

Chapter 19.61 – COMMERCIAL WIND ENERGY FACILITIES

Section 19.61.010 - Declaration of Intent

1. To provide requirements for permitting of wind energy facilities based upon locations where wind energy facilities can meet the standards and criteria set forth herein and/or can be mitigated in relation to the County's Agricultural District.
2. To provide site criteria for the utilization of the County's wind energy resources. Each wind energy facility will be subjected to individualized review and the imposition of conditions based on site-specific information that will be tailored to address project impacts in accordance with the adopted site criteria. The ultimate goal is to achieve a predictable but sensitive siting process that effectively addresses project impacts.

Section 19.61.020 – Application of Standards and Criteria

Due to the unique nature of each wind energy project site, this section sets forth the requirements and standards for the review and granting of a conditional use permit for a commercial wind energy facility.

- A. Purpose.** The following standards and regulations are necessary for the health, safety, general welfare and convenience of the inhabitants of the County.
- B. Permits.** No person or applicant shall establish a commercial wind energy facility without first complying with the provisions and standards of this ordinance and obtaining all necessary state and local permits and approvals.
- C. Pre Conditional Use Meeting.** The project applicant will hold a minimum of one informal community meeting within the County to inform the public about the proposed facility. Planning staff will take responsibility for arranging these meetings.
- D. Permits Required.** Before any person shall commence construction, a valid conditional use permit shall be approved. Prior to road construction on county roads and/or new intersections with a county road, county road use and right-of-way permits shall be obtained. Building permits must be obtained before foundations are prepared.
- E. Permit Application.** Application for a conditional use permit to create a commercial wind energy facility shall be filed with the Planning Office. The application for a conditional use permit shall be in writing, signed by the applicant, and shall include the following:
 1. The name and address of the applicant;
 2. The project site location and a listing of the tax parcels and parcel ownerships of the proposed facility;
 3. Twelve copies of the complete layout plan for persons reviewing the application. These plans shall contain the following information:
 - i. Area and dimensions of the project site;
 - ii. Corridor(s) or area(s) within which proposed wind tower turbines and facilities will be located. This includes the study area where micrositing for the final project layout occurs;
 - iii. Number, dimensions and preliminary footprint of all turbines including the size of the monopoles;
 - iv. Preliminary location and dimensions of all roads and connections to county roads;

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- v. Preliminary location of underground and overhead transmission line corridors;
 - vi. Location of any proposed buildings or facilities, such as operations and maintenance buildings or substations;
 - vii. Location of any existing buildings;
 - viii. Location of existing water, sewer or any existing gas lines;
 - ix. A map or maps of the existing and proposed site topography including conceptual grading and drainage plans;
 - x. All existing occupied buildings within one mile of turbine "micrositing" corridors or areas and/or proposed turbine locations;
 - xi. Geographic information system (GIS) layers of the proposed project;
 - xii. Any other applicable information as might be necessary to interpret the compliance of the plans to the regulation of this ordinance.
4. Such further information as may be requested by the County Planner to enable him/her to determine if the proposed facility will comply with all the requirements of this Ordinance and other applicable state and local regulations.

F. Review Procedure. Upon receipt of the application and plans, the County Planner shall distribute for review and comment the plans to the following: the County Engineer, the Director of Public Works, the County Environmental Health Officer, the County Building Inspector and the affected utilities. These personnel shall review the application and submit written comments to the County Planner within 20 days of the date of distribution of the application.

The County Planner shall review the application for compliance with the provisions of this ordinance and other applicable laws and regulations, shall review the comments received from the review sources, and shall submit a written staff report to the Board of Adjustment or Hearing Examiner regarding whether the proposed use serves and makes appropriate provisions for the public health, safety and general welfare.

A public hearing shall be held before the Board of Adjustment or Hearing Examiner as set out in Chapter 19.06 under Section 19.06.040.

G. SEPA Appeal. In the event of an appeal of the County's SEPA determination, the appeal hearing shall be conducted by the Board of Adjustment or Hearing Examiner as required by Section 19.06.050 – SEPA Appeals. The Board of Adjustment or Hearing Examiner shall hold one consolidated hearing at which it will hear and decide both the underlying governmental action (CUP) and the SEPA administrative appeal.

