

## **Section 8. Albany County Wind Energy Siting Regulations**

### **A. General Provisions**

1. **TITLE.** These regulations shall amend the Albany County Zoning Resolution, to be referred to as the Albany County Wind Energy Siting Regulations.
2. **Purpose.** These regulations have been adopted for the following purposes:
  - a. To assure that any development and production of wind-generated electricity in Albany County is safe, effective, and that it will minimize impacts to wildlife;
  - b. 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;
  - c. To facilitate economic opportunities for local residents;
  - d. To promote the supply of wind energy in support of Wyoming's goal of increasing energy production from renewable energy sources;
  - e. To be consistent with the Albany County Comprehensive Plan.
3. **Authority.** The Albany County Wind Energy Siting Regulations are adopted under the authority granted by the following Wyoming Statutes:

Title 18 Counties. Chapter 5 Planning and Zoning, Article 2.  
Planning and Zoning Commission, §§18-5-201 to 18-5-207

Title 9 Administration of the Government. Chapter 8 Land Use Planning, Article 1. General Provisions, §§9-8-101 to 9-8-302.
4. **Severability.** If any section or provision of the Albany County Wind Energy Siting Regulations is adjudged invalid for any reason, the adjudication does not affect any other section or

provision of these regulations. These regulations are declared to be severable.

B. Definitions

1. "Applicant" means the entity or person who submits to the County Planning Office an application for the siting of any Wind Energy Conversion System (WECS), WECS Project or substation.
2. "Financial Assurance" means reasonable assurance, at the discretion of the Board of County Commissioners, from a credit worthy party that the costs associated with but not limited to, construction; maintenance; consequences from an abandonment; or a failure to properly execute closure, post-closure costs are recoverable from applicant(s) under these regulations.
3. "Operator" means the entity responsible for the day-to-day operation and maintenance of any WECS, WECS Project or substation, including any third party subcontractors.
4. "Owner" means the entity or entities with an equity interest in the WECS, including their respective successors and assigns. Owner does not mean (i) the property owner from whom land is leased for locating the WECS (unless the property owner has an equity interest in the WECS; or (ii) any person holding a security interest in the WECS solely to secure an extension of credit, or a person foreclosing on such security interest, provided that after foreclosure such person seeks to sell the WECS at the earliest practicable date.
5. "Primary Structure" means structures such as residences, commercial buildings, hospitals, and day care facilities. Primary structure excludes structures such as storage sheds and loafing sheds.
6. "Professional Engineer" means a qualified individual who is licensed as a professional engineer in the State of Wyoming.

7. "Substation" means the apparatus that connects the electrical collection system of the WECS and increases the voltage for connection with a utility's transmission line(s).
8. "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 the substation and their support facilities, including transmission lines.
9. "WECS Project" means the WECSs and associated support facilities including, but not limited to, roads, substations, operation and maintenance buildings, and permanent met towers as specified in the siting approval application and including the project area as defined by the owner.
10. "WECS Tower" means the support structure to which the nacelle and rotor are attached.
11. "WECS Tower Height" means the distance from the highest point of a vertical rotor blade to the top surface of the WECS foundation.

C. Applicability. These regulations govern the siting of WECS, WECS Projects and substations that provide electricity to be sold to wholesale or retail markets, except that owners of WECS with an aggregate generating capacity of 25 kW or less who locate the WECS on their own property are not subject to these regulations. WECS towers shall be permitted in agricultural or industrial zoned districts. Approval of any WECS Project permit does not preclude the need to obtain approved Zoning Certificates for individual structures, additions and changes.

D. Prohibition. No WECS Project shall be constructed, erected, installed, or located within Albany County, unless prior siting approvals have been obtained pursuant to these regulations. WECS Projects shall be permitted by WECS Project permits which allow each individual WECS to be moved within the project boundary as the variables of the individual project dictate.

