

**ORDINANCE #40**  
**UNION COUNTY WIND ENERGY SITING ORDINANCE**

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**I. INTRODUCTION**

**A. Title**

This Ordinance shall be known, cited and referred to as the "Union County Wind Energy Siting Ordinance".

**B. Purpose**

This Ordinance has been adopted for the following purposes:

1. To assure that any development and production of wind-generated electricity in Union County after the effective date of this Ordinance is safe and effective;
2. To acknowledge that these facilities are clearly visible and cannot be hidden from view, however, design consideration should include minimizing the degradation of the visual character of the area;
3. To facilitate economic opportunities for local residents; and
4. To promote the supply of wind energy in support of New Mexico's goal of increasing energy production from renewable energy sources.

**C. Authority**

This Ordinance is adopted under the authority granted by the following New Mexico Statutes:

Chapter 3, Article 21. Zoning Regulations, § 3-21-1 et. seq.

Chapter 4, Article 37. County Ordinances, § 4-37-1 et. seq.

**D. Severability**

If any section or provision of this Ordinance, or the application of that section or provision to any person, situation, or circumstance is adjudged invalid for any reason, the adjudication does not affect any other section or provision of this Ordinance or the application of the adjudicated section or provision to any other person, situation, or circumstance. The Board of Union County Commissioners ("Board of Commissioners") declares that it would have adopted the valid portions and application of this Ordinance without the invalid part, and to this end the provisions of this Ordinance are declared to be severable.

**II. DEFINITIONS**

- A.** "Applicant" means the entity or person who submits to the County, pursuant to Sections V and VI of this Ordinance, an application for a preliminary plan review or the siting of any WECS, WECS Project, or Substation, as defined below.

- B. "County" means Union County, New Mexico.
- C. "Credit Rating" means (i) with respect to any entity a U.S. commercial bank or a U.S. branch of a foreign bank, (A) the current ratings issued or maintained by Standard & Poor's or Moody's with respect to such entity's long-term senior, unsecured, unsubordinated debt obligations (not supported by third-party credit enhancements) or (B) if item (A) is not issued or maintained by at least one of Standard & Poor's or Moody's, the "Credit Rating" will be the entity's issuer credit rating assigned by Standard & Poor's, Moody's, or any other rating agency agreed by the Parties, notched down one (1) rating grade (e.g., if an entity's issuer credit rating is BBB-/Baa3, its Credit Rating will be BB+/Ba1), or (ii) if such entity is a financial institution, the ratings issued or maintained by Standard & Poor's or Moody's with respect to such entity's long-term, unsecured, unsubordinated deposits.
- D. "Creditworthy Bank" means a U.S. commercial bank or a U.S. branch of a foreign bank (in either case which is not an Affiliate of either Party) having at the applicable time assets in excess of \$1,000,000,000 and a Credit Rating of (i) A- or better from Standard & Poor's, or (ii) A3 or better from Moody's, or (iii) if such bank has a Credit Rating at such time from both Standard & Poor's and Moody's, A- or better from Standard & Poor's and A3 or better from Moody's.
- E. "Creditworthy Entity" means an entity or person having at the applicable time a Credit Rating of (i) BBB- or better from Standard & Poor's, or (ii) Baa3 or better from Moody's, or (iii) if such Person has a Credit Rating at such time from both Standard & Poor's and Moody's, BBB- or better from Standard & Poor's and Baa3 or better from Moody's.
- F. "Financial Security" means (i) a bond, a letter of credit or a guaranty provided by an entity or financial institution with unsecured, senior long-term debt ratings of at least "A2" by Moody's Investors Service or "A" by Standard & Poor's (or any successor ratings agency), (ii) cash deposited in escrow with a financial institution unaffiliated with Applicant or owner, or (iii) any other form of security reasonably acceptable to the County and Applicant or owner. "Financial Security" shall be in an amount equal to the total estimated costs of the removal obligation as certified by a professional engineer selected and retained by the applicant or owner who shall be reasonably acceptable to the County. The Financial Security may be reduced at any time by an amount equal to the salvage value of the WECS Project components (e.g., equipment, steel, etc.), upon delivery by the Applicant or owner to the County of copies of bona fide third party offer(s) for such components.
- G. "Force Majeure" means: an act of God; extreme weather condition; inability to secure equipment or services at market rates; claim of Force Majeure by a contractor, supplier, or vendor to the WECS Project; inability to sell electricity from the WECS Project at commercially reasonable prices in the open market during a period when a force majeure (or comparable) clause under a power purchase contract(s) is in effect; labor dispute; lock-out; material adverse condition claimed by a Lender; natural disaster; strike; or, any other cause not reasonably within the control of the Applicant.