H. Amendment of a Corridor/Area Site Plan. A corridor/area site plan as approved by the Board of Adjustment or Hearing Examiner shall not be altered in a substantial way, such as an increase in the number of towers or a change in the project boundaries, unless approved by the Board of Adjustment or Hearing Examiner. If the alteration is felt to be of a substantial nature, the Board of Adjustment or Hearing Examiner shall require that the plan be submitted in compliance with these regulations. In the case of micrositing wind turbines or facilities, because of changing generator sizing, topographical features and other conditions, latitude is given, provided the wind turbine location is within the

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corridors/areas approved by the Board of Adjustment or Hearing Examiner. In the event of micrositing of turbines or facilities within the approved boundaries of the project area, micrositing will not be considered to be a substantial change to the site plan. Prior to any micrositing changes, County Planning staff must be notified.

Section 19.61.030 – Other Applicable Requirements

1. Project applicants will need to comply with other applicable County requirements, such as critical area ordinances, environmental review regulations, and building code requirements.
2. Uses Permitted Outright. The following uses are permitted outright, without the need for a conditional use permit, subject to compliance with the provisions stated in 19.61.040 and other applicable code requirements:
 - a. Temporary uses associated with investigatory work to determine the suitability of the site for energy development, such as meteorological towers. The placement of meteorological towers and other such equipment need not obtain a permit through this chapter. However, all other applicable code requirements apply.
3. All accessory buildings, uses, and structures related to and supporting the operation of commercial wind energy facilities, including utilities and utility infrastructure needed for the principal use, shall be considered part of the facility. For purposes of this chapter, accessory uses include any temporary (construction phase) concrete or asphalt batch plant and the mining and utilization of on-site gravel for on-site use only, as necessary for the wind energy facility development, such as for the construction of internal roads.

19.61.040 – Conditions for Meteorological Towers

1. There is no height restriction on meteorological towers in Whitman County. Towers over 200 feet are subject to conditions applied by the Federal Aviation Authority (FAA) regarding lighting and markings. The towers will have four FAA red marker balls installed at the uppermost portion of the guy wires to serve as a visual aid for low-flying planes and helicopters.
2. For meteorological towers and associated accessory structures the setback shall be the height of the tower plus 35 feet from the right-of-way of any state or county road and all adjacent landowner's property lines .
3. The meteorological towers and guy wires shall be fenced sufficient to prevent unauthorized access. The tower shall be setback at least 20 feet from the fence and accessory structures at least five feet from the fence. The fence shall be at a minimum six feet high.
4. If a meteorological tower is no longer in use it is to be removed at the time of decommissioning of a wind energy facility. In the case of a meteorological tower that is not a part of the facility, it is to be removed at the end of its use.

19.61.050 – SEPA Requirements

Expanded SEPA Checklist

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1. An Expanded SEPA Checklist shall be submitted to the Planning Office for each application for a commercial wind energy generating facility. The Expanded Checklist shall be submitted simultaneously with any other permit application(s) that may be required by the County; *provided* that if the County determines that an Environmental Impact Statement (EIS) will be required, an Expanded Checklist will not be required.
2. The Expanded Checklist shall (in addition to being consistent with the SEPA Checklist required in this chapter) provide analysis of impacts to elements of the environment as noted in the SEPA Checklist required in this chapter and Chapter 197-11 WAC, and explain the measures proposed to avoid, minimize or mitigate those impacts.
3. Site specific studies for impacts to habitat/wildlife (including avian species), cultural resources, and a grading and stormwater management plan complying with applicable local or state best management practices and stormwater quality standards, shall be submitted with the Expanded Checklist.
4. Because additional studies may be required by the Planning Office for effective review and siting, a pre-application meeting with a representative from the Planning Office is strongly recommended. The level of detail and analysis necessary is dependent on the type of project proposed, its location, and the currently available environmental information and review relevant to the proposal.
5. The Expanded Checklist shall include sufficient information to adequately describe the proposal and its impacts, including but not limited to, information regarding the total square footage of buildings to be constructed, the maximum height and number of wind turbines, expected noise generation levels, the location of occupied structures in proximity to the proposed project, the locations and length of new roads and above-ground and below-ground electrical cables and power lines, and transportation impacts.
6. An application for review under this Chapter shall not be deemed complete until the information required under number five (5) above is provided. Except for site specific studies for impacts to habitat/wildlife and avian species, upon a clear showing by the applicant that the study is not applicable or is unnecessary, the Planning Office may, within its discretion, waive specific application requirements. Such a determination shall be documented in writing in the project file. Should the applicant prepare an EIS, the Planning Office may waive all requirements for the submittal of individual studies at the time of application and deem the application complete upon submitting the information required in Section 19.61.020(5) above.

