Conversion System (WECS), WECS Project or Substation.
2. "Collector system" means the electrical transmission infrastructure, including conductors, towers, substations, switchgear and other components necessary to deliver power from any Wind Energy Conversion System, WECS Project or Substation up to, but not including, electric substations or similar facilities necessary to interconnect to existing or proposed transmission lines that serve load or export energy from Wyoming.
3. "Commercial WEC Project" means WECS, WECS Projects and Substations that provide electricity to be sold to wholesale or retail markets.

4. "Financial Assurance" means reasonable assurance in a form acceptable to the County, at the discretion of the County Commissioners, that the costs associated with but not limited to, construction; maintenance; consequences from an abandonment; or a failure to properly execute closure and post-closure care, are recoverable from Applicant(s) under these Regulations. The elements to be considered when establishing adequate levels of financial assurance shall include credit worthiness, financial strength, credit history, credit rating and any other factors that reasonably bear upon the decision to accept a financial assurance.
5. "Nacelle" means the part of the wind turbine which houses a drivetrain consisting of a gearbox, connecting shafts, support bearings, the generator plus other machinery.
6. "Net Metering" means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a Non-Commercial WECS Project or customer generator that is fed back to the electric utility.
7. "Non-Commercial WECS Project" means a WECS Project with an aggregate generating capacity of one half (0.5) megawatt or less, consisting of ten (10) towers or less, located on property owned solely by the Applicant(s) to generate electricity for the Applicant's personal use, is operated solely by the Applicant(s).
8. "Operator" means the person responsible for the day-to-day operation and maintenance of any WECS, WECS Project or Substation, including any third party which operates the WECS, WECS Project or Substation, for the Owner(s).
9. "Overlay Zone District" means a zoning district that encompasses one or more underlying zones and that imposes additional requirements above that required by the underlying zone. The underlying zoning of a property where an overlay district is established does not change.
10. "Owner" means the person, entity or entities with an equity interest in the WECS Project, including their respective successors and assigns. "Owner" does not mean the property owner from whom land is leased for locating the WECS Project (unless the property owner has an equity interest in the WECS Project); or any person holding a security interest in the WECS Project solely to secure an extension of credit, or a person or entity which obtains title to the WECS Project by foreclosing on such security interest, provided that after foreclosure such person or entity sells the WECS Project at the earliest practicable and commercially reasonable date.
11. "Person" means and includes an individual, group, firm, partnership, corporation, cooperative, association, or other legally established entity excluding the state, federal government and local government. "Person" also includes the parent company, partnership or holding entity for a person.
12. "Pre-Application Review" means an initial review for the purpose of providing an Applicant(s) feedback about potential issues. The Pre-Application Review does not expressly grant approval and does not negate or minimize requirements that may arise during later reviews.

13. "Primary Structure(s)" means structures such as residences, commercial buildings, hospitals, and day care facilities. Primary Structure(s) excludes structures such as storage sheds and other non-occupied, secondary or accessory structures.

14. "Project Structure(s)" mean structures such as wind turbine towers, collector systems or other associated structures and buildings that are part of the WECS Project.

15. "Designated Scenic and Open View Sheds" means the landscape or topography visible from a geographic point, especially that having aesthetic value that has been designated by Federal, State, County or Municipal action.

16. "Substation" means the apparatus that connects the electrical collection system of the WECS(s) and increases the voltage for connection with the utility's transmission lines.

17. "Wind Energy Conversion System" ("WECS") means all necessary devices that together convert wind energy into electricity, including the rotor, nacelle, generator, WECS Tower, electrical components, WECS foundation, transformer, and electrical cabling from the WECS Tower to Substation(s) and their support facilities, including collector systems.

18. "WECS Project" means the WECS and associated support facilities including, but not limited to, roads, substations, operation and maintenance buildings, and permanent towers as specified in the application, including the project area as defined by the Owner(s) and includes, but is not limited to a Wind Energy Facility.

19. "WECS Tower" means the support structure to which the nacelle and rotor are attached and includes the foundation for the tower.

20. "WECS Tower Height" means the distance from the highest point of a vertical rotor blade to the top surface of the WECS foundation.

21. "Wind Energy Facility" means any wind powered electrical generation development consisting of an individual wind turbine or multiple wind turbines rated by the manufacturer to generate more than one-half (0.5) megawatt of electricity and includes all contiguous lands where the Owner(s) or developer has rights to erect wind turbines.

d. General Requirements

To obtain siting approval, the Applicant(s) must first submit a WECS Conditional Use Permit application to the Planning and Development Department. Commercial WECS Conditional Use Permit applications shall be referred to the Carbon County Planning & Zoning Commission for review and recommendation prior to being considered by the Board of County Commissioners.

