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Connie D. Tschetter, Crook County Clerk

CROOK COUNTY
WIND ENERGY FACILITY
RESOLUTION

Approved: June 6, 2012

CROOK COUNTY
WIND ENERGY FACILITY RESOLUTION
State of Wyoming
Adopted: June 6, 2012

I certify that the attached is a true and correct copy of the Crook County Wind Energy Facility Resolution, Crook County, Wyoming adopted pursuant to and in accordance with the authority vested in the Board of County Commissioners of Crook County by the statutes of the State of Wyoming, Sections 18-5-501 through 18-5-513, and Sections 16-3-101 through 16-3-115.

This Wind Energy Facility Resolution is a new resolution.

Prior to adoption this Wind Energy Facility Resolution was made available for public inspection on the 4th day of April 2012. A notice was also published in the Sundance Times, the Moorcroft Leader, and the Wyoming Pioneer at least 45 days before this Resolution was adopted by the Board of County Commissioners.

The attached Wind Energy Facility Resolution is effective immediately upon filing with the Crook County Clerk.

Signed this 6th day of June, 2012.

CROOK COUNTY CLERK

Connie D. Tschetter

Connie D. Tschetter

MY TERM EXPIRES THE FIRST
MONDAY IN JANUA

SEAL

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Please Note: that ***Wyoming Statute 18-5-501 thru 18-5-513 are in bold italicized font* and the County additions are in regular font.

CHAPTER 1
WIND ENERGY FACILITY RESOLUTION

Section 1. Title. This resolution shall be known as the Crook County Wind Energy Facility Resolution.

Section 2. Authority. The Crook County Wind Energy Facility Resolution is authorized by W.S. 18-5-501 thru 18-5-513 enacted by the Sixtieth Legislature of the State of Wyoming, 2010 Budget Session and by W.S. 16-3-101 through 16-3-115.

Section 3. Purpose. This resolution is enacted for the purpose of implementing Crook County Wind Energy Facilities Rules and Regulations, establishing requirements and procedures to regulate and control the design, installation and decommissioning of all wind energy facilities to be constructed and operated within Crook County and to ensure said wind energy facilities are in compliance with all applicable Wyoming Statutes, Crook County Policies and Rules and Regulations.

Section 4. ***Definitions.*** For the purposes of this resolution, the present tense shall include the future tense, the singular member shall include the plural, and the plural member shall include the singular, the masculine shall include the feminine and neuter, unless the context requires otherwise. For the purpose of the Crook County Wind Energy Facilities Resolution the following definitions shall apply:

(a) ***"Industrial siting council" or "council" means the council created by W.S. 35-12-104.***

(b) ***"Wind energy facility" or "facility" means any wind powered electrical generation development consisting of an individual wind turbine or multiple wind turbines rated by the manufacturer to generate more than one-half (0.5) megawatt of electricity and includes all contiguous lands where the owner or developer has rights to erect wind turbines.***

(c) ***"Enlarge" or "enlargement" means adding additional wind turbines which are not permitted as part of an original permitting process.***

(d) ***"Owner" means the surface owner of the land*** as shown in the records of the Crook County Assessor prior to January 1 of the current year and the records of the Crook County Clerk from January 1 to the date of filing of the application.

(e) "Applicant" means the owner or developer of a wind energy facility.

(f) "Certify" means the Applicant swears under oath that they were authorized to do so and have completed the requirement.

(g) "Reasonable efforts have been undertaken to provide notice" means that the applicant has provided notice that substantially complies with W.S. 18-5-503, (a), (i) and (ii); 18-5- 504,(c) and any amendment thereto; with Rules and Regulations of the Industrial Siting Council, Chapter 1, Section 10, (g), (i) and any amendment thereto; and with this resolution by first class mail, or by personal service to the owners of land, record owners of mineral rights , cities, towns, and counties, and also by publication for two consecutive weeks in each newspaper of general circulation published within Crook County.

(h) "Financial assurances" means as set forth in the Rules and Regulations promulgated by the Industrial Siting Council of the Wyoming Department of Environmental Quality.

(i) "Residential dwelling" means any structure that is assessed by the County Assessor as a residential structure as of January 1 of each year and/or a rural address has been assigned by the local governmental entity.