19.61.055 - Micrositing Corridors/Areas

1. All terrestrial habitat, critical area assessments, and cultural resource studies required shall be conducted within identified study corridors/areas of sufficient width and dimension to enable comprehensive environmental assessment while allowing flexibility in the final layout. In order to encourage the maximum sufficiency of studies and to enable the maximum flexibility of final layout based upon site-specific attributes, the County shall review and provide written approval of "micrositing" corridors/areas for all roads, wind turbine locations, and above- and below-ground electrical transmission locations. This micrositing review occurs at the time of the final layout approval of the project after the conditional use permit has been issued.

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The final location of wind turbines and all buildings associated with the wind energy facility shall be recorded by GPS coordinates.

2. Actual final locations of wind turbine generators, below-ground electrical cables, and above-ground electrical transmission towers will be established during the micro-siting process, occurring after permit review and prior to actual construction; provided that all such facilities must be sited within the study corridors/areas reviewed and approved by the County. During the micro-siting process (when the final, exact locations of the turbines and other project elements and equipment are determined), the applicant will typically balance a number of technical and engineering factors, including limitations posed by the terrain, wind data (speed, wind shear, etc.), wake effects of turbines on others, feasibility of access, setbacks (internally established or based on permit requirements), geotechnical considerations (subsurface conditions), environmental restrictions (avoidance of sensitive habitat), cultural/archeological restrictions (avoidance of cultural resource sites), telecommunications constraints (line of sight microwave paths), FAA requirements, and other site-specific criteria that are not fully resolved until final engineering is completed.

19.61.060 - Development Standards and Criteria

1. Setbacks. All setback distances established in this section shall be measured from the closest point of the tower to the closest point of the thing from which the tower is set back, for example, an occupied building or property line.
 - a. Minimum, non-waivable occupied building setbacks: Wind energy turbine towers shall be sited a minimum of one-times (1X) the height of the wind turbine generator plus 100 feet away from existing occupied building structures, measured from the ground to the maximum extent of the turbine blade, regardless of whether the occupied building structure owner consents to the location.
 - b. Occupied building visual, shadow flicker, and aesthetic setbacks: Visual, including but not limited to shadow flicker, and aesthetic setbacks are imposed to address wholly local concerns regarding the visual and aesthetic impacts of wind turbine generators. For all non-consenting, non-participating landowners, commercial wind energy turbine towers shall be setback a minimum distance of four-times (4X) the maximum height of the turbine, measured to the blade tip at its maximum elevation, from the non-participating landowner's occupied building. In view of the low density, rural/agricultural nature of the zoning districts deemed to be suitable for commercial wind energy facilities, the minimum occupied building structure visual and aesthetic standard shall be considered sufficient to address any visual and aesthetic impacts.
 - c. There shall be a minimum setback distance of four-times (4X) the maximum height of a turbine, measured to the blade tip at its maximum elevation, from the boundaries of incorporated communities.
 - d. Setbacks from non-participating adjacent landowner's property lines: There shall be a minimum distance of one-times (1X) the height of the wind turbine generator plus 100 feet away from the property line of any non-participating adjacent

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landowners, including state and improved county right-of-ways, measured from the ground to the maximum extent of the turbine blade.

- e. For purpose of this section, any consents to visual setback distances of less than 4X turbine height from a non-participating adjacent landowner's occupied buildings and less than the minimum setbacks from a nonparticipating adjacent landowner's property lines shall be documented by a fully executed, notarized agreement by the fee title owner, in a format that can be recorded on the affected real property title.

2. Height Limits

- a. Subject to standards imposed by the FAA, height limits are not established for wind turbines, transmission towers, and wind data collecting devices such as anemometers.
- b. Building structure height limitations shall be in accordance with the standards established for the applicable zoning district.

3. Site Access and Traffic Management: Prior to commencement of construction, the applicant shall provide the Public Works Department with a traffic management plan. All elements of the traffic management plan shall be reviewed by the County Engineer, who has discretion for determining whether or not the materials are complete or acceptable to the Public Works Department based on state law and prevailing rigorous industry standards. Required elements of the plan shall include:

- a. Public roads to be utilized by the applicant shall be identified in the application. A qualified third party engineer shall document road conditions prior to construction and again within thirty (30) days after construction is complete or as weather permits. The applicant shall enter into a county road use agreement for the repair of damage to public roads resulting from project activities.
- b. Ingress and egress points shall be located and improved (if needed) in order to assure adequate structural and operational capacity for existing and projected traffic volumes and to provide efficient movement of traffic, including existing and anticipated agricultural traffic and projected construction traffic.
- c. All applicable governmental permits or approvals shall have been obtained, including: permits to access state or county roads (if needed), construction within state or county right-of-ways, overweight and oversize loads, weight restricted bridges and structures, haul route agreements, etc.
- d. A franchise agreement pertaining to the long term use of public right-of-ways for underground utilities, above ground utilities, private facility features, and private infrastructure.
- e. All weather access roads (including graveled roads) suitable to accommodate year-round emergency response vehicles and equipment, shall be provided to within 150 feet of any built structure or surface activity area.
- f. Engineering studies, plans, reports necessary to substantiate any engineering related elements of the plan.