Non-Commercial WECS Conditional Use Permit applications will be administered in accordance with Paragraph 22, Non-Commercial WECS. All Applicants for this type of permit must schedule a pre-application meeting with the Planning and Development Director or his/her designee.

## 1. Commercial WEC Project

The Conditional Use Permit application for a Commercial WEC Project shall contain, or be accompanied by, the following information:

- a) A WECS Project summary, including, to the extent available:
  - (1) A general description of the project, including its approximate total name plate generating capacity; the potential equipment manufacturer(s), type(s) of WECS(s), number of WECS, and name plate generating capacity of each WECS; the maximum height of the WECS Tower(s) and maximum diameter of the WECS rotor(s); the general location of the project; and
  - (2) A description of the Applicant(s), Owner(s) and, if known, Operator(s) including their respective business structures; and
  - (3) The name(s), address(es), phone number(s), and email(s) of the Applicant(s), Owner(s) and Operator(s), and all owner(s) of property on which the Project is to be located;
  - (4) The name(s), address(es), and phone number(s) of the Applicant(s), Owner(s) and Operator(s), and all property owner(s) within 1,000 feet of the geographical boundary of the WECS project site; and
  - (5) A preliminary site plan for the installation of a WECS Project showing the planned location of each WECS Tower, guy lines and anchor bases (if any), Primary Structure(s), property lines (including identification of adjoining properties), setback lines, public & private access roads and turnout locations, Substation(s), electrical cabling from the WECS Tower to the Substation(s), ancillary equipment, transmission lines, and layout of all structures within the geographical boundaries of any applicable setback; and
  - (6) A waste management plan that includes an inventory of estimated solid wastes to be generated, and a proposed disposal program for the construction, operation and eventual decommissioning of the proposed WECS project; and
  - (7) A plan for reclamation of the surface after construction.
  - (8) A list of all State and Federal agencies requiring approval and a copy of such approval, including all required studies, reports and certifications. In the event that a State or Federal Agency has not yet approved a required study, report or certification, then the conditional use permit shall be subject to receipt of a copy of such approval, unless good cause is shown to the satisfaction of the County; and
  - (9) Letters of consent to permit from all surface property owners upon which the WECS project will be located or other legal

documentation (leases, etc.) which demonstrate consent of the surface property owners for the WECS project; and

- (10) Certification that the proposed WECS project will comply with all the standards required by W.S. 18-5-504; and
- (11) Certify that the proposed WECS project will comply with all applicable zoning and county land use regulations; and
- (12) Any other information normally required by the County as part of its Zoning Rules and Regulations; and
- (13) Conditional Use Permit application fee.

b) Certification that reasonable efforts have been undertaken to provide notice in writing, to all owners of land within one (1) mile of the proposed WECS project and to all cities and towns located within twenty (20) miles of the WECS project. Notice shall include a general description of the project, including its location, projected number of turbines and the likely routes of ingress and egress.

c) Evidence of publication of notice of the proposed WECS project to be published in the official paper of Carbon County, twice in two (2) different weeks, at least twenty (20) days prior to the Board of County Commissioners public hearing on the application. The notice shall include a brief summary of the wind energy facility, invite the public to submit comments and identify the time and date of said hearing.

d) The Applicant(s) shall notify the Carbon County Planning & Development Department in writing of any material changes to the information provided that occurs while approval of the WECS Conditional Use Permit application is pending.

e) During initial site selection, the Applicants are advised to consult with Wyoming Game and Fish Department (WGF) department. The Applicant(s) should submit evidence of consultation that the Applicant(s) has coordinated with WGF about the project. The Applicant(s) need not complete duplicative studies, but should provide the County Planning and Development Department with wildlife studies contained in existing environmental assessments and/or formal National Environmental Protection Act (NEPA) studies that cover the project area. The County Planning and Development Department will refer the application to WGF for review and comment.

f) The Applicants are advised to seek comments from the Wyoming State Historical Preservation Office (SHPO) for matters concerning archaeology and/or historical importance and to include relevant reports with the application. The Applicant(s) need not complete duplicative studies, but should provide the County Planning and Development Department with relevant historical or archeological studies contained in reports required by other jurisdictions. The County will refer the application to the Wyoming State Historical Preservation Office (SHPO) and any other relevant agencies for review and comment.