- H. "Moody's" means Moody's Investor Services, Inc. or any successor entity.
- I. "Non-Commercial WECS" means a WECS that is incidental and subordinate to another use on the same parcel and supplies electrical power solely for Applicant's on-site energy generation and consumption with an aggregate generating capacity of 100 kW or less.
- J. "Operator" means the party or entity responsible for the day-to-day operation and maintenance of any WECS, WECS Project, or Substation, including any third party subcontractors.
- K. "Owner" means any party or entity with a controlling ownership interest in the WECS, including their respective successors and assigns. Owner does not mean the property owner from whom land is leased for locating the WECS unless the property owner has a controlling ownership interest in the WECS.
- L. "Preliminary Plan Review" means the review process conducted by the County prior to the Applicant submitting a WECS Project application in order to provide guidance to an Applicant only, the results of which are in no way considered binding upon the County or intended to replace any part of the application process or any other requirement contained herein.
- M. "Primary Structure(s)" means commercial, industrial and residential structures other than the WECS Tower and includes structures such as residences, quonset huts, barns, commercial buildings, hospitals, and day care facilities. Primary Structure(s) does not include storage structures such as storage sheds and loafing sheds.
- N. "Professional Engineer" means a qualified individual who is licensed as a professional engineer in the State of New Mexico.
- O. "Public Hearing" as used in the context of any permit or application process, means an opportunity for public comment at a regular meeting of the Board of Commissioners at which the opportunity for public comment appears on the agenda.
- P. "Residential Area" means any identifiable area containing two (2) or more homes or structures used for residential purposes, or intended to contain two (2) or more homes or residential structures.
- Q. "Siting Approval" means approval by the Board of Commissioners in the form of a Resolution adopted by the Board of Commissioners stating that the proposed WECS Project conforms with the provisions of this Ordinance and is approved by the County.
- R. "Standard & Poor's" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or any successor entity.
- S. "State" means the State of New Mexico.

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- T. "Substation" means the apparatus that connects the electrical collection system of the WECS and increases the voltage for connection with the utility's transmission system.
- U. "Wind Energy Conversion System (WECS)" means all necessary devices that together convert wind energy into electricity, including the rotor, nacelle, generator, WECS Tower, and electrical components, WECS foundation, transformer, and electrical cabling from the WECS Tower to the Substation(s) and their support facilities, including transmission lines.
- V. "WECS Project" means the WECS(s) described in an Applicant's Siting Approval application submitted pursuant to this Ordinance and associated support facilities including, but not limited to, WECS and the transformer, electrical cabling from the WECS Tower to the on-site step-up transformer/substation, interconnection and transmission system, roads, operation and maintenance buildings, permanent meteorological towers, and other infrastructure required by Owner for the WECS facility (including any substation to the extent Applicant is constructing and installing same).
- W. "WECS Tower" means the support structure to which the nacelle and rotor are attached.
- X. "WECS Tower Height" means the distance from the highest point of a vertical rotor blade to the top surface of the WECS foundation.

*Interpretative Concepts:* In this Ordinance,

- A. The singular includes the plural and vice versa, and
- B. Where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings.
- C. Any reference to WECS, WECS Project, or Substation without mention of each or all other of these terms or concepts shall not be interpreted to exclude reference to these other concepts unless the intent to do so is clear.

### III. APPLICABILITY

This Ordinance governs the siting of WECS Projects that provide electricity to be sold to wholesale or retail markets, provided that Non-Commercial WECS Projects are not subject to Sections V through XIV of this Ordinance and shall instead comply with only Chapter XVI of this Ordinance. Notwithstanding anything to the contrary herein, this Ordinance shall not apply to (a) any WECS Projects that are completed and operational prior to the effective date of this Ordinance, (b) any WECS Projects that have been approved by the Board of Commissioners prior to the effective date of this Ordinance, and (c) any replacement, reconstruction, repair, maintenance or other similar activities for any WECS Project.

Siting Approval does not preclude the need to obtain required approvals from the County for additional individual structures, additions, and changes in accordance with applicable law.

#### **IV. PROHIBITION**

No WECS Project, transmission lines or Substation that is subject to this Ordinance shall be newly constructed, erected, installed or located within Union County unless prior approval has been obtained pursuant to this Ordinance with respect to each such WECS or WECS Project.

#### **V. WECS PROJECT PRELIMINARY PLAN REVIEW**

The preliminary plan review process described in this Section V (“Preliminary Plan Review”) is intended to enable the County to provide feedback to an Applicant about potential issues that the Applicant’s proposed WECS Project may face. A Preliminary Plan Review will result in feedback to the Applicant in the form of a letter or memo from the County or its agents stating preliminary approval of the plan as submitted or providing recommendations for modification. Approval of a Preliminary Plan Review does not grant approval, either expressly or impliedly, of a WECS Project nor does it negate or minimize the requirements of other agencies in any manner.

The Preliminary Plan Review process is meant to consider the land use from a local land use perspective only. This process puts Union County, adjacent counties, neighboring property owners and the general public on notice that a property is under consideration for a potential WECS Project, gives the Applicant some awareness of potential issues associated with a particular project and minimizes costs to the Applicant until such time that a formal WECS Project application is presented to the County in accordance with Section VII of this Ordinance.

- A.** A request for Preliminary Plan Review may be submitted to the County to request approval of a preliminary plan for a potential WECS Project as an approved land use. A Preliminary Plan Review application must include, at a minimum, a proposed project description, preliminary project plan, contact information for the Applicant and identification of real property owners whose real property is required for the construction of the WECS Project. The application must contain information regarding any Financial Security {Term is no longer a defined term} that the Applicant expects to be provided pursuant to this Ordinance. Preliminary Plan Review applications shall not require that studies, detailed site plans, formal agreements and other information requested for Siting Approval per this Ordinance be submitted.
  