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- g. Planned phasing requirements of the traffic management plan (if required) to accommodate multi-phase or multi-year construction plans.
4. Noise: State noise standard compliance: During construction and operations, the project shall comply with applicable state noise standards.
5. Air quality: All applicable air emission permits shall be obtained and all conditions complied with. The applicant shall re-vegetate any disturbed areas that are not permanently occupied by the project features. The applicant shall comply with county road standards for dust control and erosion. The applicant shall maintain a water truck on-site during construction for dust-suppression.
6. Vegetation and wildlife construction limitations: Based upon the information provided in the Expanded SEPA Checklist, the applicant shall limit construction disturbance by flagging sensitive areas and conduct ongoing environmental monitoring during construction to assure that flagged areas are avoided. The applicant shall develop a reseeded/restoration and weed management plan in consultation with the Whitman County Weed Control Board and WDFW.
7. Overhead electrical transmission and collector lines: Overhead electrical transmission and collector lines should be constructed consistently with the existing Avian Power Line Interaction Committee (APLIC) recommendations for raptor protection on power lines and such other commonly accepted industry or regulatory standards.
8. Avian and bat studies and requirements: The County shall consider recommended conditions listed in the current, and as amended, Washington State Department of Fish and Wildlife Wind Power Guidelines. However, any recommended conditions taken from the Guidelines or recommended by the Department of Fish and Wildlife must be reasonable and objective and address project impacts. The following conditions and requirements shall be mandatory:
 - a. The applicant shall conduct project pre-assessment studies consistent with the Washington Department of Fish and Wildlife Wind Power Guidelines effective on the date of submitting a complete permit application. Project applicants are further advised to consult with WDFW and local habitat/wildlife experts regarding turbine siting before making final site decisions.
 - b. The facility shall use bird flight deflectors on guy supported permanent meteorological towers or use un-guyed permanent meteorological towers.
 - c. The applicant shall assess and monitor raptor nests on the project site for activity prior to construction and modify construction timing and activities to avoid impacts to nesting raptors. At a minimum, one raptor nest survey during breeding season within 1-mile of the project site should be conducted to determine the location and species of active nests potentially disturbed by construction activities, and to identify active and potentially active nest sites with the highest likelihood of impacts from the operation of the wind plant. A larger survey area (e.g., a 2-mile buffer) is recommended if there is some likelihood of nesting occurrence of state and/or federally threatened and endangered raptor

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- species (e.g., ferruginous hawk, bald eagle, golden eagle), or if empirical data on displacement impacts may be monitored after construction.
- d. A minimum of one full season of avian use surveys is recommended following current state-of-the-art protocols to estimate the use of the project site by avian species/groups of interest during the season of most concern (usually spring/early summer). Additional seasonal data (e.g. fall or winter) is recommended in the following cases: 1) use of the project site for the avian groups of concern is estimated to be high relative to other projects, and 2) there is very little existing data regarding seasonal use of the project site. This additional avian use data should be collected to refine impact predictions and make decisions on project layout.
 - e. The County shall require the applicant to identify and remove all carcasses of livestock, big game, etc. from within the project that may attract foraging bald eagles or other raptors.
 - f. The CUP shall require the applicant to monitor the project for a minimum of one year following project start-up to estimate bird and bat fatality rates using standard protocol. The applicant shall report bird fatalities observed for the life of the project to WDFW and USFWS on a quarterly basis, unless and until these wildlife agencies waive or reduce this reporting requirement.
9. Stormwater: Design and implement stormwater drainage systems in consultation with a professional engineer to ensure that minimal erosion will occur. After construction, monitor the site for erosion on a regular schedule as approved by the Department of Ecology or Whitman County, and after large rainfall or snowmelt events, and take corrective action as necessary.
 10. Geologic and Flood Hazards: The applicant shall design structural foundations and buildings in accordance with applicable International Building Code requirements for the relevant seismic zone. Compliance with all applicable local requirements is required.
 11. Water Resources: Water required for onsite use (construction phase work, restroom facilities and general maintenance) shall be obtained in accordance with state and local requirements.
 12. Cultural Resources: The applicant shall complete a cultural resource survey of areas of the project site that will be disturbed temporarily or permanently. During construction, the applicant shall flag and avoid cultural resources, and monitor construction activities to ensure that flagged cultural properties are avoided. The applicant shall train construction workers on the need to avoid cultural properties and procedures to follow if previously unidentified cultural properties, including Indian graves, are encountered during construction. If any previously unidentified cultural resource properties are encountered during construction, the applicant shall cease construction activities in the immediate vicinity of the site pending evaluation by a qualified archeologist and consultation with the Department of Archaeology and Historic Preservation to identify appropriate mitigation measures such as avoidance or scientific data recovery.