## 2. Design and Installation

### a) Design Safety Certification

WECSs shall conform to applicable industry standards, including those of the American National Standards Institute ("ANSI") and the Institute of Electrical and Electronics Engineers ("IEEE") and the National Electrical Safety Code (NEC). Concurrently with building permit applications, the Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories ("UL"), Det Norske Veritas ("DNV"), Germanischer Lloyd Wind Energie ("GL"), or an equivalent third party.

### b) Color

When not conflicting with colors required by the Federal Aviation Administration or other Federal Agencies, towers and blades shall be painted off-white or another non-reflective, unobtrusive color that is agreed upon by the County prior to authorization. The color selected is intended to help the project blend with the natural visual character of the area. The Applicant(s) shall submit a visual rendering of the proposed towers with color scheme, for approval by the Board.

### c) Signage

There shall be no signage or logo of any type allowed on the WECS tower(s) with the exception of safety signs, warning signs and identification signs or numbers and emergency contact signs. Factory installed manufacturer's logo or an owner's logo will be permitted but cannot be illuminated. Any other signage shall only be allowed as approved by the County.

3. The Planning and Zoning Commission may recommend and the Board of County Commissioners may require specific design standards or restrictions that will mitigate or prohibit the degree to which WECS may impact views, view-sheds and scenic or historic landscapes which may have important and unique character or value.

### a) Scenic Landscapes and Vistas

WECS's should be located such that they do not interfere with any designated Federal, State or County scenic resources, byways or scenic corridors to the greatest extent possible. WECS shall be located as far as possible away from important views in order to diminish the visual impact of the structure.

### b) Visibility, Screening and Buffering

Wherever possible, WECS shall be located to make maximum use of existing terrain, vegetation and structures for the purposes of screening the turbines from off-site views. To the greatest extent possible, WECS shall be sited such that mature vegetation and/or existing structures are located between the facility and public and private viewpoints.

## 4. Warnings

a) A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and Collector substations.

b) For projects that are placed on land with public access; visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of fifteen feet (15') from the ground.

c) Each application shall include an evaluation of Federal Aviation Administration (FAA) approved remote sensing beacons or Audio Visual Warning Systems (AVWS) that do not require continuous night-time wind farm aviation warning lighting.

#### 5. Exterior Climb Prevention

a) All WECS Towers must be unclimbable by design or protected by anti-climbing devices.



6. Commercial WECS Setbacks and Standards

Commercial WECS Tower	Minimum Setbacks	Additional Comments, Waivers and similar
Primary Structure	5.5 times the WECS tower height	Unless waived in writing by the person owning the primary structure. A WECS tower shall not be located closer to a primary structure than one and one-tenth (1.10) times the WECS tower height.
Third Party Transmission and Distribution Lines	1.10 times the WECS tower height	
Communication Towers	1.10 times the WECS tower height	
Adjacent or Contiguous Property Lines	1.10 times the WECS tower height	Unless waived in writing by the owner of every property which would be located closer than the minimum distance. This does not apply to property lines within the WECS Projects.
County Residential Zone District and any City and Town	one-half (0.5) mile	
Any Platted Subdivisions	5.5 times the height of the tower	Unless waived in writing by the owners of all lands included within the distance specified herein; but in no event closer than 1,000 feet from the nearest platted subdivision property line.
ROW (I-80), State Highways 77, 487, 72, 13, 130, 230, 70, 789, 71, and U.S. Highways 287 and 30.	one quarter (0.25) mile from the right-of-way (ROW)	Unless waived by the Board of County Commissioners (BoCC). Measured from the edge of the road Right-of-Way (ROW)
County Roads and Railroads	one quarter (0.25) mile from the right-of-way (ROW)	Unless waived by the BoCC. Measured from the edge of the road or railroad Right-of-Way (ROW).

<b>WECS Tower</b>	<b>Minimum Setbacks</b>	<b>Additional Comments, Waivers and similar</b>
State Parks and Wildlife Refuges	A minimum distance of one-quarter (0.25) mile	Unless waived by the BoCC upon a recommendation from the applicable State Agency.
Variances	The Applicant(s) does not need to obtain a variance from the County upon approval of a setback waiver by a property owner. A waiver of the setback requirements shall run with the land and shall be recorded as part of the chain of title for the subject property. Copies of the recorded waivers shall be furnished to the County and included in the application file.	
Setbacks shall be measured from the center of the WECS tower foundation.		
Setbacks may be modified at the discretion of the County Commissioners to minimize degradation of the visual, environmental or acoustic character of the area.		