E. Siting Approval Application.

1. To obtain siting approval, the applicant(s) must first submit a WECS Project permit application to the County Planning Office.
2. The WECS Project permit application shall contain or be accompanied by the following information:
  - a. A project summary, including, to the extent available: (1) a general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer, type of WECSs, number of WECS, and name plate generating capacity of each WECS; the maximum height of the WECS towers and maximum diameter of the WECS rotor; the general location of the project; and (2) a description of the applicant, owner and operator, including their respective business structures;
  - b. The names, addresses, and phone numbers of the applicants, owners and operators, and all property owners;
  - c. A site plan for the installation of a WECS Project showing the planned location of each WECS tower, anchor bases (if any), primary structures, property lines (including identification of adjoining properties), setback lines, public access roads and turnout locations, substations, electrical cabling from the WECS tower to the substations' ancillary equipment, transmission lines, and layout of all structures within the geographical boundaries of any applicable setback;
  - d. All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of these regulations.
  - e. Letters of consent to construct from all surface property owners on which the WECS Project is located; and

- f. Any other information required by the County Planning Office as part of its zoning regulations.
3. Application and Approval Process.
- a. Application Submission. A completed application, signed by the owner(s) and applicant shall be submitted to the County Planning Office.
  - b. Certified list of adjacent property owners. A certified list of adjacent property owners within two (2) miles of the proposed WECS Project shall be provided with the application. A title insurance company, a professional engineer, a surveyor or an attorney must certify the list.
  - c. Notice Requirements. WECS Project permit applications shall be subject to all County notice requirements within the Albany County Zoning Resolution (Chapter 1, Section 13).
  - d. Planning and Zoning Review and Recommendation. The Planning and Zoning Commission will review the application at a regular meeting and make findings and a recommendation to the Board of County Commissioners.
  - e. Board of County Commissioners Review and Decision. The Board of County Commissioners shall hold a public hearing prior to acting on the application. In order to give final approval of the WECS Project permit, the Board of County Commissioners must be able to make required findings of fact and conclusions of law, determining that each impact shall be mitigated, if deemed necessary, ensuring compatibility with adjacent uses.
  - f. Findings Necessary for Approval. The Board of County Commissioners must make the following findings:
    - (i) That the applicant has provided such site plans and/or survey maps as required.

- (ii) That the proposed WECS Project will not adversely affect the public health, safety, and welfare of the community.
- (iii) That the proposed WECS Project shall not adversely affect the public interest by overburdening County services.
- (iv) That the applicant has adequately addressed the following impacts:
  - (A) Economic. Demonstrate that the applicant has addressed any complaints specified during the public comment period concerning any negative economic impacts.
  - (B) Air Quality. There shall be no adverse air quality impact at or beyond the property line: fumes, smoke, odor, dust, heat; etc.
  - (C) Water Quality. There shall be no adverse water quality impacts.
  - (D) General Nuisances. Minimize light, glare, heat, noise, vibration, odors, fumes, smoke or other nuisances generated by the WECS Project that may affect off-site property owners.
  - (E) Soil Disturbance. Show that soil disturbance on the site will be minimized and that appropriate measures will be taken to restore disturbed areas to its former state.
  - (F) Wildlife Impacts. Show that the WECS Project will not be a significantly negative impact on wildlife species in the area.
  - (G) Cultural Resource Impacts. Show that appropriate measures will be taken to mitigate disturbance of any cultural resources on the site.

(H) If this project requires review by industrial siting, the applicant shall not be required to address (F) wildlife impacts or (G) cultural resource impacts of this subsection.

4. The applicant shall notify the County Planning Office of any changes to the application information that occur while the WECS Project application is pending.
5. The WECS Project permit expires within five (5) years of its date of approval by the Board of County Commissioners unless:
  - a. The applicant has substantially commenced WECS Project construction under an approved Albany County permit; or
  - b. The applicant has submitted evidence acceptable to the Board of County Commissioners that the WECS Project is still viable and the delay in construction is caused by project management or coordination issues that are pending resolution in the near future.
6. The Board of County Commissioners may renew the permit for an additional five (5) year term. If the WECS Project is not completed once the additional term ends, the applicant must apply for a new WECS Project permit to proceed with the project.