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13. Visual Resources:

- a. The applicant shall prepare visual simulations of wind turbines from key view points, chosen in consultation with the Planning Office.
- b. Lighting for security shall be minimized. Lighting fixtures, except those required by the FAA for safety purposes, must be shielded, hooded, and oriented towards the ground so that direct rays of light don't shine onto neighboring properties or serve as a source of light pollution. FAA lights shall be minimized to the extent practicable in consultation with the FAA.
- c. The applicant shall provide a clean looking facility free of debris and unused or non-functioning equipment by: storing equipment and supplies off-site (post-construction), and removing damaged or unusable equipment from the site.
- d. To the extent practicable, and subject to industry standards and requirements to meet the FAA's daytime lighting and marking standards, the applicant shall chose paint colors that are a non-obtrusive color such as white, off-white or gray.
- e. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with any wind energy system visible from any public road are prohibited.

14. Decommissioning:

O. Decommissioning and Site Restoration; Financial Assurance:

- (1) The applicant is responsible for project Decommissioning and Site Restoration. The applicant shall develop a Decommissioning and Site Restoration Plan in consultation and active participation with Whitman County. The Decommissioning and Site Restoration Plan shall be delivered to the Board of Whitman Commissioners for review and approval at least sixty (60) days prior to the beginning of Site Preparation. Within sixty (60) days of receipt of the Decommissioning and Site Restoration Plan, the Board of County Commissioners shall consult with a qualified soil scientist and a qualified biologist to review and either request the applicant make specific revisions in accordance with the commercial solar siting criteria in the Whitman County Code or approve the plan, which approval shall not be unreasonably withheld. The applicant shall not begin Site Preparation prior to obtaining approval of the Decommissioning and Site Restoration Plan from the Board of County Commissioners.
 - a) The applicant shall, at its sole expense, shall commence work on the decommissioning elements of the plan within sixty (60) days of the termination of Commercial Operations of the project. The applicant must fully complete the decommissioning elements of the Decommissioning and Site Restoration Plan within twelve (12) months

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after the end of Commercial Operations of the facility. The decommissioning elements shall address, at a minimum,

- i. Removal of all above-ground and below-ground project facilities, material, and infrastructure, including minimum depth of removal below-ground;
- ii. Safe disposal, recycling or salvage of removed project facilities, materials, and infrastructure;
- iii. Removal of project access roads;
- iv. Allocation of value for salvaged project materials;
- v. Appropriate worker safety precautions to be observed during decommissioning activities;
- vi. A detailed engineering estimate, prepared by a licensed professional engineer, of the costs to fully implement the Decommissioning and Site Restoration Plan.

A. The estimate must be based on the costs of the County hiring a third party to fully implement the Decommissioning and Site Restoration Plan.

B. The estimate may not be reduced for “net present value.

C. The estimate may not include any credit for salvage value that may be realized from the sale of facility structures or equipment, property interests, or other assets associated with the facility at the time the Decommissioning and Site Restoration Plan is implemented.

- vii. Any agreements with any underlying landowner(s) regarding project facilities, materials, infrastructure and roads that landowner wishes to retain.

b) The applicant shall, at its sole expense, fully implement and complete the site restoration elements of the Decommissioning and Site Restoration Plan within twelve (12) Months after the end of all decommissioning activities. The site restoration elements of the Plan shall include, at a minimum,

- i. The evaluation and documentation, by a qualified soil scientist, of the soil conditions of the Project Site prior to commencement of Site Preparation;
- ii. The evaluation and documentation, by a qualified biologist, of the presence, types, extent, and conditions of all vegetation

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existing on Project Site prior to commencement of Site Preparation;