## 7. Federal, State and Local Requirements

a) Nothing in these Regulations is intended to preempt other applicable State and Federal laws or regulations. All WECS Project facilities shall be constructed to meet and be maintained in compliance with all Federal, State and County requirements, including all Wyoming Industrial Siting Council requirements, if applicable. If compliance issues arise at any time during the review, development or operational phases, the Applicant(s) or Owner(s), at the discretion of the County may be requested to provide additional studies or reports prepared by qualified professionals addressing the issues and mitigation measures that may be needed to maintain compliance.

## 8. Use of Public Roads

Any Applicant(s), Owner(s), or Operator(s) proposing to use any public road(s), for the purpose of transporting WECS(s) or Substation parts and/or equipment for construction, operation, or maintenance of the WECS(s) or Substation(s), shall:

a) Submit a report demonstrating how legal access will be provided to the WECS facility. The report shall describe how private roadways within the project will be marked as private roadways, and shall acknowledge that the County is not required to repair, maintain or accept any dedication of the private roadways to the public use.

b) Identify all public roads within Wyoming and submit conceptual mapping of all proposed haul routes with the WECS Conditional Use permit application. The report shall also include a traffic study, prepared by a Licensed Engineer, of any public roadways leading to and away from the proposed project during and after construction. The Board of County Commissioners may require the Applicant(s) enter into a Road Use Agreement for the use of County roads prior to construction of the project. The road use agreement shall be developed by the Applicant(s) for review by the County Road & Bridge Department, Planning & Development Department, and the County Attorney's Office.

c) Prior to issuance of a building permit, obtain new access, access modification or change of use of access permit; utility crossing permits from WYDOT or applicable agency for impacts to any Federal, State or County Highway/Road facilities.

d) The Applicant(s), at the discretion of the Board of County Commissioners, may be required to provide additional studies and reports, prepared by qualified professional(s), to determine if impacts to public roads will occur. If impacts are determined, a mitigation plan and/or long term road maintenance agreement will be required at the discretion of the Board.

e) Applicant(s), Owner(s), or Operator(s) must obtain any applicable weight or size permit(s) relating to transportation of WECS from the appropriate agency.

f) The Applicant(s), Owner(s), or Operator(s) shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential damage to roadways due to the WECS Project; and

g) Secure Financial Assurance in a reasonable amount at the discretion of the Board of County Commissioners, for the purpose of repairing any damage to public roads caused by constructing, operating or maintaining the WECS Project. The amount of financial assurance shall be submitted as an estimate signed and sealed by a Licensed Engineer and submitted as part of the road use agreement. If the Owner(s) of the WECS project is a person regulated by the Wyoming Public Service Commission, the requirements of the subparagraph shall not apply.

h) The use of public roads and other infrastructure shall be in accordance with and in compliance with County regulations governing such activities. Any degradation to, or damage of public roads or other infrastructure by parties affiliated with the installation, operation or maintenance of WECS Project will bear all costs required to return the public roads or other infrastructure to their original or better condition prior to their use. If Carbon County has entered into any Memorandum of Understanding with any other counties in the proposed WECS Project(s), including counties in other states, as applicable, the Owner(s) shall furnish proof of compliance with the requirements of any such county.

#### 9. Additional Permitted Uses

a) The County may allow the Applicant(s) to include certain accessory type uses on a WECS Project facility property, such as on-site security and communications facilities necessary for the operation of the WECS Project, a visitor center where the public may be permitted to visit the facility and obtain information about the facility and wind farms in general. Information centers, kiosks or markers on state wildlife and historical issues may be included with approval of such accessory uses. Directional signage may be allowed upon issuance of a sign permit.

#### 10. Operations and Maintenance

a) Routine scheduled maintenance shall include the repainting of equipment and structures, grounds or landscaping as appropriate to the location. If the Owner(s) of the WECS project is a person regulated by the Wyoming Public Service Commission, the requirements of the subparagraph shall not apply.

b) All solid wastes and hazardous materials related to the construction, operation and maintenance of a WECS Project shall be handled, stored or

disposed of in accordance with the approved waste management plan and in accordance with all applicable Federal, State and County laws and regulations.

c) On April 1st of every even numbered year after the third anniversary of the permit, the Owner(s) or Operator(s) of the WECS shall submit to the County Planning and Development Department a statement that lists all WECS currently inoperative for longer than six continuous (6) months. All WECS that remain inoperative for eighteen (18) continuous months or longer must be removed unless the Owner(s) provides a written plan and schedule acceptable to the Carbon County Planning & Zoning Commission for refurbishing and/or reactivating the inoperative WECS. If the Owner(s) of the WECS project is a person regulated by the Wyoming Public Service Commission, the requirements of the second sentence of this subparagraph shall not apply.