- B.** Each Preliminary Plan Review will be conducted during a meeting of the Board of Commissioners to provide an opportunity for public awareness and comment. Each such meeting shall be held as soon as practicable following the Applicant’s submittal of a Preliminary Plan Review application pursuant to this Section.

- C. Approval of a Preliminary Plan Review does not imply that a WECS Project is approved or that any particular structure will ultimately be approved by the County.
- D. A separate Siting Approval application in accordance with Section XII of this Ordinance will be required to proceed further with any WECS Project.
- E. An Applicant may elect to skip the Preliminary Plan Review process and proceed directly to the full Siting Approval application in accordance with Section VII of this Ordinance.

**VI. ANEMOMETER AND METEOROLOGICAL TOWER PERMIT APPLICATION**

An application for one or more anemometers/meteorological tower permits may be submitted independent of the Preliminary Plan Review or WECS Project Siting application. An Anemometer and Meteorological Tower permit application must be submitted in accordance with the County's existing permit application for the construction of other structures within the County or pursuant to a form of application as may be developed by the County.

- A. An application for an Anemometers and Meteorological Tower permit must include, at a minimum, the following information:
  - a. The general area proposed for tower location(s);
  - b. Tower description and specifications, including height information;
  - c. Documentation of landowner approval, which may be demonstrated by submission of excerpted portions of agreements that demonstrate landowner approval or by submission of a letter showing landowner approval; and
  - d. Any and all other information required under the County's existing permit application process.
- B. To the extent that studies, detailed site plans, and formal agreements are required in order to approve the Anemometer and Meteorological Tower permit application, the applicant shall obtain and provide the necessary information. Nothing in this provision shall impose upon the Applicant an obligation to obtain or provide information with the Anemometer and Meteorological Tower permit application beyond that necessary to approve or deny the permit.
- C. An application for a Anemometer and Meteorological Tower Review shall be considered for approval by the Board of Commissioners upon recommendation by the County Manager.

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## VII. WECS PROJECT SITING APPROVAL PROCESS

A. To obtain Siting Approval, the Applicant(s) must first submit a detailed application to the County in accordance with this Ordinance.

B. The Siting Approval application shall contain or be accompanied by the following information:

1. A summary of the WECS Project, including, to the extent available: (1) a general description of the project, including the potential equipment manufacturers, types of WECS, proposed number of WECS and expected name plate generating capacity of each WECS, the maximum height of the WECS Towers and maximum diameter of the WECS rotors and the general location of the project; and (2) a description of all Applicants, Owners and Operators, including their respective business structures as applicable;
2. The names, addresses, and phone numbers of all Applicants, Owners and Operators, and all real property owners whose real property is required for the construction of the WECS Project and real property owners whose real property abuts the WECS Project;
3. A site plan for the installation of the WECS Project showing the planned location of WECS Towers, guy lines and anchor bases (if any), Primary Structures, real property lines for real property required for the construction of the WECS Project (including identification of abutting real property), setback lines, public access roads and turnout locations, Substations, electrical cabling from the WECS Towers to the Substation(s), ancillary equipment, transmission lines, and proposed layout of all known WECS Project-related structures within the geographical boundaries of any applicable setback. The site plan may be based on County land records with GIS project data layered in showing project components. Should any questions or ambiguities arise or if any questions or ambiguities may arise from using the County land records, an ALTA level survey shall be completed. Nothing in this provision shall be interpreted as waiving the requirement that an ALTA or other professional level survey be completed at any other stage in the permitting process;
4. All studies, reports, certifications and approvals required herein or pursuant to any and all applicable State and Federal laws and regulations;
5. Documentation of consent from all real property owners whose real property is required for the construction of the WECS Project and of notice concerning the WECS Project to real property owners whose property abuts the WECS Project. Consent may be obtained through a letter of consent or memorandum of understanding; and



6. Certification by the Applicant that to the best of its knowledge the WECS Project complies with applicable County Ordinances, Rules, and Regulations.

C. The Applicant shall notify the Board of Commissioners of any material and/or substantial changes to the information provided pursuant to Section VI.B. that occur while approval of any Siting Approval application is pending.

D. A public hearing shall be held by the Board of Commissioners at the earliest time practicable following receipt of a Siting Approval application and its consideration by the County Manager. The application will then be reviewed at a meeting of the Board of Commissioners following the public hearing. Such review by the Board of Commissioners will result in written feedback to the Applicant of the Board of Commissioners' findings.

E. Siting Approval may be authorized by the Board of Commissioners upon the recommendation of the County Manager. Siting Approval issued by the Board of Commissioners shall be valid for the life of the WECS Project. If new wind turbine generators or WECS Towers are installed that substantially and materially differ in quantity or technology from those originally shown in the Siting Approval application, an amendment to the Siting Approval application or a new Siting Approval application shall be required prior to installation.

F. During the preconstruction engineering period, should the Applicant engage in ground disturbance which requires using heavy equipment to complete geotechnical work, the Applicant shall provide notice to the Board of Commissions at least seven (7) days prior to the work being performed.