- iii. Measures for the identification and remediation of any hazardous waste materials adversely affecting the Project as a result of the project's Site Preparation, Operations, and/or Decommissioning;
- iv. Detailed plans for restoration of Project Site soil and vegetation as near as possible to their documented conditions prior to commencement of Site Preparation;
- v. The duration and metrics for measuring and monitoring the success of soil and vegetation restoration, including how the metrics will be informed by periodic soil and vegetation assessments (including re-vegetation success) during Commercial Operations of the project; and
- vi. Within sixty (60) days of completion of all restoration activities, applicant shall provide a proposed final report to the Board of County Commissioners documenting all restoration activities and results. Within sixty (60) days of receipt of the final report, the Board of County Commissioners shall consult with a qualified soil scientist and a qualified biologist to review and either provide detailed directions to applicant for further restoration in accordance with the Decommissioning and Site Restoration Plan or approve the final report, which approval shall not be unreasonably withheld. Upon approval of the final report on restoration, the Conditional Use Permit and all other County-issued project permits shall terminate and be of no further effect.

- c) The applicant shall provide the County with a Notice of Intent to Terminate Commercial Operations of the facility not later than six (6) months before Commercial Operations cease. Absent delivery of a Notice of Intent to Terminate Operations, the facility will be presumed to be at the end of its useful life, and Commercial Operations will be deemed to have terminated without further action by the applicant, if no electricity is generated for commercial use for the continuous period of twelve (12) months.
- d) The applicant shall deliver to the County Public Works and Planning Directors an updated Decommissioning and Site Restoration Plan every five years on the anniversary date of issuance of the facility's conditional use permit. The updated Decommissioning Plan shall account for new technologies and processes for decommissioning, salvaging, or repowering the facility.

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- e) The Decommissioning and Site Restoration Plan and the responsibilities thereunder shall transfer to and be fully binding upon any successor of the applicant, which transfer shall be approved in accordance with WCC Ch. 19.xx.xxx.
 - f) If the Project Site owner(s) waives the implementation of any part of the Decommissioning and Site Restoration Plan they must also demonstrate, to the satisfaction of the Whitman County Board of Commissioners, their financial ability and agreement to assume responsibility for all permitted facilities with the appropriate regulatory agency. Copies of the approved permit transfers must be provided to the Planning Department.
 - g) All references to applicant in this Section 19.xx.xxx.O of the Whitman County Code shall include and be interpreted to include successors or transferees to the applicant.
- (2) Except as provided at WCC 19.xx.xxx.3 below, the applicant is responsible for Decommissioning and Site Restoration financial assurance. The Applicant shall maintain financial assurance in an amount documented to be sufficient to cover all costs associated with fully implementing the Decommissioning and Site Restoration Plan based on detailed engineering estimates. The financial assurance instrument may be in the form of a surety bond, irrevocable letter of credit, or guaranty, as further described below. Whitman County must be named as an obligee or beneficiary on any financial assurance instrument. A copy of the financial assurance instrument cover page(s), showing the effective coverage dates, the amount of coverage, and identification of Whitman County as an obligee or beneficiary shall be provided to Whitman County annually. The financial assurance instrument cover page(s) provided to the County shall also clearly state that applicant and Whitman County are to be notified in writing, by certified, return receipt requested mail sent not less than one hundred and twenty days in advance of cancellation or other termination of the financial assurance security instrument.
- a) The amount of the financial assurance instrument shall be adjusted annually as follows:
 - i. During the period of the project's Commercial Operations, the applicant must annually adjust the Decommissioning and Site Restoration Plan cost estimate for inflation as determined by reference to the U.S. Bureau of Labor Statistics' Consumer Price Index within sixty (60) days prior to the anniversary date of the establishment of the financial instrument used to provide financial assurance.

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- ii. Applicant must increase the amount of financial assurance consistent with the annually adjusted estimate of cost to fully implement the Decommissioning and Site Plan to ensure sufficient funds for Site Restoration.
- b) The duty to provide financial assurance shall commence sixty (60) days prior to the beginning of Site Preparation and shall be continuously maintained through to the completion of Decommissioning and Site Restoration. Site Preparation shall not commence until an adequate financial assurance in the amount in an amount established in accordance with WCC 19.xx.xxx above is provided as follows:
- i. *Surety Bond*. The applicant may provide financial security for the performance of its Decommissioning and Site Restoration obligations through a Surety Bond issued by a surety listed as acceptable in Circular 570 of the U.S. Department of the Treasury. Each bond must remain in place for a period of at least one year and shall be renewed annually until acceptance by Whitman County of the final report on the Decommissioning and Site Restoration as provided at WCC 19.xx,xxx,xx.
 - A. An irrevocable Standby Trust Fund for Decommissioning and Site Restoration shall also be established concurrently with the Surety Bond to receive any funds that may be paid by the surety to be used to complete all obligations in the Decommissioning and Site Restoration Plan.
 - B. The surety shall become liable for the bond obligation if the applicant fails to perform as guaranteed by the bond.
 - C. The surety may not cancel or decline to renew the bond until mailing, at least one hundred twenty days before the current bond expiration date, written notice of its intent to cancel or decline to renew via certified, return receipt request mail to applicant and the County.
 - D. If, within ninety days of the mailing of the written notice of cancellation as provided above, the applicant has not fully performed its Decommissioning and Site Restoration obligations or provided alternate financial assurance adequate under the Whitman County Code, then the surety shall transfer the amount of the bond into the Irrevocable Standby Trust Fund as directed by the County; or

