

ZONING ORDINANCE 23-___

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF COCHISE COUNTY, ARIZONA,
AMENDING ARTICLE 18 SITE DEVELOPMENT STANDARDS, SECTION 1822, WIND
ENERGY POWER PLANTS OF THE COCHISE COUNTY ZONING REGULATIONS**

WHEREAS, Arizona Revised Statutes (“A.R.S.”) §§ 11-811, et seq. gives the Cochise County Board of Supervisors (the “Board”) the authority to adopt zoning regulations to address land use; and

WHEREAS, the Board originally adopted Zoning Regulations in Cochise County, pursuant to that authority in 1975, and has with periodic modification, maintained them in effect since that time; and

WHEREAS, the Board recognizes that amendments to the Zoning Regulations can affect countywide land use patterns and therefore, warrants careful consideration of regional impacts; and

WHEREAS, Article 18 of the Zoning Regulations sets forth specific criteria, known as site development standards, with which all uses in all Zoning Districts must comply unless otherwise exempted by the Zoning Regulations. These standards are designed to protect surrounding properties from adverse impacts of the proposed use; and

WHEREAS, Section 1822 of the Zoning Regulations specifically applies to Wind Energy Power Plants, which are utility scale, non-residential systems that provide electricity to off-site consumers; and

WHEREAS, the Board recognizes the general purpose of this amendment is to incorporate newer and more updated best practices into site design, decrease potential safety hazards in design, as well as incorporate additional owner/operator responsibilities that will ultimately reduce long-term County liability for removal and site restoration; and

WHEREAS, on December 14, 2022, the Planning and Zoning Commission held a duly noticed public hearing on the proposed amendments to the Zoning Regulations, hereby known as Docket R-22-03; and

WHEREAS, on January 10, 2023, the Board of Supervisors held a duly noticed public hearing of the proposed amendments to the Zoning Regulation, Docket R-22-03 attached hereto as "Exhibit A" that will amend Article 18 of the Cochise County Zoning Regulations and found them to be in the public interest.

NOW, THEREFORE, BE IT RESOLVED THAT by the Board of Supervisors of Cochise County, Arizona that the Cochise County Zoning Regulations shall be amended as contained in "Exhibit A," attached hereto.

PASSED AND ADOPTED BY THE BOARD OF SUPERVISORS OF COCHISE COUNTY, ARIZONA, THIS 10th DAY OF JANUARY 2023.

Ann English, Chair
Cochise County Board of Supervisors

ATTEST:

Tim Mattix
Clerk of the Board

APPROVED AS TO FORM:

Paul Correa

Paul Correa
Civil Deputy County Attorney

EXHIBIT A

1822 WIND ENERGY POWER PLANTS

1822.01 Intent

The intent of these regulations is to promote the effective and efficient use of wind energy resource within the County through wind energy power plants (WEPPs), and to regulate the siting, design, and installation of such systems to preserve and protect the environment as well as public health, safety, welfare.

1822.02 Applicability

Wind Energy Power Plants (WEPPs) are constructed primarily for the purpose of providing electricity to off-site consumers and shall be allowed only in RU (in Category D Growth Areas), GB, LI, or HI Zoning Districts, by Special Use Authorization only. This does not include residual power returning to the grid provided by small-scale systems, which primarily provide on-site power, subject to Arizona Corporation Commission regulations. Site-specific conditions and/or project scope may require that Applicants provide drainage and soil reports, environmental assessments or environmental impact statements, visual impact analyses including shadow flicker analysis, electromagnetic interference analysis, migratory bird/bat study, and/or cultural resource assessments with their application.

1822.03 Design Standards

The following site design standards shall apply for the permitting, construction, and operation of Wind Energy Power Plants:

- A. ~~1822.01~~ **Height Limits** - Wind Energy Power Plants are exempt from height limits ~~per Article 20 (Height Exceptions) of the Zoning Regulations.~~
- B. ~~1822.02~~ **Setbacks** - Setbacks from all property boundaries and road travel ways for Wind Energy Power Plants shall be equal to the height of the tallest structure with turbine blades fully extended for free-standing Wind Turbines, plus 10 feet. Wind Turbines, components, design features, and other structures associated with the Wind Turbines must have a minimum setback of 1,000 feet to any existing residence, school, nursing home, or hospital. This site development standard is intended to promote safety and minimize damage to property if a turbine falls; it is not subject to Variances, Administrative, or Planning Commission modification.
- C. ~~1822.03~~ **Distance Between Structures** - The distance between structures shall be equal to the fully extended height of the structure, plus 10 feet, for freestanding Wind Turbines.

