

## SECTION 12

### WIND ENERGY FACILITY

#### 12-101 PURPOSE AND APPLICABILITY; DEFINITIONS

- (A) Purpose. The review and approval process set forth in this Section 12 shall apply to Wind Energy Facilities as that term is defined in Section 1-106 of these Regulations.
- (B) Relationship to Zoning Resolution. To the extent that there are conflicts between the requirements of this Article 12 and other provisions of the Phillips County Zoning Resolution, it is intended that the purpose and intent of this Article 12 shall control the interpretation of the Zoning Resolution concerning Wind Energy Facility related issues.
- (C) Major Electrical Facilities. Applications by public utilities or power authorities proposing development of a Wind Energy Facility that also falls within the statutory definition of a Major Electrical Facility are subject to special review procedures required by Colorado State Statutes. Except as specifically provided by the Colorado Statutes<sup>1</sup>, public utilities and power authorities shall comply with the provisions of this Section 12 for Major Electrical Facilities to be located in the unincorporated area of the County.
- (D) Definitions.

#### AREA AFFECTED BY THE WIND ENERGY FACILITY

Unless a specific distance is referenced, a use or feature is deemed affected by a Wind Energy Facility if located within one thousand feet (1,000') of the boundary of the Wind Energy Facility site.

#### AREAS OF PALEONTOLOGICAL, HISTORIC OR ARCHAEOLOGICAL IMPORTANCE

Any area or building listed on the National Register of Historic Places or the Colorado Register of Historic Places as of the date of application for a Conditional Use Permit.

#### BOUNDARY OF THE SITE

The "boundary of the site" or the "boundary of the Wind Energy Facility" shall be the exterior boundary of the real property over which an applicant for a Wind Energy Facility requests or is granted a Conditional Use Permit. Property is outside of the exterior boundary of the site if the applicant does not request or receive a Conditional Use Permit over such property. The specific siting of individual

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<sup>1</sup> C.R.S. 29-20-108

components of the Wind Energy Facility, including Wind Turbines and Wind Energy Accessory Buildings may be included conceptually within the Site Plan and are permitted to be moved and adjusted as necessary during the design and construction process without modifications to the Site Plan, so long as new lands are not added to the original “boundary” of the Wind Energy Facility, such relocations conform to the setbacks and other requirements of this Article 12, and the total megawatt nameplate does not increase.

#### OCCUPIED

For purposes of this Section 12, occupied means, in reference to a building or structure, used or occupied by human inhabitants for at least thirty (30) consecutive days during the prior twelve (12) month period.

#### PUBLIC UTILITY

A “public utility” has the meaning given by Col. Rev. Stat. 40-1-103.

#### POWER AUTHORITY

A power authority means an “authority”, as defined by Col. Rev. Stat. 40-4-102.

#### WIND ENERGY ACCESSORY BUILDING

Any permanent building located within the boundary of a Wind Energy Facility site that is customarily incidental and subordinate to the principal Wind Turbines. Any Wind Energy Accessory Building may contribute to the successful operation, convenience and necessity of the Wind Turbines. Examples of Wind Energy Accessory Buildings may include, but not be limited to, electrical substations and switching stations. This definition shall not include any above ground or buried transmission lines, wires, or other electrical equipment in addition to any above ground junction boxes, step-up transformers, operations and maintenance buildings or any temporary or non-permanent buildings or structures used during the construction of a Wind Energy Facility.

#### **DEFINITIONS**

The following definitions apply to terms used in the regulatory provisions of this section.

#### IMPACT

A direct or indirect effect or consequence of the project or an element of the project.

MAJOR ELECTRICAL FACILITIES

Major Electrical Facilities has the meaning given by Colorado Revised Statute § 29-20-108(3)(a)-(d), as it may be amended from time to time.

MET TOWER

A meteorological tower used for the measurement of wind speed.

NON-PARTICIPATING LANDOWNER

The owner of a permanent dwelling on land outside of the boundary of the Wind Energy Facility site.

PERMANENT

For purposes of these regulations, permanent shall mean any building continuing or existing without fundamental or identifiable change for a continuous period of at least three (3) years at the time of the Conditional Use Permit application.

SIGNIFICANT

Deserving to be considered; important; notable and not trifling.

SYSTEM HEIGHT.

The total height of the tower, the wind turbine and any blade extended at its highest point, measured from ground level.

WIND ENERGY COMPANY

The applicant for a Conditional Use Permit or a Construction Permit for a Wind Energy Facility, or the owner or operator of a Wind Energy Facility.

WIND ENERGY FACILITY

An electricity generating facility consisting of one or more Wind Turbines under common ownership or operating control, and includes substations, MET Towers, cables/wires and other Wind Energy Accessory Buildings, whose main purpose is to supply electricity to off-site customer(s). Non-permanent MET Towers installed to evaluate wind resources will not alone constitute a Wind Energy Facility until such time as siting for permanent MET Towers, Wind Turbines or Wind Energy Accessory Buildings is proposed.

