

Chapter 19.61 – COMMERCIAL WIND ENERGY FACILITIES

Section 19.61.010 - Declaration of Intent

- A. 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.
- B. 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:
 - a. Area and dimensions of the project site;
 - b. 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;

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- c. Number, dimensions and preliminary footprint of all turbines including the size of the monopoles;
 - d. Preliminary location and dimensions of all roads and connections to county roads;
 - e. Preliminary location of underground and overhead transmission line corridors;
 - f. Location of any proposed buildings or facilities, such as operations and maintenance buildings or substations;
 - g. Location of any existing buildings;
 - h. Location of existing water, sewer or any existing gas lines;
 - i. A map or maps of the existing and proposed site topography including conceptual grading and drainage plans;
 - j. All existing occupied buildings within one mile of turbine "micrositing" corridors or areas and/or proposed turbine locations;
 - k. 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

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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 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

A. Project applicants will need to comply with other applicable County requirements, such as critical area ordinances, environmental review regulations, and building code requirements.

B. 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:

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.

C. 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

A. 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.

B. For meteorological towers and associated accessory structures the front setback shall be 35 feet from the right-of-way of any state or county road and side or rear setbacks shall be 20 feet. The setback from parcel or lease lines shall be 20 feet for meteorological towers and five feet for accessory structures.

C. The meteorological towers and guy wires shall be fenced sufficient to prevent unauthorized access. The fence shall be at a minimum six feet high.

D. 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.

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19.61.050 – SEPA Requirements

Expanded SEPA Checklist

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. An application for review under this Chapter shall not be deemed complete until the information required under letter E 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 above.

19.61.055 - Micrositing Corridors/Areas

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

B. Actual final locations of wind turbine generators, below-ground electrical cables, and above-ground electrical transmission towers will be established during the micrositing 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 micrositing 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

A. 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.

1. 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.
2. 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.

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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.

3. 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.
4. 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 landowners, including state and improved county right-of-ways, measured from the ground to the maximum extent of the turbine blade.
5. 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.

B. Height Limits

1. 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.
2. Building structure height limitations shall be in accordance with the standards established for the applicable zoning district.

C. 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:

1. 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.
2. 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.

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3. 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.
 4. 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.
 5. 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.
 6. Engineering studies, plans, reports necessary to substantiate any engineering related elements of the plan.
 7. Planned phasing requirements of the traffic management plan (if required) to accommodate multi-phase or multi-year construction plans.
- D. Noise: State noise standard compliance: During construction and operations, the project shall comply with applicable state noise standards.
- E. 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.
- F. 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 reseeding/restoration and weed management plan in consultation with the Whitman County Weed Control Board.
- G. 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.
- H. 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:

1. 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.
2. The facility shall use bird flight deflectors on guy supported permanent meteorological towers or use un-guyed permanent meteorological towers.
3. 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 species (e.g., ferruginous hawk, bald eagle, golden eagle), or if empirical data on displacement impacts may be monitored after construction.
4. 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.
5. 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.
6. 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.
- I. 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.

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- J. 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.
- K. 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.
- L. 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.
- M. Visual Resources:
 - 1. The applicant shall prepare visual simulations of wind turbines from key view points, chosen in consultation with the Planning Office.
 - 2. 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.
 - 3. 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.
 - 4. 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.
 - 5. 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.

N. Decommissioning:

1. 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.
2. 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.
3. 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.

O. Public Safety, Inquiries and Complaints:

1. The applicant shall comply with state occupational health and safety standards.
2. 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.
3. The applicant shall provide project staff with cellular or on-site phones to enable timely communication with the Fire Department and other emergency services.

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- 3 4. The applicant shall fence site entrances as appropriate and post signs warning
- 4 of electrical dangers with emergency contact numbers e.g. phone numbers of
- 5 emergency responders. The facility owner and operator shall maintain a phone
- 6 number and identify a responsible person for the public to contact with inquiries
- 7 and complaints throughout the life of the project.
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- 9 5. The applicant shall monitor the site for evidence of unauthorized use and
- 10 provide additional security as appropriate.
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12 19.61.070 - Compliance with Project Conditions

- 13 A. Upon proving reasonable notice to the project owner or operator, County officials
- 14 shall have the right to enter the project site to verify compliance with project
- 15 conditions.
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- 17 B. Compliance with project conditions and code requirements is required. In addition
- 18 to such other remedies available under law, any County department or other
- 19 decision maker issuing any decision, environmental determination (such as a
- 20 mitigated determination of non-significance), approval, authorization, or other
- 21 determination, including a determination on the conditions to apply to a particular
- 22 project under this chapter ("authorization"), may conduct enforcement activities in
- 23 accordance with County code and Washington law.
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25 19.61.080 – Severability

26 Severability. If any section, sentence, clause or phrase of this ordinance should be held

27 to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or

28 unconstitutionality shall not affect the validity or constitutionality of any other section,

29 sentence clause or phrase of the ordinance.

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

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