d) The Owner(s) or Operator(s) of the WECS shall control and eradicate noxious and invasive weed species within the disturbed areas of the project. Weed control shall be maintained as directed by the Carbon County Weed and Pest District or the appropriate public entity having jurisdiction.

e) Interference

- (1) The Applicant(s) shall provide the applicable wireless telecommunication service providers and local emergency service provider(s) (911 operators) copies of the project summary and site plan. To the extent that the above provider(s) demonstrate a likelihood of interference with their communications resulting from the WECS(s), the Applicant(s) shall take reasonable measures to mitigate such anticipated interference.
- (2) If, after construction of the WECS(s), the Owner(s) or Operator(s) receives a written complaint related to interference with emergency services communications, local broadcast of residential television or other communication venues, the Owner(s) or Operator(s) shall take steps to respond to the complaint and take reasonable measures as necessary to alleviate or mitigate the interference.
- (3) The Owner(s) or Operator(s) shall mitigate light impact on existing residences that are visible within one (1) mile of an existing residence and still meet applicable FAA requirements. Examples of light mitigation include but are not limited to; downward directed lighting, use of shielded light fixtures, eliminating lighting that casts light onto adjacent property.

## 11. Coordination with Emergency Services

a) The Applicant(s), Owner(s) or Operator(s) shall submit a written emergency management plan for review and comment to the County and local fire department, County Emergency Management Coordinator and the County Sheriff. If the WECS Project extends into another county, the emergency plan shall address multi-county coordination of emergency notices and use of emergency services and the plan shall be commented upon by officials of the other affected county. If the conditional use permit is granted, the plan shall be supplemented and revised following construction of the WECS project and prior to its operation, if there are any variations in the project construction which would materially impact the original emergency management plan.

## 12. WECS Project Mapping

a) To the extent not inconsistent with confidentiality and security obligations under State and/or Federal law; the Owner(s) or Operator(s) shall provide the County Planning and Development Department with a detailed map of the site within ninety (90) days of when operation begins. This map will include the geographic coordinates of each WECS structure, all roads within the WECS Project area, and public roads and turnouts connecting to roads of the WECS Project. This Map shall be updated by the Owner(s) or Operator(s) every five (5) years or after the completion of any significant additional construction, whichever occurs first.

## 13. Reclamation and Decommissioning Plan

For WECS Projects not owned or operated by a Public Utility subject to decommissioning and reclamation requirements of the Public Service Commission per W.S. §35-12-105:

a) The Applicant(s) shall provide a site and facility reclamation and decommissioning plan which indicates the planned life of the Wind Energy Facility and the means by which the facility and its site will be decommissioned and reclaimed at the end of the facility's life and which certifies that any owner of land within the Wind Energy Facility and its site who is not the Applicant(s) has been consulted in development of the reclamation and decommissioning plan. Such plan shall comply with all requirements adopted by the Wyoming Industrial Siting Council under W.S. §35-12-105(d) and (e) regardless of whether the facility is referred to the Wyoming Industrial Siting Council pursuant to W.S. §18-5-509 or is otherwise subject to the Industrial Siting Act. If the permit is granted, the plan shall be updated every five (5) years until site reclamation and decommissioning is complete.

#### 14. Public Notice and Approval Process

a) Upon receipt of an application, the Planning and Development Department shall conduct a review of the application to determine if it contains all the information required by W.S. 18-5-503 and this Section and any other applicable rules and regulations. If the Planning and Development Department determines that the application is incomplete, it shall within thirty (30) days of receipt of the application notify the Applicant(s) of the specific deficiencies in the application. The Applicant(s) shall provide the additional information necessary within thirty (30) days of receipt of a request for additional information. When the Planning and Development Department determines that the application is complete it shall notify the Applicant(s) that the application is complete and shall provide notice of the date and time at which the hearing required by W.S. §18-5-506 and 14b will be conducted.

b) The Board of County Commissioners shall hold a public hearing to consider public comment on the application no less than forty-five (45) days and not more than sixty (60) days after determining that the application is complete. Written comments on the application shall be accepted by the Board of County Commissioners for not less than forty-five (45) days after determining that the application is complete.