WIND TURBINE

A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator. The term “Wind Turbine” shall include the turbine, blade, tower, base and pad transformer.

**12-102 PERMIT APPLICATION REQUIREMENTS FOR WIND ENERGY FACILITY**

- (A) **CONDITIONAL USE PERMIT APPLICATION MATERIALS:** The applicant shall submit a Conditional Use Permit application to the County Planning Office that contains the following material.
- (1) **Written Description:** A written description of the proposed Wind Energy Facility including rated kW capacity, system height and total blade diameter. No Wind Turbine shall exceed FAA regulated system height for that specific site.
    - (a) **Applicant is not the owner:** If the applicant is not the owner of the land where the proposed Wind Energy Facility will be located, the applicant shall submit a letter signed by each property owner within the boundary of the site consenting to the submission of the application for a Conditional Use Permit.
  - (2) **Location Map:** A location map, to scale, that illustrates the following:
    - (a) Location of the proposed Wind Energy Facility in the County, and description of the current land use, and
    - (b) All property within the exterior boundary of the site of the proposed Wind Energy Facility, including the location and description of the current land use, and indicating any occupied dwellings, microwave communication links and airports located within five hundred feet (500') of any Wind Turbine or Wind Energy Accessory Building.
      - (i) Applicant shall provide a list of property owners within one thousand feet (1,000') of the exterior boundary of the site, and their current mailing address on file with the County assessor.
  - (3) **Wastewater System.** If the proposed Wind Energy Facility includes uses that must be served by a wastewater treatment system, the application shall include a description of the proposed system, including location and size of leach field, sewer service lines, and treatment facilities. Applicant shall provide proof that the wastewater system complies with state standards and is adequate to service the proposed Wind Energy Facility, including:

- (a) Letter of approval from Northeast Colorado Health Department documenting that the wastewater system is adequate to serve the Wind Energy Facility.
  - (4) Water Supply System. If the proposed Wind Energy Facility includes uses that must be served by water, the application shall include a description of the source and capacity of the water supply, including location and size of well(s) and/or water lines to serve the proposed Wind Energy Facility. The applicant shall provide proof of adequate physical and legal supply to serve the Wind Energy Facility, including:
    - (a) A letter of approval from the Office of the State Engineer documenting that the proposed water supply is adequate to serve the proposed use.
  - (5) Notice to FAA. If any Wind Turbine included in the proposed Wind Energy Facility has a system height over two hundred (200) feet or is located within twenty thousand (20,000) feet of the runway of an airport, the application shall be accompanied by a copy of the written notification to the Federal Aviation Administration (FAA).
  - (6) Notice to Operation of Communication Link. If any Wind Turbine included within the proposed Wind Energy Facility is located within one (1) mile of any microwave communications link, the application shall be accompanied by a copy of the written notification to the operator of the communication link.
  - (7) Additional Information and Waivers. The Planner may request additional information consistent with the requirements of the Phillips County Zoning Regulations that may be required to evaluate the proposed Wind Energy Facility. The Planner may waive or reduce any of these requirements if they are determined to be inappropriate or unnecessary to determining if the application satisfies applicable standards.
- (B) BUILDING PERMIT APPLICATION MATERIALS. The applicant shall submit a building permit application to the County Planning Office prior to construction of the Wind Energy Facility that contains the following materials:
- (1) Site Plan: The site plan, prepared at a scale acceptable to the County Planner, shall include the following elements:
    - (a) Date of preparation, revision box, written scale, graphic scale, and north arrow (designated as true north);

- (b) Clearly identified boundary lines, corner pins to the extent they exist and dimensions of the site under consideration where the Wind Energy Facility will be located;
  - (c) Size of the site where the proposed Wind Energy Facility will be located, in acres or square feet.
  - (d) Location and dimension of all occupied dwellings on the site where the proposed Wind Energy facility will be located, and on properties within one thousand feet (1,000') to the exterior boundary of the site.
  - (e) Location and dimension of all proposed Wind Turbines and Wind Energy Accessory Buildings in the proposed Wind Energy Facility:
  - (f) Setbacks of the Wind Turbines from property lines on the boundary of the site and the distance between each Wind Turbine.
    - (ii) Setbacks of all Wind Energy Accessory Buildings.
    - (iii) The site plan shall be accompanied by a detailed drawing or a photograph of each model of Wind Turbine under consideration to be installed as part of the Wind Energy Facility.
  - (g) Existing and proposed roads, railroad tracks, utility lines and facilities, transmission lines and facilities, oil and gas wells, oil and gas facilities, pipelines, flow lines, irrigation ditches, and easements and rights-of-way of record with the County Clerk & Records Office if located within five hundred feet (500') of the exterior boundary of the site where the proposed Wind Energy Facility will be located, shown by location and dimension.
  - (h) Proposed phasing of development. An application proposing to phase development shall provide a description of each phase of development including the number of Wind Turbines and the Wind Energy Accessory Buildings and interconnection requirements for each phase.
- (2) Access. Description of proposed access route to and from the Wind Energy Facility including road surface material, proposed measures for dust control, and proposed road maintenance schedule or program.
  - (3) Utility and/or Transmission Interconnection. Description of utility interconnection or electric transmission system interconnection.
  - (4) Water and/or Wind Erosion Control Plan. A plan showing existing and proposed grading for the Wind Energy Facility site. The Drainage and Erosion Control Plan shall be accompanied by a description of practices

that will be utilized to control erosion and run-off during and after construction.