## VIII. DESIGN AND INSTALLATION

### A. *Design Safety Certification*

1. WECSs shall conform to applicable industry standards, including those of the American National Standards Institute ("ANSI") and National Electrical Commission ("NEC"). Applicants shall use reasonable efforts to obtain from equipment manufacturers any certificates of design compliance that such manufacturers have obtained from Underwriters Laboratories ("UL "), Det Norske Veritas ("DNV"), Germanischer Lloyd Wind Energie ("GL "), or an equivalent third party, with respect to the equipment to be incorporated into the WECS Project. If the Applicant is unable to obtain the certificates of design compliance from the equipment manufacturers, the Applicant must provide a certified statement documenting the reasonable efforts exhausted by the Applicant in attempting to obtain the certificates.
2. Following the granting of Siting Approval and prior to commencing construction activities, the Applicant will certify to the best of its knowledge that the WECS Project complies with the State of New Mexico Construction Industries Division commercial construction building permit requirements and applicable codes.

**B. *Color***

Towers and blades shall be (1) a color consistent with industry standards, or (2) a reasonable, non-reflective, and unobtrusive color approved by the Board of Commissioners that is intended to help the project blend with the natural visual character of the area.

**C. *Signage***

There shall be no signage or logo of any type allowed on the WECS Towers with the exception of safety signs, warning signs and emergency contact signs and the Owner's, Operator's or manufacturer's company trademark or logo located on the nacelle only. Any and all other signage on the WECS Towers shall only be allowed as approved by the County in the Siting Approval.

**D. *Warnings***

1. A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and Substations.
2. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of 15 feet from the ground.

**E. *Climb Prevention***

The Owner shall render all WECS Towers unclimbable to unauthorized personnel, either through the use of design elements or through anti-climbing devices such as:

1. Site-appropriate security enclosures with locking portals at least six (6) feet high; or
2. Anti-climbing devices fifteen (15) feet vertically from the base of the WECS Tower.

**F. *Setbacks***

1. All WECS Towers shall be set back at least one-quarter mile from any Primary Structure. The distance for the above setback shall be measured from the point of the Primary Structure foundation closest to the WECS Tower to the center of the WECS Tower foundation. The owner of the Primary Structure may waive this setback requirement and such waiver shall govern and supersede the requirements of this Section VIII.F.1; but in no case shall a WECS Tower be located closer to a Primary Structure than 1.10 times the WECS Tower Height.

2. All WECS Towers shall be set back a distance of at least 1.10 times the WECS Tower Height, measured from the tip of the blade, from third party transmission lines and communication towers.
3. All WECS Towers shall be set back a distance of at least 1.10 times the WECS Tower Height, measured from the tip of the blade, from immediately adjacent real property lines. This does not apply to real property lines within the WECS Project.
4. All WECS Towers shall be set back a distance of at least one-half mile from any primary structure in a Residential Area. All other WECS Project structures shall be set back a distance of one-quarter mile from any primary structure in a Residential Area. If such property is undeveloped, the required setback shall be at the center of the property or at any other more restrictive point as determined by the County.
5. All WECS Towers shall be set back a distance of one (1) mile from any incorporated municipality, unless waived by the municipality.
6. All WECS Project structures, except transmission lines, shall be set back a distance of at least 1.10 times the WECS Tower Height from all highways, interstates, and public roads.
7. All WECS Towers shall be set back from all State parks and recreational areas a minimum of one-quarter mile.
8. All WECS Towers shall be set back from prior existing WECS Towers that are not a part of the same or affiliated WECS Project a distance of at least five (5) times the WECS Tower Height of such prior existing WECS Tower unless such requirement is waived by the owner of such prior existing WECS Project.
9. The Applicant does not need to obtain a variance from the County or the applicable municipality upon waiver by either the County or such municipality or the applicable property owner of any of the above setback requirements. Any waiver of any of the above setback requirements shall run with the land and be recorded as part of the chain of title of the subject property.
10. Any Applicant requested reduction of setback distances shall be granted at the reasonable discretion of the Board of Commissioners.

**G. *Compliance with Additional Regulations***

Nothing in this Ordinance is intended to preempt other applicable State and Federal laws and regulations. To the extent that this Ordinance conflicts with any such applicable laws or regulations, such laws and regulations shall control. Furthermore, if any action, demand, law, order, proclamation, regulation, right, rule or statute of any state or federal agency or authority or entity is adopted

which effects the project, the Applicant shall have reasonable time to achieve compliance with such action, demand, law, order, proclamation, regulation, right, rule or statute.

**H. *Use of Public Roads***

1. Each Applicant, Owner, or Operator proposing to use any highway, interstate, or public road located within the County ("Public Roads") for the purpose of transporting WECS or Substation parts and/or equipment for construction, operation, or maintenance of a WECS Project or Substation shall:
  - a. Identify all such Public Roads expected to be involved in the construction of the WECS Project. Proposed mapping of haul routes on such Public Roads shall be submitted in detail with the Siting Approval application.
  - b. Comply with any and all applicable Oversize/Overweight Permit requirements of the New Mexico Department of Transportation ("NMDOT") and conform with all applicable State and Federal requirements for transport.
  - c. Comply with NMDOT's new access, access modification, or change of use of access requirements and utility crossing requirements for impacts to any affected State highway facilities.
  - d. Applicant, at the discretion of the Board of Commissioners and as a condition to Siting Approval, may be requested to provide reasonable additional studies and reports prepared by a qualified professional to determine if material impacts to Public Roads will occur. If such impacts are determined, a reasonable mitigation plan and/or reasonable long term road maintenance agreement may be required at the discretion of the Board of Commissioners as a condition to Siting Approval.