c) Notice Requirements. An affidavit by the Applicant(s) shall be submitted which certifies that the Applicant(s) has undertaken reasonable efforts to provide written notice to all owners of land within one (1) mile of the property line of the proposed Wind Energy Facility and to all cities and towns located within twenty (20) miles of the Wind Energy Facility. Notice shall include a general description of the project including its location, projected number of turbines and the likely routes of ingress and egress. The affidavit shall attest that notice was mailed to those owners of record on file at the Carbon County Assessor's Office.

d) Notice of the proposed Wind Energy Facility shall be published in a newspaper of general circulation in Carbon County twenty (20) or more days prior to the public hearing required by W.S. §18-5-506. The notice shall include a brief summary of the Wind Energy Facility, invite the public to submit comments and identify the time and date of the hearing. The Applicant(s) shall provide an affidavit of publication prior to the BoCC hearing. In addition, the County may prepare a notice to be published in a newspaper of general circulation in the County that should include a brief summary of the Wind Energy Facility, invite the public to submit comments and identify the time and date of the hearing. The application shall not be subject to additional County notice requirements for a Conditional Use Permit application.

e) The Owner(s) or Applicant(s) shall certify that notice has been provided to the record owners of mineral rights located on or under the lands where the proposed facility will be constructed. Such notice may include notice by publication. The certification of notice shall be provided with the application. To the extent that the notice requirements in the paragraph do not comply with rules adopted by the Industrial Siting Council as provided by W.S. §18-5-504(c), the standards and requirements adopted by the Industrial Siting Council shall control and shall be complied with by the Applicant(s).

f) Planning and Zoning Review and Recommendation. The Planning and Zoning Commission will review and consider the application at a meeting of the Commission and certify their recommendation to the Board of County Commissioners.

15. Decision of the board; findings necessary

a) Within forty-five (45) days from the date of completion of the hearing required by W.S. 18-5-506, the Board shall make complete findings, issue an opinion, render a decision upon the record either granting or denying the application and state whether or not the Applicant(s) has met the applicable standards. The decision shall be subject to the remedies provided in W.S. 18-5-508. The Board shall grant a permit if it determines that the proposed wind energy facility complies with all standards properly adopted and the standards required by this article.

b) No permit shall be granted if the application is incomplete or if all notices required by this regulation and W.S. 18-5-503 have not been timely given.

c) A copy of the decision shall be served upon the Applicant(s).

16. Liability Insurance

a) The Owner(s) or Operator(s) of the WECS Project shall maintain a current general liability policy issued by an insurance company authorized to business in Wyoming covering bodily injury and property damage with limits of at least \$1 million per occurrence and \$1 million in the aggregate. The Applicant(s) shall provide proof of insurance to the Board of County Commissioners prior to the Board's approval of the submitted application or otherwise demonstrate adequate self-insurance. If the application is approved, the Owner(s) or Operator(s) of the WECS shall provide proof of insurance to the Board annually. Proof of insurance may be made by providing a certificate of insurance. If the Owner(s) of the WECS project is a person regulated by the Wyoming Public Service Commission, the requirements of the subparagraph shall not apply.

17. Transfer of Conditional Use Permits

No conditional use permit shall be transferred without the prior approval of the Board of County Commissioners. Board approval shall not be unreasonably withheld upon good cause shown. Any transferee shall agree in writing to be bound by the terms of the Conditional Use Permit.



## 18. Conditional Use Permit Violation

A failure by the person who is issued a conditional use permit to materially comply with any of the provisions of the permit shall constitute a violation of the permit and this section.

a) Prior to taking steps to enforce the permit requirements and applicable regulations as provided by law, the County shall first provide written notice to the permit holder setting forth the alleged violation(s). Such written notice shall provide the permit holder a reasonable time period, not to exceed sixty (60) days, to cure the violation or for good faith negotiations to resolve the alleged violation(s).

b) If the County determines, based upon all the facts pertinent to the circumstances involving the violation, including any history of prior violations, that the parties cannot resolve the alleged violation(s) within the good faith negotiation period, or in the event that it determines that exigent circumstances exist, such as an emergency, or the need to prevent imminent harm due to the violation, that, in the best interests of, and for the protection of the public, the provisions of subparagraph (a) above should not apply, the County may proceed to enforce these regulations in any manner allowed by law in those circumstances.