- (5) Analysis for Erosion, Sedimentation and Flooding. If any Wind Turbine or Wind Energy Accessory Building included in the proposed Wind Energy Facility is located within the one hundred (100) year flood plain, the application shall be accompanied by a report that addresses the potential for wind erosion, water erosion, sedimentation and flooding.
- (6) Impact Analysis. Description of the significant impacts that the proposed Wind Energy Facility would be expected to cause. The impact analysis shall include, but is not limited to, the following information.
  - (a) Surface Water
    - (i) Description and map of surface water bodies required to be evaluated under water quality or other environmental standards imposed by any state or federal agency with jurisdiction over the Wind Energy Facility.
    - (ii) Description of impacts of the Wind Energy Facility on surface water quality or quantity.
    - (iii) Description of mitigation techniques that will be used to mitigate impacts to surface waters.
  - (b) Ground Water
    - (i) Description and map of ground water bodies required to be evaluated under water quality or other environmental standards imposed by any state or federal agency with jurisdiction over the Wind Energy Facility.
    - (ii) Description of impacts of the Wind Energy Facility on ground water quantity or quality.
    - (iii) Description of mitigation techniques that will be used to mitigate impacts to ground water.
  - (c) Wildlife and Wildlife Habitat
    - (i) Description of wildlife and wildlife habitat required to be evaluated under wildlife and wildlife habitat standards imposed by any state or federal agency with jurisdiction over the Wind Energy Facility, including terrestrial and aquatic game and non-game species and livestock, and migration routes.

- (ii) Description of impacts to wildlife and wildlife habitat.
  - (iii) Description of mitigation techniques that will be used to mitigate impacts to wildlife and wildlife habitat.
- (d) Glare, Dust and Noise. The Wind Energy Company shall monitor and control all noise levels per C.R.S 25-12-103, unless waived by private agreement between the landowner and Wind Energy Company. The applicant shall include the following:
  - (i) Description of existing levels of glare, dust and noise in the area affected by the Wind Energy Facility.
  - (ii) Description of increase in levels of glare, dust and noise associated with the Wind Energy Facility.
  - (iii) Description of mitigation techniques that will be used to control increases in glare, dust and noise.
- (e) Agricultural Lands
  - (i) Description of agricultural lands affected by the Wind Energy Facility.
  - (ii) Description of impacts to agricultural lands.
  - (iii) Description of mitigation techniques that will be used to mitigate impacts to agricultural lands.
- (f) Important Areas
  - (i) Description of areas of paleontological, historic or archaeological importance affected by the Wind Energy Facility.
  - (ii) Description of the impacts to areas of paleontological, historic or archaeological importance affected by the Wind Energy Facility.
  - (iii) Description of mitigation techniques that will be used to control impacts to areas of paleontological, historic or archaeological importance affected by the Wind Energy Facility.
- (g) Recreational Resources
  - (i) Description of the reasonably anticipated impacts to recreational opportunities including fishing, hunting, hiking or other resources, and experiences affected by the Wind Energy Facility.



- (ii) Description of mitigation techniques that will be used to mitigate impacts to recreational resources.
  - (iii) The Wind Energy Company shall design the Wind Energy Facility so that shadow flicker computer modeling estimates of the amount of shadow flicker anticipated to be caused by the Wind Turbines on any occupied dwelling shall not exceed thirty (30) hours per year under planned operating conditions, unless the owner of the occupied dwelling waives such requirement by written agreement.
- (h) Local Government Facilities and Services.
- (i) Description of government facilities and services that will be affected by the Wind Energy Facility such as law enforcement, emergency response, water supply, roads and other facilities and services necessary to respond to or serve the proposed Wind Energy Facility.
  - (ii) Description of the impact of the Wind Energy Facility on the capability of local governments to provide the necessary facilities and services.
  - (iii) Description of mitigation techniques that will be used to mitigate impacts to government facilities and services.

## **12-103 WIND ENERGY FACILITY PERMIT REVIEW AND APPROVAL PROCESSES**

### **(A) PRE-APPLICATION MEETING**

Prior to submitting a Conditional Use Permit application, the applicant shall schedule a Pre-application Meeting with the County Planner to discuss the proposed Wind Energy Facility.