- D. **1822.04 Noise Impacts** - Noise generated by Wind Energy Power Plant systems shall not exceed fifty decibels (50 dBA), as measured from the nearest property line, except during short-term events, including utility outages and severe windstorms.
- E. **1822.05 Lighting** - Light fixtures or illumination of any kind shall not be allowed on Wind Energy Power Plants except as required by the Federal Aviation Administration (FAA) or to the extent required for safety or applicable federal, state, or local authority. The application shall include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure.
- F. **1822.06 Signage** - Signs of any type may not be attached to Wind Energy Power Plants, including fencing and support structures. This does not include manufacturer's logos which may be part of the system when purchased, emergency notification information, or appropriate warning signage (see 1822.04.B).
- G. **Transmission Lines-** All power transmission lines from the tower to any building or other structure associated with the development shall be located underground to the maximum extent practicable.
- H. **Color and Finish-** All turbines and towers that are part of the application shall be painted a neutral color. Finishes shall be matte or non-reflective.
- I. **Support Structure** - A WEPPs and transmissions poles shall be constructed with a tubular tower or monopole structure, not a lattice tower
- J. **Operational Condition** - A WEPP shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions and requirements of this Section.
- K. **Additional Design Considerations** – Additional mitigation measures may be required by the County to mitigate any site-specific conditions to lessen negative impacts uncovered by supplemental reports included within the application.

1822.04 Supplemental Safety Provisions

- A. All WEPPs shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode.
- B. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24-hour, 7 day a week coverage.
- C. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.

1822.05 Transfer or Sale

- A. No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility shall occur without written acceptance by the transferee of the obligation of the transferor under this Local Law. No transfer shall eliminate the liability or responsibility of an applicant or of any other party under this Local Law for acts or omissions occurring prior to such transfer or sale.
- B. In the event of a transfer of unit ownership, the County reserves the right to reassess the amount of the bond and request an additional amount to be posted in order to provide adequate surety. Any costs to the County associated with these activities shall be reimbursed by the current project owner or operator.

1822.06 Cessation of Use/Abandonment or Damage

- A. Should any part of the WEPP be damaged, or should a WEPP violate a permit condition, the owner or operator shall cure any deficiency within ninety (90) days after written notice from the County.
- B. If any WEPP remains non-functional or inoperative for a continuous period of (1) one year, the applicant and/or its successors or assigns, without any further action by the County, shall remove said system and restore the site at its own expense, subject to the provisions of the Decommissioning Plan.

1822.07 Decommissioning and Site Restoration

- A. All applications for a WEPP must include a Decommissioning Plan, acceptable to the County, to ensure that all system components are properly decommissioned upon the end of their operational life, cessation of use, or determination of abandonment.
- B. The Decommissioning Plan shall state how the facility will be decommissioned and will include a Professional Engineer's estimated cost of decommissioning, the financial resources to be used to accomplish decommissioning, and the financial assurances necessary to fund the decommissioning.
- C. Removal of the system shall include, but not be strictly limited to the following:
 - 1. All above ground components including but not limited to, turbines, blades, nacelles, towers, transformers, above ground collection cables and poles and fencing.
 - 2. Foundations and buried project components, other than buried collection lines, must be removed to a depth of thirty-six (36) inches.
 - 3. Buried collection lines must be removed to a depth of thirty-six (36) inches. Collection lines below a depth of thirty-six (36) inches may remain in place.
 - 4. Removal and remediation of any hazardous materials.
 - 5. Removal activities must be completed within one year of decommissioning initiation unless otherwise approved by the County.
- D. Restoration of each site shall include:

1. Ground disturbance must be minimized to the extent practical, and the site restored to its original ground contours if possible.
 2. Disturbed on site soils and vegetation will be reasonably restored and re-established using native seed mix and with proper soil nutrients (fertilizer, lime and other amendments) to provide and sustain growth or in coordination with the landowner to allow desired vegetation to be planted.
 3. Roads must be adequately restored to their original condition following decommissioning activities.
 4. Access roads, fencing associate drainage improvements, and residual minor improvements may remain with written consent from the landowner.
- E. The County shall be granted the right of entry onto the site, pursuant to reasonable notice to the property owner, to effect or complete decommissioning pursuant to the Decommissioning Plan.

1822.08 Financial Assurance Required

- A. The owner/operator shall continuously maintain financial assurance in the amount of the decommissioning costs. Examples of such include a performance bond, surety bond, trust instrument, cash, escrow, or irrevocable letter of credit, or other form approved by the County. This financial assurance shall be in place before the commencement of construction and will be in the amount of the decommissioning costs, to be determined by a qualified independent engineer licensed to practice in the State of Arizona. All costs of this financial assurance shall be borne by the owner/operator. The cost estimate shall be updated by the owner/operator at no more than five-year intervals to ensure an accurate estimation of costs associated with equipment value and site restoration, adjusted for inflation.
- B. The financial assurance may further be utilized by the County for the costs of correcting any other acts of non-compliance with these regulations or directives of the County.

1822.09 Liability Insurance Required

The owner/operator shall maintain a current liability insurance policy to cover installation and operation costs, with the County being added as an additional insured, with the designation of primary and noncontributory. The applicant will immediately provide Cochise County, in writing, any notice of cancellation or change to any of the insurances referred to herein.