F. Design and installation

1. Design Safety Certification. Following the granting of WECS Project under these regulations, a professional engineer shall certify, as part of the Zoning Certificate application, prior to construction that the foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.
2. Color. Towers and blades shall be painted white or gray or another non-reflective, unobtrusive color as agreed to by the County Planner and the applicant that will help the project blend with the natural visual character of the area.

3. Noise. Noise associated with WECS operation shall not exceed fifty-five (55) dBA as measured at any point along the common property lines between a non-participating property and a participating property.
  - a. This level may be exceeded during short-term events such as utility outages, severe weather events, and construction or maintenance operations.
  - b. This standard shall not apply along any portion of the common property line where the participating property abuts state or federal property.
  - c. Noise levels may exceed the fifty-five (55) dBA limit along common property lines if written permission, as recorded with the Albany County Clerk, is granted by the affected adjacent non-participating property owners.
4. Signage. There shall be no signage or logo of any type allowed on the WECS towers with the exception of reasonable manufacturer safety warning and emergency contact signs. Any other signage shall only be allowed as approved by the County.
5. Warnings. A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
6. Climb Prevention. All WECS towers must be unclimbable by design or protected by anti-climbing devices.
7. Setbacks
  - a. All WECS towers shall be set back at least one-quarter (.25) mile from any primary structure. The distance for the above setback shall be measured from the point of the primary structure foundation closest to the WECS tower to the center of the WECS tower foundation. The owner of the primary structure may waive this setback requirement. However, a WECS tower shall not be located closer to a primary structure than one and one-tenth (1.10) times the WECS tower height.

- b. All WECS towers shall be set back a distance of at least one and one-tenth (1.10) times the WECS tower height from third party transmission lines and communication towers.
- c. All WECS towers shall be set back a distance of at least one and one-tenth (1.10) times the WECS tower height from adjacent property lines. This does not apply to property lines within WECS Projects.
- d. All WECS towers shall be set back a distance of one-half (.5) mile from any residential zoning district. The owner of the adjacent property in the residential zone may waive this setback requirement; however, all WECS Project structures shall be set back a distance of at least one and one-tenth (1.10) times the WECS tower height from the adjacent property line.
- e. All WECS towers shall be set back a distance of one (1) mile from any incorporated municipality, unless waived by the municipality.
- f. All WECS towers shall be set back a minimum of one-quarter (.25) mile from the right-of-way of Interstate 80, Highway 34, 130 and 230, and U.S. Highway 287/30.
- g. All WECS towers shall be set back a distance of at least one and one-tenth (1.10) times the WECS tower height from public roads and railroads. Setback shall be measured from the edge of the road or rail right-of-way.
- h. All WECS towers shall be set back from State Parks and wildlife refuges a minimum of one-quarter (.25) mile.
- i. The applicant does not need to obtain a variance from the county upon waiver by either a municipality or property owner of any of the above setback requirements. Any waiver of any of the above setback requirements shall run with the land and be recorded as part of the chain of title in the deed of the subject property. Copies of the signed

waivers shall be furnished to the County Planning Office for inclusion in the application file.

- j. Setback distances may be modified at the discretion of the Board of County Commissioners to minimize degradation, if any, of the visual, environmental or acoustic character of the area, additional performance standards may be adopted by the Board of County Commissioners upon formal consideration, review and public hearings.

8. Use of Public Roads

- a. Applicants, owners, or operators proposing to use any county, improvement district, municipality or state roads, for the purpose of transporting WECSs or substation parts and/or equipment for construction, operation, or maintenance of the WECSs or substations shall:

- (i) Identify all such public roads. Detailed mapping of haul routes shall be submitted after the specific haul routes have been identified. No public roads shall be used for construction activities related to a WECS Project until specific haul routes have been identified and maps have been submitted to the County Planning Office and appropriate approvals obtained.
- (ii) Obtain access permits and utility crossing permits from the county.
- (iii) The applicants, at the discretion of the Board of County Commissioners, may be requested to provide additional studies and reports prepared by qualified professionals to determine if impacts to public roads will occur.