**I. *Additional Permitted Uses***

The County may allow, but shall not require, the Applicant to include certain accessory type uses on WECS Project-related real property such as a visitor center where the public may be permitted to view a facility and obtain information about the specific facility and wind farms in general; provided, however, that the specific form of any such accessory use shall be determined in the sole discretion of the Applicant. Directional signage may be permitted by the County in its reasonable discretion. Information on local historical issues may be included, or required, upon County approval of such accessory uses.

## IX. OPERATION

### A. *Maintenance*

1. The Owner or Operator of the WECS Project may be required to submit a certification on each anniversary of the Siting Approval certifying that the WECS Project, in its entirety, is being maintained in material accordance with the equipment manufacturer's recommendations and in material accordance with all applicable State and Federal requirements.
2. Weeds at non-decommissioned WECS Projects shall be controlled in accordance with applicable County ordinances
3. Periodic maintenance will include upkeep to all WECS Project structures, improvements, and grounds in accordance with applicable law and prudent industry practices. Routine scheduled maintenance shall include the repainting of equipment and structures and ground work or landscaping as appropriate to the location and the installed or erected improvements, in each case as determined by Owner in light of prudent industry practices.

### B. *Lighting*

The WECS Project shall comply with minimum Federal Aviation Administration ("FAA") lighting standards.

### C. *Signal Interference*

The Applicant shall comply with applicable Federal Communications Commission ("FCC") requirements related to frequency coordination.

### D. *Coordination with Local Fire Department and Emergency Services*

1. The Applicant, Owners or Operators shall submit to the local fire department and/or Emergency Management Coordinator a copy of the Siting Approval and the WECS Project site plan, site address and emergency contact information.
2. Upon request by the local fire department and/or Emergency Management Coordinator, the Owners or Operators shall cooperate with the relevant agency to develop any emergency response plan.
3. Nothing in this section shall alleviate the need to comply with any and all other applicable fire and public safety laws and regulations.

### E. *Transfer of Applications*

Each Applicant or Owner shall have the right to assign, transfer and otherwise novate a Siting Approval Application or supporting or related documentation submitted by such Applicant to the County and to assign, transfer and otherwise

novate an issued Siting Approval or supporting or related documentation issued by the County; provided, however, that: (a) the assignee, transferee or recipient of the assignment, transfer, or novation agrees in writing to assume all of assignor's, transferor's or novator's obligations under such application or issued Siting Approval and (b) the Applicant or Owner provides Financial Security, as defined under Article II of the Ordinance or such assignee, transferee or recipient of the assignment, transfer, or novation shall provide (a) Financial Security as defined under Article II of the Ordinance or (b) evidence is provided that following the effective date of the Transfer, there shall be in effect, one or more renewable energy purchase agreements for the sale of renewable energy from the WECS Project. In the event such assignment, transfer or novation shall occur prior to the completion of the construction of the WECS Project, the Applicant or Owner shall demonstrate to the satisfaction of the Board of Commissioners that such assignee, transferee or recipient of the assignment, transfer, or novation (a) has the technical and financial ability to complete and operate the WECS Project, and (b) has an equal or greater probability than the Applicant or Owner of entering into a renewable energy purchase agreements for the sale of renewable energy from the WECS Project. The foregoing restrictions on transfer shall not apply to (i) assignees or purchasers whose interests are held solely for security purposes, (ii) the assignment, transfer and otherwise novation of a Siting Approval Application to a utility in good standing in its State of incorporation, or affiliate thereof, involved in the generation, transmission, or sale of electric power, and (iii) the assignment, transfer and otherwise novation of a Siting Approval Application approved, in the sole discretion, of the Board of Commissioners.

**X. FEDERAL, STATE AND LOCAL REQUIREMENTS**

WECS Project facilities shall comply with all applicable Federal, State and local requirements. Each Applicant shall certify as part of its Siting Approval application that to the best of its knowledge the WECS Project facility is designed and expects to be in compliance with all of the laws and regulations listed below in this Section IX, to the extent applicable. Certification by the Applicant that to the best of its knowledge that the WECS Project complies with applicable laws and regulations shall be provided to the County upon request.

If credible issues are documented at any time during the Siting Approval process related to the Applicant's compliance with applicable Federal, State and/or local requirements related to the WECS Project, then the Applicant shall cooperate with the Board of Commissioners' reasonable requests for information in connection with such issues, including but not limited to the production of additional studies, reports, maps, and/or graphic depictions prepared by a professional qualified in the relevant discipline.

Within fourteen (14) days of submittal of the initial Siting Approval application and at reasonable intervals thereafter, but prior to obtaining final approval from the Board of Commissioners for the WECS project, the County Manager shall provide the Applicant with a checklist indicating which Federal, State and local requirements have been met

and documentation stating that once their requirements are met, the WECS project is expected to be approved.