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- ii. *Irrevocable Letter of Credit.* The applicant may provide financial security for the performance of its Decommissioning and Site Restoration obligations through an Irrevocable Letter of Credit payable to Whitman County. The Irrevocable Letter of Credit shall be issued by a federally insured and qualified financial institution authorized to issue letters of credit.
 - A. An Irrevocable Standby Trust Fund for Decommissioning and Site Restoration shall also be established concurrently with the issuance of the letter of credit, by the applicant to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit.
 - B. The letter of credit shall be irrevocable and issued for a period of at least one year and shall be renewed annually until acceptance by Whitman County of the final report on the Decommissioning and Site Restoration as provided at WCC 19.xx,xxx,xx.
 - C. The financial institution issuing the letter of credit may not cancel or decline to renew the letter of credit until mailing, at least one hundred twenty days before the current expiration date, written notice of its intent to cancel or decline to renew via certified, return receipt request mail to applicant and the County.
 - D. If, within ninety days of the mailing of the written notice of intent to cancel or decline to renew the letter of credit as provided above, the applicant has not fully performed its Decommissioning and Site Restoration obligations or provided alternate financial assurance adequate under the Whitman County Code, then the issuer of the letter of credit shall transfer the amount of the letter of credit into the Irrevocable Standby Trust Fund as directed by the County; or
- iii. *Guaranty.* Applicant may provide financial assurance from a qualified Third-Party Entity for the performance of its Decommissioning and Site Restoration obligations by delivering a guaranty under which the guarantor provides either a Surety Bond or Irrevocable Letter of Credit in accordance with WCC 19.65.xxx.(O)(2)(b)(i) or (ii) above to fund the applicant's Decommissioning and Site Restoration obligations herein.
 - A. If the applicant fails to perform the Decommissioning and Site Restoration obligations covered by the guaranty, the guarantor will be required to provide funding from the

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Surety Bond or Irrevocable Line of Credit to complete the appropriate activities.

- B. The guaranty will remain in force unless the guarantor sends written notice of its intent to cancel its guaranty by certified, return receipt requested mail to the applicant and the County at least one hundred twenty days before cancellation.
- C. If, within ninety days of the mailing of the written notice of intent to cancel or decline to renew or continue the guaranty as provided above, the applicant has not fully performed its Decommissioning and Site Restoration obligations or provided alternate financial assurance adequate under the Whitman County Code, then the guarantor shall transfer the amount of the guaranty into the Irrevocable Standby Trust Fund as directed by the County.
- D. The guarantor entity's chief financial officer shall provide a corporate guaranty that the entity passes the financial test concurrent with delivery of the guaranty as specified in this section. This corporate guaranty shall be reconfirmed annually ninety days after the end of the entity's fiscal year by submitting to the County a letter signed by the guarantor entity's chief financial officer that:
 - i. Provides the information necessary to document that the guarantor entity passes the following financial test:
 - a) If the Guarantor is providing a bond that they are in good standing and meet the requirements pursuant to Circular 570 of the U.S. Department of the Treasury.
 - b) If the Guarantor provides an Irrevocable Line of Credit they shall provide and certify the following information:
 - a. Federal Deposit Insurance Corporation verification of good standing.
 - b. Investment grade credit rating from a Nationally Recognized Statistical Rating Organization (NRSRO).

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ii. Guarantees that the funds to finance the required Decommissioning and Site Restoration activities are available.

iii. Guarantees that the required Decommissioning and Site Restoration assurances will be available until Decommissioning and Site Restoration is completed.

iv. Guarantees that the entity's chief financial officer will notify in writing, via certified, return receipt requested mail, the applicant and the County within ten days any time that the entity no longer passes the financial test or is named as debtor in a voluntary or involuntary proceeding under Title 11 U.S.C., Bankruptcy. Such a proceeding under Title 11 will cause the entity to fail the financial test.

v. Guarantees that after written notification is delivered to the applicant and the County that the entity no longer passes the financial test the entity shall deposit the restoration funds into the Standby Trust Fund if so directed by the County.