If impacts are determined, a mitigation plan and/or long-term road maintenance agreement between the applicant and Albany County will be required

at the discretion of the Board of County Commissioners.

- (iv) If potential road impacts are determined to extend beyond County boundaries the applicants will be responsible to contact all potentially impacted jurisdictions (other states or counties) and to provide written documentation of the contacts as well as written statements from the jurisdictions that they are aware of the potential impact.

b. The County Planning Office may require the applicants, owners or operators to do the following:

- (i) Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage; and
- (ii) 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.
- (iii) The use of public roads and other infrastructure shall be in compliance of federal, state and county regulations governing such activities. If degradation to or damage of public roads or other infrastructure by parties affiliated with the installation, operation or maintenance of WECS Project, these parties will bear all costs required to return the public roads or other infrastructure to their original or better condition prior to their use for the project. If Albany County has entered into any Memorandum of Understanding with any other counties in the proposed WECS Project, including counties in other states as applicable, the owner shall furnish proof of compliance with the requirements of any such county.

9. Sediment Control. Owners or operators shall do the following to minimize soil erosion and damage to existing vegetation during construction and maintenance of a WECS Project:
  - a. Minimize disturbance and construction on erodible slopes.
  - b. Minimize the number of new roads and construction staging areas.
  - c. Minimize the grading width of roads. One-lane roadways with turnouts are recommended.
  - d. Owners or operators shall reclaim areas disturbed by construction activities with native vegetation as areas of the WECS Project complete construction.

G. Operation.

1. Maintenance:
  - a. The owner of the WECS must maintain and operate the WECS in compliance with all state and federal occupational and environmental health and safety regulations. All WECS that remain inoperative for twelve (12) months or longer must be removed unless the owner provides a written plan and schedule acceptable to the County Planning Office for refurbishing and reactivating inoperative WECS. The owner of the WECS shall submit to the County Planning Office a statement on March 1<sup>st</sup> of each year that lists all WECS currently inoperative for longer than twelve (12) months.
  - b. The owners or operators of the WECS shall control and eradicate noxious and invasive weed species as designated by Albany County Weed and Pest within the disturbed areas of the project, during and for a minimum of five (5) years after the life of the operation. This shall be maintained to the satisfaction of Albany County Weed and Pest. The owners or operators may choose to contract with the County or outside services to control weeds.

Disturbed areas shall be preliminarily delineated at the time of application by the applicant and shall include, as a minimum, the proposed future easements for new roads, transmission lines, WECS, buildings, and any other property that may be disturbed or accessed by the owner. If the delineated disturbed areas change, the owner shall notify the Albany County Weed and Pest District.

- c. Periodic maintenance will include upkeep to all structures and grounds for aesthetics. Routine scheduled maintenance shall include the repainting of equipment and structures and groundwork or landscaping as appropriate to the location.

2. Interference:

- a. The Applicants shall provide the applicable microwave transmission providers and local emergency service providers (911 operators) copies of the project summary and site plan. To the extent that the above providers demonstrate a likelihood of interference with its communications resulting from the WECS, the applicants shall take reasonable measures to mitigate such anticipated interference. If these entities make subsequent changes to their equipment and systems such that an existing WECS Project interferes with their re-designed communications systems, the Board of County Commissioners shall not require the existing WECS Project to be moved or disassembled to remedy such interference.
- b. If, after construction of the WECS the owners or operators receive a written complaint related to interference with emergency services communications, local broadcast of residential television or other communications venues, the owners or operators shall take steps to respond to the complaint as reasonably feasible. The owners or operators of the WECS will bear any costs incurred to mitigate

interference.

- c. The owners or operators shall mitigate light impact on existing residences as reasonably feasible and still meet FAA requirements.

3. Coordination with Local Fire Department

- a. The applicants, owners or operators shall submit to the local fire department and/or the Emergency Management Coordinator a copy of the site plan.
- b. Upon request by the local fire department and/or the Emergency Management Coordinator, the owners or operators shall cooperate with the relevant agency to develop any emergency response plan.

