

Ordinance B2004-01-23B

AN ORDINANCE ENTITLED, An Ordinance to Amend Section 1215 Wind Energy System (WES) Requirements Adopted by Ordinance B2004-01, July 6th, 2004, as amended, of the Zoning Ordinance of Deuel County.

Be it ordained by the Board of County Commissioners of Deuel County, South Dakota: that Section 1215 adopted by Ordinance B2004-01 July 6th, 2004, as amended, of the Zoning Ordinance of Deuel County be amended to change Section 1215 Wind Energy System Requirements as follows: (Changes only are printed with those parts in bold as additions and those parts with a line through them as deletions to the ordinance)

Section 1215. Wind Energy System (Wes) Requirements

Section 1215.01 Applicability

The requirements of these regulations shall apply to all WES facilities except private non-commercial facilities with a single tower height of less than one-hundred forty (140) feet and used primarily for on-site consumption of power.

Section 1215.02 Federal and State Requirements

All WESs shall meet or exceed standards and regulations of the Federal Aviation Administration and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WESs.

Section 1215.03 General Provisions

1. Mitigation Measures

- a. **Site Clearance.** The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.
- b. **Topsoil Protection.** The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
- c. **Compaction.** The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.
- d. **Livestock Protection.** The permittees shall take precautions to protect livestock during all phases of the project's life.
- e. **Fences.** The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.
- f. **Roads**

i. **Public Roads.** Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

ii. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County of such arrangements upon request of the County.

iii. **Turbine Access Roads.** Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

iv. **Private Roads.** The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

v. **Control of Dust.** The permittees shall utilize all reasonable measures and practices of construction to control dust.

vi. **Soil Erosion and Sediment control Plan.** The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

2. Setbacks

Wind turbines shall meet the following minimum spacing requirements.

a. Distance from existing Non-Participating residences and businesses shall be not less than six times the height of the wind turbine. Distance from existing Participating residences, business and public buildings shall be not less than fifteen hundred feet. Non-Participating property owners shall have the right to waive the respective setback requirement.

~~Distance from existing off-site residences, business and public buildings shall be not less than one thousand (1,000) feet. Distance from on-site or lessor's residence shall be not less than five hundred (500) feet or one hundred and ten percent (110%) of the wind turbine height, whichever is greater. For purposes of this section only, the term "business" does not include agricultural uses.~~

b. Distance from public right-of-way shall be one hundred and ten percent (110%) the height of the wind turbines, measured from the ground surface to the tip of the blade when in a fully vertical position.

c. Distance from any property line shall be one hundred and ten percent (110%) the height of the wind turbine, measured from the ground surface to the tip of the blade when in a fully vertical position unless wind easement has been obtained from adjoining property owner.

d. Distance from the Lake Park District located at Lake Cochrane 3 miles, Lake Alice 2 miles and 1 mile from the Lake Park District at Bullhead Lake.

e. Distance from the municipalities of Altamont, Astoria, Brandt and Goodwin of 1 mile from the nearest residence and 1 1/2 miles from the city limits of the towns of Gary, Toronto and Clear Lake, except the area of Clear Lake located in sections 11, 12 and 14.

3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.

4. Lighting. Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.

5. Turbine Spacing. The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.

6. Footprint Minimization. The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be

mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.

7. **Electrical Cables.** The permittees shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.

8. **Feeder Lines.** The permittees shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction.

9. **Decommissioning/Restoration/Abandonment**

a. **Decommissioning Plan.** Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. **The decommissioning plan shall include the requirement that Permittee post a bond or other adequate security sufficient to pay the entire cost of the decommission process.**

b. **Site Restoration.** Upon expiration of this permit, or upon earlier termination of operation of the WES, the permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty two (42) inches. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.

10. **Abandoned Turbines.** The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.

11. Height from Ground Surface. The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.
12. Towers.
 - a. Color and Finish. The finish of the exterior surface shall be non-reflective and non-glass.
 - b. All towers shall be singular tubular design. With the exception of those towers identified in Section 12.15.01.
13. **Noise & Shadow Flicker.**
 - a. **Noise level shall not exceed 45 dBA average A-Weighted Sound pressure at the perimeter of existing residences, for non-participating residences. Noise level shall not exceed 50 dBA average A-Weighted Sound pressure at the perimeter of existing residences.**
 - b. **Limit for allowable shadow flicker at existing residences to no more than 30 hours annually.**
14. Permit Expiration. The permit shall become void if no substantial construction has been completed within three (3) years of issuance.
15. Required Information for Permit.
 - a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.
 - b. Map of easements for WES.
 - c. Copy of easement agreements with landowners.
 - d. Map of occupied residential structures, businesses and public buildings.
 - e. Map of sites for WES, access roads and utility lines.
 - f. Proof of utility right-of-way easement for access to transmission lines.
 - g. Location of other WES in general area.
 - h. Project schedule.

SECTION 1215.04

Real Estate Property Value Assurance Plan

The WES Owner/operator must provide a Real Estate Property Value Assurance Plan (REPVAP) to all Non-Participating landowners who: 1) own property within $\frac{1}{4}$ of a mile of the WES project, measured horizontally, from the nearest wind turbine, and 2) have not signed any mitigation waivers. This is a legally binding contract between the Owner/operator and its successors and the non-participating landowners. Each one of these fully executed contracts must be submitted with the application for a Special Exception.

The conditions of the Real Estate Property Value Plan to be entered into must be as follows and become binding on the WES Owner/operator once a Special Exception permit for the WES Project is granted:

1. Establishing the Current Value of the Home

- a. One Certified General Appraiser will be selected from a list of appraisers licensed in the State of South Dakota and conducting business in the general WES project area.
- b. The appraiser shall perform an appraisal of the property – in its current state, and within 2 months of the granting of a Special Exception.
- c. The appraisals will be performed at the Applicant's expense. The property owner hereby agrees to permit access to the property as required to perform the appraisal. Furthermore, the property owner hereby agrees to provide full disclosure of known defects of the property as may be required under South Dakota State Law.
- d. The appraiser preparing the appraisal will provide a written copy of their report to both the property owner and the Applicant

2. Establishing the Future Value of the Home if Listed for Sale.

- a. If during the time period from the granting of the Special Exception permit through the life of the WES, the property owner lists the property for sale with a qualified realtor licensed with the State of South Dakota, then an "updated" appraisal will be prepared, again at the Applicant's expense, using the same procedure outlined above. The updated CMA will explicitly take into account any changes in local market conditions for comparable properties unaffected by the wind project, as well as any improvements to the home and/or lot.
- b. In the event that the property has been listed for at least 12 months and sells for less than the market value determined by the updated appraisal, the Applicant will pay the difference in value within 30 days after closing of the sale of the property. The 12-month listing requirement may be waived by Applicant if requested by the property owner at the Applicant's sole discretion.

3. Other Stipulations

- a. The property owner hereby grants the Applicant the right to purchase the property at the greater amount of the updated appraisal or the highest bona fide offer.