- (1) Purpose. The Pre-application Meeting is intended to provide information pertinent to the site and the proposal, to provide an understanding of the applicable review procedures and the standards to be met for approval of the application, and to explain the application materials required for submittal.
- (2) Additional Requirements Applicable to Major Electrical Facility. During the pre-application meeting, the public utility or power authority shall consult with the Planner to identify the specific routes or geographic locations under consideration and attempt to resolve land use issues that may arise from the contemplated permit application.

(B) COMPLETENESS DETERMINATION

Within fifteen (15) calendar days following receipt of the Conditional Use Permit or building permit application, the Planner shall determine whether the application is complete. An application shall be deemed complete if it includes all information required.

- (1) Application is Not Complete. If the application is not complete, the Planner shall notify the applicant in writing of any materials that must be submitted for the application to be deemed complete. The time to review the application shall not begin to run until the application has been determined to be complete.
- (2) Completeness Date. Once the application has been determined to be complete, the Planner shall stamp the application with the date that it was determined to be complete, and all-time frames pertaining to review of the application shall be based on the completeness date.

(C) REVIEW OF APPLICATION MATERIALS

- (1) Review by Referral Agencies. The Planner may request the professional analysis and recommendations of referral agencies, organizations, or technical consultants deemed appropriate and necessary to complete the review.
  - (a) Upon determination of completeness, the Planner may determine that the application materials or any portion thereof shall be submitted for review and comment by any appropriate Colorado or federal agency. The period for comment by the review agencies shall be forty five (45) calendar days from the date the application is deemed complete by the Planner, unless an extension has been requested by the referral agency. The Planner may grant an extension if it is determined that good cause for the delay has been shown. The failure of any agency to respond within the forty five (45) day review period or within the period of extension shall not be deemed an approval of such plan by the referral agency.
  - (b) Applicant shall be responsible for direct payment of review fees charged by consultants and referral agencies.
  - (c) The applicant shall have the right to review the comments and recommendations received from the review agencies. The applicant may submit additional information and make changes in the application to respond to the comments of the review agencies, under the following conditions:

- (i) If the changes are substantial or significantly alter the nature, character or extent of the application, the Planner may refer the information and revised application back to some or all review agencies for further comment; and
  - (ii) The Planner may extend the period for comment as appropriate for the review, however; the period of time for review and final action by the Board of County Commissioners shall not exceed one hundred twenty (120) days from the date the application was determined to be complete.
- (2) Evaluation of Application by Planner. The Planner shall review the application for compliance with the relevant approval standards in 12-104, and prepare a report that recommends approval, approval with conditions or denial of the application. The report shall be forwarded to the applicant and to the Board of Adjustment no less than six (6) calendar days prior to the Board of Adjustment public hearing on the application.

(D) PUBLIC HEARING ON A CONDITIONAL USE APPLICATION

- (1) Approval. The application shall be approved if the application satisfies all of the relevant standards in 12-102.
- (2) Conditional Approval. The application may be approved with conditions, if conditions are necessary to ensure compliance with the relevant standards.
- (3) Denial. The application shall be denied if the application does not satisfy all the relevant standards in 12-102 and a conditional approval or contingent approval would not be sufficient to ensure compliance with the relevant standards.
- (4) Contingent Approval. A Wind Energy Facility may be approved subject to the necessary approvals from state and federal agencies, and acceptance of any electrical interconnection by the applicable electric utility and /or electric transmission entity.
- (5) Term. Approval shall expire two (2) years from the date such permit is granted, unless the Wind Energy Company has filed an application for a Building Permit for the Wind Energy Facility, or the Board of County Commissioners specifically grants a longer period of time for the approval.

(E) ADDITIONAL REQUIREMENTS APPLICABLE TO MAJOR ELECTRICAL FACILITY

Within one hundred twenty (120) days after submission of a completed application for a Major Electrical Facility, the County shall decide whether to approve, approve with conditions, or deny the application. If the County does

not take final action within such time, the application shall be deemed approved. Nothing in these provisions shall be construed to supersede any timeline set by agreement between the County and a public utility or power authority applying for approval of a Major Electrical Facility.

(F) PHASES OF DEVELOPMENT

If the application proposes phased development of the Wind Energy Facility, each phase of development shall be described in the permit approval, including the following information:

- (1) Number of Wind Turbines and the appurtenant facilities to be developed in each phase.
- (2) Size of the area involved for each development phase.

(G) WRITTEN NOTICE OF APPROVAL

Upon approval of a Wind Energy Facility, the County shall provide written notice to the Public Utilities Commission and to the concerned electric utility and/or electric transmission entity.

(H) BUILDING PERMIT REQUIRED

A building permit shall be obtained from the Planning Department for all new Wind Turbines and Wind Energy Ancillary Buildings comprising the Wind Energy Facility prior to beginning construction. The building permit shall expire if construction has not commenced within one (1) year, subject to a one (1) year extension upon submission of a written report to the Planning Department setting forth the reason(s) for a delay and the plan for commencing construction within the one-year extension period.