## 19. Revocation or suspension of conditional use permit

a) A conditional use permit may be revoked or suspended for:

(i) Any material false statement in the application or in accompanying statements or studies required of the Applicant(s), if a true statement would have warranted the refusal to grant a conditional use permit;

(ii) Failure to comply with the terms or conditions of the permit after notice of the failure and reasonable opportunity to correct the failure;

(iii) Violation of Article 5, Wind Energy Facilities at W.S.18-5-501 et. seq., this section or valid orders of the Board of County Commissioners or the Industrial Siting Council;

(iv) Failure of the proposed wind energy facility to receive a required permit from the Industrial Siting Council pursuant to the Industrial Development Information and Siting Act, W.S. §35-12-101 through §35-12-119; or

(v) Failure of the permitted wind energy facility to:

(A) Transmit electricity created by wind energy for a period of two (2) consecutive years or more;

(B) Maintain land rights necessary to operate the wind energy facility.

## 20. Penalties for violations

### a) No person shall:

- (i) Commence to construct a wind energy facility on or after July 1, 2010 without first obtaining a permit required by Article 5, Wind Energy Facilities at W.S.18-5-501 et. seq. and this section;
- (ii) Construct, reconstruct, operate, locate, erect, maintain, enlarge, change or use a wind energy facility, after having first obtained a conditional use permit, other than in specific compliance with the permit; or
- (iii) Cause any of the acts specified in this subsection to occur.

b) Any person violating subsection (a) of this section is liable for a civil penalty of not more than ten thousand dollars (\$10,000.00) for each violation. Each day of a continuing violation constitutes a separate offense.

c) Any wind turbine tower or wind generator erected in violation of this section or Article 5, Wind Energy Facilities at W.S.18-5-501 et. seq. shall subject the Owner(s) of the tower or generator to a penalty of seven hundred fifty dollars (\$750.00) per day for every tower or generator so erected.

d) Any penalties collected pursuant to this section shall be paid and credited as provided by W.S. 8-1-109.

## 21. Referral

The Board of County Commissioners may refer a WECS Project to the Industrial Siting Council as provided by W.S. §18-5-509.

## 22. Non-Commercial WECS

a) Non-Commercial WECS may be permitted as a conditional accessory structure to an existing or proposed permitted use in all zone districts as provided in this section. Non-Commercial WECS shall be processed and permitted in accordance with the Conditional Use Permit Application Procedure set forth in Section 5.6 except that the conditional use application shall be considered and approved by the Planning and Zoning Commission after a public hearing which is advertised at least fourteen (14) days prior to the hearing and no hearing or approval on the application shall be made by the Board of County Commissioners except as otherwise provided in this paragraph. The Conditional Use Permit application fee shall be submitted with the application and in the amount listed in the then current Planning & Development Department's Fee Schedule.

b) At the public hearing, the Planning and Zoning Commission will take comments concerning the proposal and hear any objections to the proposed

Non-Commercial WECS. After hearing and considering all comments from the Applicant(s), staff and concerned parties, the Planning and Zoning Commission will then make the required determinations and shall approve, conditionally approve or deny the application. Any decision by the Planning and Zoning Commission may be appealed to the Board of County Commissioners. The party wishing to appeal must notify the Planning & Development Department in writing within five (5) business days of the decision of the Planning and Zoning Commission, otherwise the decision will become final and no appeal will be allowed. Upon appeal to the commissioners, no public hearing shall be held but it shall take comments from the Applicant(s), staff and concerned parties at a regular meeting and will then make a determination to approve, conditionally approve or deny the application.

c) A building permit is required prior to commencement of construction of all Non-Commercial WECS. The Applicant(s) shall pay a building permit fee in the amount listed in the then current Planning & Development Department's Fee Schedule.

d) A Non-Commercial WECS Conditional Use Permit application is subject to the standard application requirements and the following Non-Commercial WECS standards and requirements:

- (1) Minimum Parcel Size: The minimum parcel size upon which a Non-Commercial WECS may be constructed is **one (1) acre**.
- (2) Maximum Tower Height: Parcels less than five (5) acres in size shall have a maximum tower height of sixty feet (60'). Parcels between five and thirty-five (5-35) acres in size shall have a maximum tower height of one hundred feet (100'). Parcels of thirty-five (35) acres and larger shall have a maximum tower height of one hundred forty feet (140').
- (3) Noise: Sound emitted by a WECS shall not exceed 50 dbA, as measured at the closest neighboring inhabited dwelling. Manufacturer data must be submitted to demonstrate compliance with this requirement. This level may be exceeded during short-term events such as utility outages and/or severe winds storms.
- (4) Setbacks: No WECS shall be constructed on any property a distance of less than one hundred and ten percent (110%) of the combined height of the tower plus the length to the tip of the blade from all adjacent property lines.
- (5) Clear Zone: The WECS shall be maintained in a circular clear zone that has a radius which is equivalent to one hundred and ten percent (110%) of the combined distance of the tower height plus the length to the tip of the blade. This clear zone shall be maintained free of any occupied structure, tanks containing combustible/flammable liquids and above ground utility/electrical lines. The clear zone requirement may be waived if the anchoring

system for the structure is certified by a Wyoming Licensed Engineer.