**A. *Federal Aviation Administration***

The Applicants for the WECS Project shall comply with all applicable FAA and Department of Defense requirements for civil and military aviation, including radar use, and obtain the minimal lighting plan.

**B. *Federal Communication Commission***

The Applicants for the WECS Project shall comply with all applicable FCC requirements.

**C. *Environmental***

**1. United States Fish and Wildlife Service (“USFWS”)**

The Applicants for the WECS Project shall comply with all applicable USFWS requirements including federal endangered species regulations as established in the Federal Endangered Species Act.

**2. United States Army Corp of Engineers (“COE”)**

The Applicants for the WECS Project shall comply with all applicable COE requirements including the Federal Wetlands regulations as established in the Federal Clean Water Act.

**3. New Mexico Environmental Department (“NMED”)**

The Applicants for the WECS Project shall comply with all applicable NMED requirements.

**4. Noise Levels**

The Applicants for the WECS Project shall comply with all applicable Federal, State and local requirements. Applicants may be required to provide reasonable documentation of standard noise and decibel levels for equipment.

**5. Materials Handling, Storage and Disposal**

**a.** All solid wastes related to the construction, operation and maintenance of a WECS Project shall be promptly removed and disposed of in accordance with all Federal, State and local laws.

**b.** All hazardous materials related to the construction, operation and maintenance of the WECS Project shall be handled, stored, transported

and disposed of in accordance with all applicable Federal, State and local laws.

**6. Public Highway, Streets, Bridges or Navigable Streams**

The Applicants for the WECS Project shall comply with all applicable NMDOT requirements, including long-haul and oversize regulations.

The County will strictly enforce any civil or criminal penalties associated with violations of any law intended for environmental protection if obstruction, injury, pollution or other prohibited act occurs related to the WECS Project, or will refer such violation to the appropriate enforcement agency.

**D. *Any and all other Federal, State and Local Requirements***

The Applicants for the WECS Project shall comply with all applicable governmental requirements.

**XI. NEW MEXICO DEPARTMENT OF GAME AND FISH (“NMDGF”)**

The Applicant is advised to request information from NMDGF during initial site selection regarding any crucial or important wildlife and habitat areas that may be present. The Applicant should consult with NMDGF regarding that Department’s recommendations for studies and monitoring of wildlife impacts and mortalities, and is required to conduct such monitoring in accordance with NMDGF standards and as recommended by NMDGF. The Applicant will assure and maintain access to the wind development area for the purposes of wildlife monitoring activities as necessary. The County will route the Siting Approval application to the NMDGF for comment to be reviewed and incorporated into any report and approval.

**XII. ARCHAEOLOGICAL AND HISTORICAL RESOURCES**

The Applicant is advised to seek approval from appropriate agencies for matters concerning archaeology studies, historical importance and any other relevant Federal, State and local issues and to include relevant reports in the Siting Approval application. The County will route the application to the New Mexico Historic Preservation Division (“NMHPD”) and any other relevant agencies for comment to be reviewed and incorporated into any report and approval.

**XIII. LIABILITY INSURANCE**

The Owner or Operator of the WECS Project shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$1 million per occurrence and \$1 million in the aggregate. The Applicant shall provide proof of insurance to the Board of Commissioners at the time it submits its Siting Approval application or within thirty (30) days following approval of the applicable Siting



Approval application and thereafter within thirty (30) days after request from the Board of Commissioners.

#### **IVX. DECOMMISSIONING PLAN**

Prior to receiving Siting Approval under this Ordinance, the County and the Applicant must formulate a Decommissioning Plan to ensure that the WECS Project is decommissioned in accordance with this Ordinance. The Decommissioning Plan shall include:

- A. Provisions describing the triggering events for decommissioning the WECS Project or any portion thereof upon eighteen (18) months of continuous non-operation of the facility, unless such non-operation is the result of Force Majeure, or the non-operation is attributable to repair, replacement, or repowering and the Owner is using reasonable efforts to cure such non-operation;
- B. Provisions for the removal of structures, debris and cabling, including any located below the soil surface down to twenty-four (24) inches;
- C. Provisions for the restoration of soil and vegetation;
- D. An estimate of the decommissioning costs certified by a Professional Engineer to be provided twenty (20) months prior to decommissioning;
- E. Provisions for Financial Security to be filed with the County no later than eighteen (18) months prior to decommissioning for the purpose of assuring that Owner adequately performs decommissioning, which Financial Security shall be in an amount equal to the Professional Engineer's certified estimate of the decommissioning costs, as determined pursuant to Section XIII.D, which amount shall be reduced by an amount equal to the salvage value of the WECS upon delivery by the Owner to the County of copies of bona fide third party offers for such WECS. Further, to the extent the Applicant is required under its real property agreements with landowners in the WECS Project to post security to satisfy its removal obligations, the amount of the Financial Security shall be reduced, on a dollar-for-dollar basis, by the total amount of all such security posted in connection with such real property agreements. The County may reject the proposed forms of Financial Security if the evidence submitted does not adequately assure the funds will be available as required. Applicants shall be notified in writing within sixty (60) days of receipt of the evidence of Financial Security of the decision to accept or reject the proposed forms of Financial Security;
- F. If at any time the Financial Security furnished pursuant to this Section XIII fails to satisfy the requirements of this Ordinance, then the provider of such Financial Security shall, within ten (10) business days after such provider becomes aware of any such failure, provide and maintain, until decommissioning has been completed, replacement Financial Security that satisfies the requirements of this Ordinance. The party providing Financial Security may, from time to time,