(I) LIFE OF PERMITS

- (1) The time frame for construction to be initiated through the Building Permit shall be determined as indicated in 12-103-H "Building Permit Required".
- (2) The Conditional Use Permit for a Wind Energy Facility shall be valid for the operating term of lease agreements between property owners and the Wind Energy Company, continuing for extensions, reissuances, renewals or assignments of the original lease as long as the County Planner is provided documentation that a lease for the Wind Energy Facility was maintained in effect.

(J) MONITORING

Upon twenty-four (24) hours' notice, the Board of County Commissioners or its official representative may enter the property on which a Wind Energy Facility has been permitted, for the purpose of ensuring compliance with the terms of permit approval and applicable County regulations, and of monitoring noise, environmental impacts and other impacts which may arise.

(K) UNSAFE AND INOPERABLE WIND TURBINES.

Any unsafe or inoperable Wind Turbine deemed an unsafe structure, shall be considered a public nuisance subject to abatement by repair, rehabilitation, demolition, or removal. A Wind Turbine shall not be considered unsafe or abandoned if the owner can demonstrate to the Board's satisfaction that modernization, rebuilding, or repairs are in progress or are planned and will be completed within six months (6) of the date of notice of violation issued by the County pursuant to Section 10-102 (A).

(L) APPEAL OF DENIAL OF APPLICATION FOR MAJOR ELECTRICAL FACILITY

If the County denies a permit or application of a public utility or power authority that relates to the location, construction, or improvement of a Major Electrical Facility, or if the County imposes requirements or conditions upon such permit or application that will unreasonably impair the ability of the public utility or power authority to provide safe, reliable, and economical service to the public, the public utility or power authority may appeal the County action to the public utilities commission for a determination under Section 40-4-102, C.R.S., so long as one or more of the following conditions exist:

- (1) The public utility or power authority has applied for or has obtained a certificate of public convenience and necessity from the public utilities commission pursuant to Section 40-5-101, C.R.S., to construct the major electrical facility that is the subject of the local government action;
- (2) A certificate of public convenience and necessity is not required for the public utility or power authority to construct the major electrical facility that is the subject of the local government action; or
- (3) The public utilities commission has previously entered an order pursuant to Section 40-4-102, C.R.S., that conflicts with the local government action.

**12-104 STANDARDS APPLICABLE TO WIND ENERGY FACILITY.**

(A) GENERAL STANDARDS

- (1) Public Health, Safety and Welfare. The standards in this Section 12-104 are consistent with the County's goals of protecting the health, safety and general welfare of the community by identifying and limiting known negative impacts of Wind Energy Facility development, while also encouraging the development. Further, the project will not increase the need for public services and facilities.
- (2) Compliance with Comprehensive Plan and Intergovernmental Agreements. The proposed Wind Energy Facility shall be consistent with relevant provisions of the Phillips County Comprehensive Plan and any intergovernmental agreement between the County and a municipality that applies to the area where the use will occur.
- (3) Compliance with Other Regulations. The Wind Energy Facility shall comply with all applicable rules and regulatory requirements of state and federal agencies, and of Phillips County.
- (4) Water and Wastewater Service
  - (a) The water and wastewater service shall be adequate to serve the Wind Energy Facility.
  - (b) The water and wastewater systems shall comply with state standards.
- (5) Roadways and Access. The applicant will enter into a Long-Term Road Maintenance and Improvements Agreement with the Phillips County Commissioners prior to approval of a Conditional Use Permit. This agreement will not be limited to but should address the following:
  - (a) Legal access to a public right-of-way to and from the Wind Energy Facility shall be safe and in conformance with access standards set forth by the County Road and Bridge Department.
  - (b) During construction of the Wind Energy Facility, mitigation of traffic congestion or unsafe traffic conditions.
  - (c) Adequate turning radii shall be installed at all entrances to accommodate large truck movement.
  - (d) Off-street parking and loading zones shall be surfaced with gravel or the equivalent and shall be graded to prevent drainage problems.

- (e) Staging activities and parking of equipment and vehicles shall occur on-site and on private rights-of-way and shall be prohibited on maintained County roads, except for temporary road closures during construction with prior notice to the road manager.
  - (f) The applicant shall work with Phillips County Road and Bridge to ensure the proper maintenance and repair of all County roads utilized by the Wind Energy Project. The construction and operation of the use shall not cause damage to county roads or cause an increase in cost to the County to maintain the roads. All impacts to the roadway system shall be mitigated through roadway improvements or impact fees, or both.
    - (i) All lots and parcels shall have access to public right-of-way or approved access agreement.
    - (ii) Roads serving the proposed use shall have the capacity to accept the additional traffic generated by the use safely and efficiently.
    - (iii) All new roads shall be constructed in conformance with the Road and Bridge Standards
  - (6) Service Delivery System Capacity. The Wind Energy Facility shall not have a significant adverse effect on the capability of local government to provide services (such as fire, law enforcement, medical, etc.) or exceed the capacity of service delivery systems.
- (B) RESOURCE AND ENVIRONMENTAL PROTECTION STANDARDS
- (1) Water Quality Protection. The Wind Energy Facility shall not cause significant degradation of the quality of surface or ground water resources. Groundwater pollution control measures shall be implemented that prevent the discharge of pollutants from the activity into groundwater. If the applicable state or federal regulations governing the Wind Energy Facility do not address protection of ground water, the County may require a water quality monitoring plan and reporting plan designed for the early detection of an impact to water quality associated with the Wind Energy Facility.
  - (2) Air Quality. The proposed Wind Energy Facility shall not cause air quality to be reduced below levels established by the Colorado Air Pollution Control Division.