E. If the guarantor should not pass the required tests, the applicant must obtain an alternate financial assurance method as described in this section within 15 days of notification from the guarantor in order to provide continuous financial assurance coverage.

F. If the financial assurance agreement is transferred after its effective date, the County has the right to require, consider, and approve an alternate financial security assurance device as described in the Whitman County Code that assures the applicant's performance of its Decommissioning and Site Restoration obligations..

- c) If the Standby Trust Fund is funded for any reason above, the Whitman County Treasurer shall be named the Trustee and Whitman County shall be the sole Beneficiary.
3. If the project is owned and operated by an investor-owned electric utility regulated by the Washington Utility and Transportation Commission, such financial assurance requirements as described in this section may be waived and the Decommissioning and Site Restoration obligations

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hereunder shall be a general obligation of the investor-owned utility as defined in a contractual agreement with the County.

4. The Applicant must provide Pollution Legal Liability Insurance Coverage in an amount demonstrated to the satisfaction of the Whitman County Board of Commissioners to be sufficient to protect applicant, the Project Site, and its owners against:

- a) unexpected pollution exposures and environmental accidents; and
- b) cleanup and remediation costs, property damage, and legal expenses.

~~a. Prior to commencing construction of the project, the applicant shall prepare a decommissioning plan in a form acceptable to the County. A bond, letter of credit, or other security acceptable to the County is required to ensure proper decommissioning of each turbine and other equipment. The amount of the security shall be determined on the basis of the site-specific conditions affecting the costs of decommissioning, access, depth of foundation, terrain, etc., to include credit for salvage value of the equipment. The timing for supplying the security shall be determined in consultation with the County. If, however, the project is owned and operated by an investor-owned electric utility regulated by the Washington Utility and Transportation Commission, such security device as described in this condition may be waived and the removal and restoration obligations hereunder shall be a general obligation of the investor-owned utility.~~

~~b. Upon termination of operations, or if the project is abandoned, or ceases operation for more than 270 consecutive days (except in the event of man-made or natural disaster not in the control of the applicant), the applicant, or the then current owner shall, at their sole cost and expense, dismantle and remove above ground improvements including wind turbines, step-up transformers, substations, overhead transmission lines and support structures, control hardware, and meteorological towers. Foundations will be removed to a level of three (3) feet below the surface of the ground unless requested to be maintained by the landowner. At the request of the landowner, they shall also remove operations and maintenance buildings. The applicant shall repair any damage as a result of such removal, restore the property to grade, and implement erosion and control devices and procedures, restoring the site as reasonably as possible to its pre-project condition. In the event that the applicant or the then current owner does not fulfill their obligations under this section, the County may, at its sole election, dismantle and remove any wind tower or related facility. In such case, the applicant and the then current owner shall pay and be liable to the County for all costs incurred by the County to complete the decommissioning.~~

~~c. All applicable local and state regulatory requirements shall be complied with, including obtaining demolition permits and complying with permit conditions for removal of existing turbines and structures from the site.~~

15. Public Safety, Inquiries and Complaints:

- a. The applicant shall comply with state occupational health and safety standards.

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- b. During project construction and all project welding operations, the applicant shall have a readily accessible water truck and chemical fire suppression materials available on site to allow immediate fire response.
- c. The applicant shall provide project staff with cellular or on-site phones to enable timely communication with the Fire Department and other emergency services.
- d. The applicant shall fence site entrances as appropriate and post signs warning of electrical dangers with emergency contact numbers e.g. phone numbers of emergency responders. The facility owner and operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.
- e. The applicant shall monitor the site for evidence of unauthorized use and provide additional security as appropriate.

19.61.070 - Compliance with Project Conditions

1. Upon proving reasonable notice to the project owner or operator, County officials shall have the right to enter the project site to verify compliance with project conditions.
2. Compliance with project conditions and code requirements is required. In addition to such other remedies available under law, any County department or other decision maker issuing any decision, environmental determination (such as a mitigated determination of non-significance), approval, authorization, or other determination, including a determination on the conditions to apply to a particular project under this chapter ("authorization"), may conduct enforcement activities in accordance with County code and Washington law.

19.61.080 – Severability

Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence clause or phrase of the ordinance.

Adopted 11/16/09, Ordinance # 070081. (Revised 7/19/10, Ordinance # 070974).