- (6) Tower Security: All WECS Towers must be unclimbable by design or protected by external anti-climbing devices.
- (7) Lighting: WECS shall not be artificially lighted with accent lighting. Wind energy systems may be lighted in accordance with of the Federal Aviation Administration (FAA) regulations and guidelines or appropriate aviation authorities.
- (8) Signs/Advertising: No tower shall have any sign, writing or picture that may be construed as advertising.
- (9) Colors: All towers shall be white, gray or other neutral color and be non-reflective.
- (10) Multiple WECS: Multiple WECS can be permitted on a single parcel as long as the Owner(s)/Operator(s) complies with all Non-Commercial WECS Regulations contained herein. Units shall be installed in compliance with minimum setbacks and clear zone requirements and the minimum distance between wind energy systems shall be equivalent to one hundred and ten percent (110%) of the combined height of the tower plus the blade length. The minimum distance between towers may be waived if the anchoring system for the structure is certified by a Wyoming Licensed Engineer.
- (11) Approved Wind Turbines: At the time of application, the Applicant(s) must present a certification from the manufacturer that the system's turbine and other components are equal or exceed the standards of one of the following national certification programs such as the: the Institute of Electrical and Electronics Engineers ("IEEE"), National Electric Code (NEC), National Electric Safety Code, (NESCC), American National Standards Institute (ANSI) or other small wind certification program recognized by the American Wind Energy Association.
- (12) On-site Electrical Use: The Applicant(s) must certify on the applications that the proposed system will be used primarily for on-site consumption of electricity.
- (13) The Owner(s) shall mitigate light impact on existing residences as reasonably feasible and still meet FAA requirements. Examples of light mitigation include but are not limited to; downward directed lighting, use of shielded light fixtures and eliminating lighting that cast light onto adjacent property.
- (14) Utility Notification: Permit applications for Non-Commercial WECS shall be accompanied by evidence that the utility company serving

the property of Applicant(s) has been informed of the customer's intent to install an interconnected customer owned generator.

- (15) Removal of Defective or Abandoned WECS: Any WECS found to be unsafe by an authorized County official, or designated authority, shall be repaired by the Owner(s) to meet federal, state and local safety standards, or removed within six (6) months. If any WECS is not operated for a continuous period of twelve (12) months, the County will notify the landowner by registered mail and provide thirty (30) days for a response. In such a response, the landowner shall set forth reasons for operational difficulty and provide a reasonable timetable for corrective action. If the County deems the timetable for corrective action as unreasonable, they must notify the landowner and such landowner shall remove the turbine within one hundred twenty (120) days of receipt of notice.
- (16) Maintaining compliance: All applicable Federal, State and County laws and regulations shall be met and continually maintained for all Non-Commercial WECS.

### 23. Expiration of Conditional Use Permits

a) Any WECS Project for which a conditional use permit is granted under this section 5.11 must be commenced within two (2) years from the date of approval. If the WECS Project is not commenced within two (2) years from the date of approval then the conditional use permit shall expire and become null and void and be of no further effect. If the WECS Project is not operational within two (2) years from the date of commencement, then the conditional use permit shall expire and become null and void and be of no further effect. For the purpose of this paragraph 23, commencement of construction of Project Structures, buildings and other physical assets, including roadways, of the WECS Project shall be considered commencement of the project. For the purpose of this paragraph 23, the WECS Project shall be considered to be operational if the project is generating electricity.

b) If the WECS project has not been commenced or has not become operational as required, the Applicant(s) may request an extension of the permit for a period not to exceed twelve months upon a showing of good cause. The Applicant(s) shall apply to the County in writing for the extension no later than ninety (90) days prior to the expiration of the permit. At the time of the application for the extension the Applicant(s) shall provide such information as is necessary for the County to determine whether good cause exists for the extension. Such information may include, but is not limited to, good faith efforts to obtain required authorization for the WECS Project from other agencies with jurisdiction, such as the Wyoming Industrial Siting Council, delay in construction due to weather conditions, or other causes which have delayed the project and which are beyond the reasonable control of the Applicant(s). The Board of County Commissioners shall promptly consider the application for the extension and either allow it or deny it. No permit shall expire during the time the decision on the extension is being considered.