substitute another form of Financial Security for Financial Security which similarly meets the requirements of this Ordinance, provided that at all times the requisite amount of Financial Security shall be maintained hereunder notwithstanding any such substitution. If any substitute Financial Security replaces a letter of credit, the beneficiary thereof shall promptly mark such letter of credit as "cancelled" and return the original of same to the provider and shall take such other actions as reasonably may be requested by the issuer of such letter of credit to evidence the cancellation thereof. If any substitute Financial Security replaces a guaranty, then the beneficiary thereof shall execute such release documentation as may be reasonably requested by the guarantor. If any substitute Financial Security replaces cash collateral, the beneficiary thereof shall execute such documentation releasing its lien thereon, and terminating its rights (including contract rights) with respect thereto, and shall take any other steps necessary to transfer such cash collateral back to the party that caused such cash collateral to be posted, in each case as may be reasonably requested by the party that caused such cash collateral to be posted. If any Financial Security previously provided is no longer required hereunder, the beneficiary shall return, in the same manner as described above, the applicable Financial Security previously posted to the provider thereof.

- G. Identification of and procedures for County access to any required Financial Security;
- H. A provision that the terms of the Decommissioning Plan shall be binding upon the Owners and/or Operators of the WECS Project, and any of their successors, assigns or heirs;
- I. A provision that the County shall have reasonable access to the WECS Project site, pursuant to reasonable prior written notice, to effect or complete decommissioning if the Owner or Operator of the WECS Project fails to decommission same in accordance with the Decommissioning Plan. Any exercise of access rights by the County shall be at the County's sole risk and shall be subject to the then Owner's reasonable safety and security protocols.
- J. A provision that the County shall have the right to review and reconsider the WECS Project's Decommissioning Plan at the time of decommissioning, consistent with changes in the land use of the project at that time.
- K. If the Owner of the WECS Project is in default of its obligations under the Decommissioning Plan and has not cured such default or commenced to cure such default within ninety (90) days of written notice delivered by certified mail from the County to the Owner specifying such default, then the Board of Commissioners may draw upon and expend Financial Security solely in order to decommission the WECS Project in accordance with the Decommissioning Plan and any reconsiderations consistent with changes in the land use of the project at that time. If the Financial Security is inadequate to cover the County's reasonable,

direct costs to carry out such decommissioning, then the County Attorney may bring suit to recover such excess decommissioning costs.

## **XV. REMEDIES**

- A.** Except as caused by Force Majeure, an Applicant's, Owner's, or Operator's failure to materially comply with any of the above provisions shall constitute a default under this Ordinance.
- B.** Prior to implementation of the existing County procedures for the resolution of such default, the appropriate County body shall first provide written notice by certified mail to the Owners and Operators setting forth the alleged defaults in reasonable detail. Such written notice shall provide the Owners and Operators a reasonable time period, not to exceed sixty (60) days, but which period shall be extended in the case of Force Majeure, to cure such defaults and for good faith negotiations to resolve the alleged defaults.
- C.** If a default is not timely cured, the County shall have all rights and remedies which may be available under law or equity including specific performance.

## **XVI. NON-COMMERCIAL WECS**

This Section XVI applies only to Non-Commercial WECS and has no application to WECS Projects other than Non-Commercial WECS Projects. Non-Commercial WECS shall be allowed as an Accessory Structure {Not defined, please define or lower case} to an existing or proposed primary use in all zoning districts and shall be permitted by approval by the County when applicable, as defined herein, or by the issuance of a Special Permit and County approval when applicable.

**A.** Approval as an Accessory Structure without a Special Permit is subject to compliance with the standard application requirements and compliance with all of the following:

- 1.** Minimum Parcel Size and Total Height: The minimum parcel size to establish a Non-Commercial WECS is one (1) acre and the maximum tower height on a parcel less than five (5) acres in size is sixty feet (60'). Parcels between five and thirty-five (5-35) acres in size shall have a maximum tower height of one hundred feet (100'). Parcels of thirty-five (35) acres and larger shall have a maximum tower height of one hundred forty feet (140'). Any proposal that will exceed these standards will require an approved Special Permit prior to obtaining County approval.
- 2.** Noise: WECS shall not exceed 40 dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms. Affected property owners may waive the noise provisions of this section by signing a waiver of their rights. The written waiver shall notify the

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property owners of the noise limits in this Section, describe the impact on the property owners, and state that consent is granted for a waiver of the limits in this Section. Any such waiver shall be recorded in the office of the County Clerk. The waiver shall describe the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver shall run with the land and may forever burden the subject property.