- (3) Wildlife. The applicant for a proposed Wind Energy Facility will consult with Colorado Parks & Wildlife as to requirements relating to wildlife habitat areas unless the applicant demonstrates that there is no reasonable viable alternative location. Where the activity must be in significant wildlife habitat areas, the applicant shall contact the Division of Wildlife for recommendations.
- (4) Glare, Dust, or Noise.
  - (a) The proposed Wind Energy Facility shall comply with the statutory provisions for maximum permissible noise levels in Section 25-12-103, C.R.S.
  - (b) Fugitive dust and particulate emissions shall be controlled on the site.
  - (c) Waste materials shall be handled, stored, and disposed of in a manner that controls fugitive dust, fugitive particulate conditions, blowing debris and other potential nuisance conditions.
  - (d) The Wind Energy Facility shall use no more than the minimum lighting required by the Federal Aviation Administration. To the extent permitted by law, all lighting on Wind Turbines shall be shielded to reduce glare and visibility from the ground, shall be red lighting of the lowest reasonable intensity, and shall employ aircraft detection lighting systems designed to mitigate visibility of light to the ground to the greatest extent feasible. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.
- (5) Erosion and Sedimentation Control. Erosion and sedimentation control measures that ensure that disturbed areas and soil stockpiles are stabilized during construction shall be implemented. Disturbed areas shall be controlled within one growing season, pursuant to an approved vegetation plan by Natural Resource Conservation Service (NRCS).
- (6) Drainage / Stormwater Run-off. Run-off shall be kept on the site in a stormwater detention system approved by the County, and waters in excess of historic run-off shall be prevented from leaving the site during construction and after site development.
  - (a) If applicable, the applicant shall obtain a Stormwater Discharge Permit from the Colorado Department of Public Health and the Environment, Water Quality Control Division.
- (7) Protection of Agricultural Lands. The Wind Energy Facility shall not have a significant adverse impact on agricultural lands and agricultural operations



beyond what is permitted under agreements with landowners within the boundary of the site.

- (8) Protection of Important Areas. The Wind Energy Facility shall not significantly degrade areas of paleontological, historic, or archaeological importance. If the site of the Wind Energy Facility includes or potentially affects known areas of historic, paleontological or archaeological resources, applicant shall coordinate with the Colorado State Historic Preservation Office to mitigate and or avoid impacts during construction.
- (9) Recreation Impacts. The Wind Energy Facility shall be designed to reasonably avoid significant adverse effects on the quality or quantity of recreational opportunities and experience within the County, including but not limited to hunting, fishing, hiking, and similar recreational activities.
- (10) Protection of Mineral Rights Holders. The Wind Energy Facility shall not have a significant adverse impact on mineral drilling or production activities active within the boundary of the site at the time of conditional use application.

(C) SITE AND FACILITY DEVELOPMENT STANDARDS

- (1) General Site Plan Standards. The site is adequate in size and shape to accommodate the Wind Energy Facility.
- (2) Unless otherwise required by federal or state regulations applicable to the wind energy facility, the following minimum setbacks shall apply.
  - (a) Front, rear, and side setbacks shall be measured as the distance between the nearest lot line or base of a Wind Turbine, as applicable, and the foundation of a building, along a line at right angles to the lot line.
  - (b) Safety Setbacks. The following setbacks shall apply to each Wind Turbine comprising the Wind Energy Facility.
  - (c) The setback requirements may be waived or reduced by the Board of County Commissioners under the following conditions
    - (i) The application is accompanied by a legally enforceable agreement by which the adjacent landowner agrees to the elimination or reduction of the setback. The term of the agreement shall be for the life of the Wind Energy Facility.
    - (ii) The proposed Wind Energy Facility otherwise complies with the applicable standards.