4. WECS Project Mapping. The owners or operators shall provide the County Planning Office 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 every five (5) years or after the completion of any significant additional construction, whichever occurs first.

- H. Wyoming Game and Fish Department (WGF). The Applicants are advised to request during initial site selection information from WGF on critical habitat of protected species that may be present. The Applicant should obtain a letter from WGF verifying that the Applicant has coordinated with WGF about the project site selection and describing any annual monitoring of wildlife impacts and mortalities, as recommended by the WGF. The applicant will need to ensure access to the wind development area for the purposes of annual wildlife monitoring activities, if required. The applicant need not complete duplicative studies, but shall provide the County Planning Office with wildlife studies contained in existing environmental

assessments and/or formal NEPA studies such as the Environmental Impact Statements that cover the project area. The County Planning Office will also route the application to WGF for comment and review of pertinent reports. WGF will have thirty (30) days from the date it receives the application to provide the County Planning Office with its comments concerning the application. If no comments are received within thirty (30) days, the County Planning Office will assume the application is in order with the WGF and proceed with the permitting process. If the project requires review by the Industrial Siting Council, the project is exempt from this provision.

- I. Archeological and Historical Resources. The applicants are advised to seek comments and approval from appropriate agencies for matters concerning archaeology studies, historical importance and any other relevant federal, state and local issues and to include relevant reports in the application process. The applicant need not complete duplicative studies, but shall provide the County Planning Office with relevant historical or archeological studies contained in reports required by other jurisdictions. The County Planning Office will also route the application to the Wyoming State Historical Preservation Office (SHPO) and any other relevant agencies for comment and review. These agencies shall have thirty (30) days from the date they receive the application to provide the County Planning Office with its comments concerning the application. If no comments are received within thirty (30) days, the County Planning Office will assume the application is in order and will proceed with the permitting process. If the project requires review by the Industrial Siting Council, the project is exempt from this provision.
- J. Liability Insurance. The owners or operators of the WECS Projects shall maintain a current commercial general liability policy covering bodily injury and property damage with limits of at least one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) in the aggregate. The applicants shall provide proof of insurance to the Board of County Commissioners prior to the Board's approval of the submitted application. If the application is approved, the owners or

operators of the WECS shall provide proof of insurance to the Board of County Commissioners annually, if requested.

K. Decommissioning and Reclamation. Documentation of a guarantee between the owner and the participating property owner(s) for decommissioning and reclamation of the WECS Project shall be provided at the time of application and shall be recorded with the Albany County Clerk. A guarantee should be in the form of a lease agreement or a memorandum of lease between the owner and the participating property owner. This document shall contain the minimum:

1. Provisions describing the triggering events for decommissioning the WECS Project or any portion thereof upon thirty-six (36) months of continuous non-operation of the facility or of any aspect of any facility, unless by force majeure;
2. Provisions for the removal of structures, debris and cabling, including those below the soil surface down to twenty-four (24) inches;
3. Provisions for the restoration of the soil and vegetation;
4. Identification of the method of financial assurance (e.g. bond, federally insured certificate of deposit, letter of credit, etc.);
5. Provisions describing financial assurance forfeiture; and
6. A provision that the terms of the guarantee shall be binding upon the owners or operators and any of their successors, assigns or heirs.

L. Remedies

1. The applicant's, owner's or operator's failure to materially comply with any of the above provisions shall constitute a default under these regulations.

2. Prior to implementation of the existing County procedures for the resolution of such default, the appropriate County body shall first provide written notice to the owners and operators, setting forth the alleged default. Such written notice shall provide the owners and operators a reasonable time period, not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default.
3. If the Board of County Commissioners determines in its discretion, that the parties cannot resolve the alleged default within the good faith negotiation period, the existing County regulation provisions addressing the resolution of such default shall govern.
4. Enforcement. The provisions of these regulations are enforceable by all appropriate legal remedies including but not limited to injunctive relief or a writ of mandamus.