3. Shadow Flicker: The Owner and Operator shall make reasonable efforts to minimize shadow flicker to any occupied building on any property abutting the Non-Commercial WECS site. Affected property owners may waive the shadow flicker provisions of this section by signing a waiver of their rights. The written waiver shall notify the property owners of the flicker limits in this Section, describe the impact on the property owners, and state that consent is granted for a waiver of the limits in this Section. Any such waiver shall be recorded in the office of the County Clerk. The waiver shall describe the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver shall run with the land and may forever burden the subject property.
4. Signal Interference: The Applicant shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television or similar signals, and shall mitigate any harm caused by the Non-Commercial WECS.
3. Setbacks: The Non-Commercial WECS shall be setback a distance of one hundred and ten percent (110%) of the combined height of the tower plus the length to the tip of the blade from all adjacent property lines.
4. Clear Zone: The Non-Commercial WECS shall maintain a circular clear zone that has a radius which is equivalent to one hundred and ten percent (110%) of the combined distance of the tower height plus the length to the tip of the blade. This clear zone shall be maintained free of any occupied structure, tanks containing combustible/flammable liquids and above ground utility/electrical lines. The clear zone may be waived if the anchoring system for the structure is certified by a Professional Engineer.
5. Tower Security: Any climbing apparatus must be located at least fifteen feet (15') above the ground, and the Non-Commercial WECS tower must be designed to prevent climbing within the first fifteen feet (15').
6. Lighting: Non-Commercial WECS shall not be artificially lighted with accent lighting. Non-Commercial WECS must be lighted in accordance with the regulations and guidelines of the FAA or appropriate authorities.
7. Signs/Advertising: No Non-Commercial WECS tower shall have any sign, writing or picture that may be construed as advertising.

8. Colors: All Non-Commercial WECS shall be industry standard or other neutral, non-reflective, and unobtrusive color approved by the Board of Commissioners.
9. Multiple WECS: Multiple Non-Commercial WECS are allowed on a single parcel as long as the Owner and/or Operator complies with all Non-Commercial WECS regulations contained herein. Non-Commercial WECS shall be installed in compliance with minimum setbacks and clear zone requirements and the minimum distance between Non-Commercial WECS shall be equivalent to one hundred and ten percent (110%) of the combined height of the tower plus the blade length.
10. Approved Wind Turbines: At the time of application, the Applicant must present a certification from the manufacturer that the Non-Commercial WECS's turbine and other components equal or exceed the standards of one of the following national certification programs such as the: California Energy Commission, National Electrical Code (NEC), American National Standards Institute (ANSI) or other small wind certification program recognized by the American Wind Energy Association.
11. On-site Electrical Use: On the application, the application must certify that the proposed system will be used primarily to reduce on-site consumption of electricity.
12. Compliance with FAA Regulations: Non-Commercial WECS must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
13. Utility Notification: Permit applications for Non-Commercial WECS shall be accompanied by evidence that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
14. Removal of Defective or Abandoned WECS: Any Non-Commercial WECS found to be unsafe by an authorized County official or delegated party shall be repaired by the Owner to meet Federal, State and local safety standards or removed within six (6) months. If any Non-Commercial WECS is not operated for a continuous period of twelve (12) months, the County will notify the Owner by registered mail of the intended removal and provide thirty (30) days for a response. In such a response, the Owner shall set forth reasons for operational difficulty and provide a reasonable timetable for corrective action. If the County deems the timetable for corrective action unreasonable, they must notify the Owner and such Owner shall remove the Non-Commercial WECS within one hundred twenty (120) days of receipt of notice delivered by certified mail.

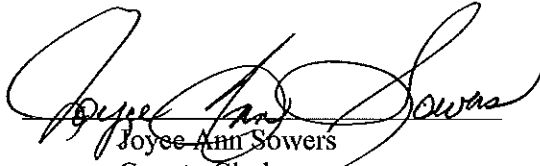
15. Maintaining compliance: All applicable Federal, State and local regulations shall be met and continually maintained for all Non-Commercial WECS.

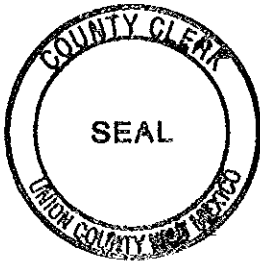
B. A Special Permit must be approved for any Non-Commercial WECS that exceeds the standards defined in Section XVI.A.1. or any other standard listed herein.

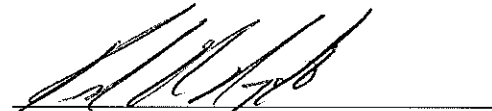
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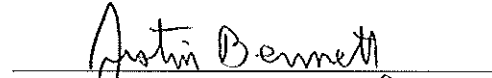
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Union County Energy Siting Ordinance

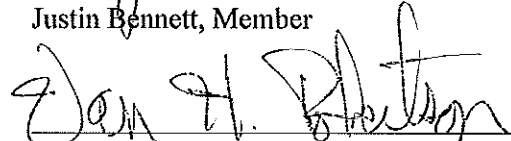
ADOPTED BY THE GOVERNING BODY OF UNION COUNTY ON THE 22<sup>ND</sup> DAY OF  
OCTOBER 2009

  
Joyce Ann Sowers  
County Clerk



  
Richard Arguello, Commission Chair

  
Justin Bennett, Member

  
Van Robertson, Member