	MINIMUM SETBACK
Setback from above-ground public electric power lines or communication lines <sup>1</sup>	1.1 times system height or 500 feet, whichever is greater.
Setback from public road or highway or railroad <sup>2</sup>	1.1 times system height or 500 feet, whichever is greater
Setback from public road or highway with ADT (Average Daily Traffic) of 7,000 or more <sup>3</sup>	1.1 times system height or 800 feet, whichever is greater
Setback of any occupied dwelling on the property of a non-participating landowner, which residence was in existence, or permitted for construction, at the time an application for the applicable Wind Energy Facility was properly submitted to Phillips County officials.	2 times system height, or 2,500 feet, whichever is greater.
Setback from property line of any regularly inhabited public building or public space, such as (but not limited to) schools, hospitals, churches, courts, libraries, arenas, and parks.	2 times system height, or 2,500 feet, whichever is greater.
Setback from all other property lines on or outside the boundary of the site unless appropriate easements are secured from adjacent property owners or other acceptable mitigation is approved by the Board of County Commissioners.	1.1 times system height or 500 feet, whichever is greater.
<ol style="list-style-type: none"> <li>1. Measured from the outer boundary of the public utility right-of way or easement [or from existing power line or telephone line]</li> <li>2. Measured from the outer boundary of the public road/highway right-of-way or railroad right-of-way</li> <li>3. Average daily trips, based on traffic field measurements [determined by CDOT or County]</li> </ol>	

(3) Scenic Resource Setback. Wind Turbines comprising the Wind Energy Facility shall be setback a minimum of one-quarter (¼) mile from any

highway designated to be a scenic highway or roadway by the Phillips County Comprehensive Plan or by the State of Colorado.

(a) A scenic resource protection setback requirement may be reduced to two times the total system height if the Board determines that the characteristics of the surrounding property eliminate or substantially reduce considerations of scenic value.

(4) Notice and Record of Waiver or Reduction of Setback.

(a) Memorandums of any proposed setback waiver or reduction shall be included in all public notices regarding the Conditional Use Permit application review.

(b) If the application is approved with a setback waiver or reduction, the approved setbacks shall be specified in the approval.

(5) Guy-Wire Anchor Setback. Guy wire anchors shall be set back from any property boundary a minimum of twenty feet (20').

(a) Guy wires shall be distinctly marked and fenced on all permanent towers.

(b) Minimum Ground Clearance. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than forty feet (40').

(D) SAFETY AND SECURITY

(1) Fencing, or other barriers acceptable to the County, shall be installed to prevent unauthorized access to the Wind Energy Facility electrical interconnection facilities.

(2) All wiring between Wind Turbines and the Wind Energy Facility substation shall be installed at least four feet (4') underground, except as necessary to connect with a larger transmission or distribution network.

(3) All access doors to Wind Turbine towers and electrical equipment shall be and remain locked when unattended.

(4) Signs warning of the electrical hazard and other hazards associated with the Wind Energy Facility shall be posted at the base of each Wind Turbine tower and other electrical equipment.

(5) A security patrol or other security measure may be required if it is determined to be necessary and appropriate to ensure public safety.

- (6) The Wind Energy Facility shall have adequate fire control and prevention measures in place. The applicant must show the capacity of the county or districts to provide emergency services to the facility (such as fire, law enforcement, medical, etc.). Appropriate training must be provided.
- (7) Underground location of Powerlines. Unless geologic conditions prevent underground installation, the Wind Energy Facility's electrical collection system wiring and power lines shall be installed underground except where the Wind Energy Facility collector wiring is brought together for connection to the transmission or distribution network, or for transmission lines with a voltage rating of one hundred (100) kV or larger. All underground installations located within the public road easement or right-of-way shall comply with the applicable permit and design requirements of Phillips County Road and Bridge and include the following elements.
  - (a) Restoration. Any disturbed portion of the right of way shall be restored as nearly as possible to the condition as existing immediately prior to installation.
  - (b) Safety measures shall be implemented in accordance with County, State, and Federal requirements to protect the public.
  - (c) If the installation crosses a roadway, it shall be located as perpendicular to the roadway as physically possible and installed in compliance with the requirements of Phillips County Road and Bridge.
  - (d) As-built drawings shall be provided to the County once the installation has been completed.
  - (e) Work shall not commence until the required permit(s) and Notice to Proceed with the installation(s) have been issued by the County.

(E) INTERCONNECTION AND ELECTRICAL DISTRIBUTION FACILITIES

- (1) All distribution lines, electrical substations, and other interconnection facilities shall be constructed to the specifications of the American National Standard Institute (ANSI), National Electrical Code (NEC), Institute of Electrical and Electronic Engineers (IEEE), and National Utility Standards (NUS).
- (2) Interconnection shall conform to the requirements of the electric utility company, and applicable state and federal regulatory requirements.

(F) INTERFERENCE WITH NAVIGATIONAL SYSTEMS.

- (1) The applicant shall minimize or mitigate any interference with electromagnetic communications caused by the Wind Energy Facility, including radio, telephone or television signals.
- (2) Every Wind Turbine shall comply with Federal Aviation Administration regulations for sighting structures near an airport or VORTAC installation.

(G) CERTIFICATION OF EQUIPMENT AND APPURTENANT FACILITIES

- (1) All equipment and appurtenant facilities shall be certified by a registered structural engineer to be compliant with the applicable state, federal and local regulations and to conform with good engineering practices.
- (2) The electrical system shall be certified by a registered electrical engineer to be compliant with the applicable state, federal and local regulations, and to conform with good engineering practices.

(H) SIGNS

Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Wind Energy facility.

(I) APPEARANCE

- (1) Each Wind Turbine and all Wind Energy Accessory Buildings shall be painted a neutral, matte color, such as a non-reflective medium gray or tan, and match all other Wind Turbines in the Wind Energy Facility.
- (2) No Wind Turbine or other structure in a Wind Energy Facility shall feature advertising. No Wind Turbine shall feature any words or graphics visible from closer than two hundred feet (200') from the base of the Wind Turbine.
- (3) Upon the discretion of the Board of County Commissioners, a written explanation may be required indicating methods to prevent destruction or deterioration of visual amenities.

(J) NOXIOUS WEED CONTROL PLAN.

The Wind Energy Company shall monitor and control all noxious weeds within the boundary of the site per 8 CCR 1206-2 (Rules Pertaining to the Administration and Enforcement of the Colorado Noxious Weeds Act), and C.R.S. § 35-5.5-101 (Colorado Noxious Weed Act), or any successor regulations or statutes, and provide the County, with a noxious weed control plan that details how noxious weeds will be monitored and controlled throughout the lifetime of

the Wind Energy Facility. The County may require the Wind Energy Company to provide a compliance report and update its plan accordingly.

(K) DECOMMISSIONING PLAN

The Decommissioning Plan will outline the complete removal of all wind turbines and related devices and equipment and distribution transmission facilities comprising a Wind Energy Conversion System, including but not limited to, all rotors, nacelles, and towers; all collection step up transformers; all Wind Energy device foundations, pads, underground electrical wires and any and all other underground wind foundations, energy structures and improvements and all access roads (unless the relevant landowner requests that such access road remain.

Prior to receiving building permit approval, the County and the Applicant(s), Owner(s) and/or Operator(s) must formulate a Decommissioning Plan to ensure the Wind Energy Facility is properly decommissioned. The details of the Decommissioning Plan may be based on existing landowner agreements and shall include the following:

- (1) Anticipated life of the project;
- (2) Anticipated manner in which the project will be decommissioned, and the site restored;
- (3) Provisions describing the triggering events for decommissioning the Wind Energy Facility, or any aspect of the facility. If landowner agreements do not describe the decommissioning schedule, decommissioning shall be completed within twenty-four (24) months of an owner filing a Notice of Termination of Operations with the County. or upon twelve (12) months of continuous non-operation of the facility or of any aspect of any facility, unless by force majeure;
- (4) Provisions for the removal of structures, debris, and cabling, including those below the soil surface to depths agreed to in the landowner agreements or, if not specified by the landowner agreements, down to forty-eight inches (48"). Regardless of any other agreements, at no point will the removal be less than down to thirty-six inches (36");
- (5) Provisions for the restoration of the soil and vegetation;
- (6) A description of the form of Financial Assurance for decommissioning as agreed upon under landowner agreements. In the absence of such agreements, the Applicant is required to provide financial assurance in one of the following forms: a surety bond, a federally insured certificate of

deposit, a government-backed security, corporate guarantee, letter of credit, or cash (“Financial Assurance”). Financial Assurance is to begin in year fifteen (15), secured by the Owner(s) or Operator(s), for the purpose of adequately performing decommissioning, in an amount equal to the decommissioning costs less salvage value;

- (a) The Phillips County Planning Commission may reject the proposed forms of assurance of financial responsibility if the evidence submitted by the Applicant does not adequately assure that funds will be secured as required by these rules. Applicant(s) shall be notified in writing within sixty (60) days of receipt of the evidence of financial assurance. If an applicant is approved, any bond or other form of financial assurance may be canceled by the surety only afterwritten notice to the Board of County Commissioners, and upon receipt of the Board’s written consent, which may be granted when the requirements of the bond or assurance have been fulfilled,
- (7) An estimate of the decommissioning costs certified by a Professional Engineer, to be updated every five (5) years following year fifteen (15) of operation;
- (8) Identification of and procedures to access Financial Assurances;
- (9) A provision that the terms of the Decommissioning Plan shall be binding upon the Owner or Operator and any of their successors, assigns, or heirs;
- (10) A provision that the County shall have the right, but not the requirement, to enter the property and cause the appropriate abandonment and decommissioning measures to occur, as determined by the approved Decommissioning Plan, if decommissioning does not proceed in accordance with the Decommissioning Plan;
- (11) A provision that the County shall have the right to review and reconsider the decommissioning plan at the time of decommissioning and require, if deemed appropriate, other drawings, studies or materials as determined by the County to ensure compliance with this Section;
- (12) A provision that the County shall have the right to review final decommissioning and reclamation to confirm it is consistent with the Decommissioning Plan;
- (13) Bond or other financial assurance forfeiture proceedings shall occur only in the event that abandonment and decommissioning

does not comply with the Decommissioning Plan and a cure period of sixty (60) days has expired, or if the cure will require more than sixty (60) days, then the Owner or Operator has submitted a plan to cure the default acceptable to the County.