(j) "Occupied structure" is defined as a structure whether or not a person is actually present where any person lives or carries on business or another calling, where people assemble for business, government, education, religion, entertainment or public transportation; which is used for overnight accommodations; or in which persons may reasonably be expected to be present.

(k) "Maximum height of the tower" means the distance from the top of the foundation to the highest point of any portion of a wind energy facility, including the tip of any blade.

(l) "Record owners and claimants of mineral rights located on and under lands where the wind energy facility will be constructed" means those persons or entities that have any interest in the fee, leasehold, or mining claim interest in the mineral estate located on and under lands where the wind energy facility will be permitted.

(m) "Waiver" means a binding recordable document that relinquishes a legal right or a right granted by these rules. Any waiver set forth in these rules shall terminate when the permit granted expires, is revoked or the facility is decommissioned and any Wavier document shall so indicate.

(n) Other words used in these rules and regulations shall be defined as set forth in Title 35 and 18 of the Wyoming Statutes and as set forth in the Rules and Regulations promulgated by the Industrial Siting Council of the Wyoming Department of Environmental Quality.

Section 5. Permit Requirement.

(a) Permit. Pursuant to Wyoming Statute 18-5-502 ***it is unlawful to locate, erect, construct, reconstruct or enlarge a wind energy facility without first obtaining a permit from the board of county commissioners in the county in which the facility is located.***

(b) Multiple County Permits. ***If a wind energy facility is to be located in two (2) or more counties, a permit shall be obtained in each county in which the wind energy facility is to be located.***

(c) Permit Exceptions. ***No wind energy facility constructed or being constructed prior to July 1, 2010 shall be required to have the permit required by this section. No wind energy facility for which an application for a permit has been made to the industrial siting council, or that has received findings of fact, conclusions of law and an order from the industrial siting council, prior to July 1, 2010 shall be required to have the permit required by this section.***

(d) Permit for Enlargement. ***Any wind energy facility which is not required to have a permit pursuant to subsection (c) of this section shall be required to obtain a permit for any enlargement of the facility after July 1, 2010.***

Section 6. ***Application*** for Permit.

(a) ***To obtain the permit required by W.S. 18-5-502,*** and these rules ***the*** Applicant ***of a wind energy facility shall submit an application to the board of county commissioners. The application shall:***

(i) Written Notice. ***Certify that reasonable efforts have been undertaken to:***

(A) ***Provide notice in writing*** by first class mail ***to:***

(I) ***All owners of land within one (1) mile of the proposed wind energy facility;***

(II) ***To all cities and towns located within*** Crook County;

(III) To any other Wyoming cities, towns and Counties within ***twenty (20) miles of the wind energy facility;*** and

(IV) To all record owners and claimants of mineral rights located on and under lands where the wind energy facility will be constructed as required by the Industrial Siting Rules and Regulations authorized by W.S. 18-5-504 (c).

(B) The ***Notice shall include:***

(I) ***A general description of the project including its location, projected number of turbines and the likely routes of ingress and egress;*** and

(II) ***The notice shall include a brief summary of the wind energy facility, invite the public to submit comments and identify the*** location, ***time and date of the hearing.***

(C) ***Certify that notice of the proposed wind energy facility will be published*** for two consecutive weeks ***in*** each ***newspaper of general circulation*** published within Crook County and ***in all counties in which the facility will be located at least twenty (20) days prior to the public hearing required by*** Section 9 and ***W.S. 18-5-506.***

(ii) Standards Required. ***Certify that the proposed wind energy facility will comply with all the standards required by W.S. 18-5-504,*** these rules and regulations and any other county rule and regulation or policy.

(iii) Land Use Regulations. ***Certify that the proposed wind energy facility will comply with all applicable zoning and county land use regulations, which regulations shall be no less stringent than the standards required by*** W.S. 18-5-501 Et Seq.;

(iv) Emergency Management Plan. ***Certify that a written emergency management plan has been submitted for review and comment to the county fire warden, county emergency management coordinator and the county sheriff. If the permit is granted, the plan shall be supplemented and revised following construction of the facility and prior to its operation if there are any variations in the facility's construction which would materially impact the original emergency management plan.***

(v) Waste Management Plan. ***Provide a waste management plan that includes an inventory of estimated solid wastes and a proposed disposal program for the construction, operation and eventual decommissioning of the proposed wind energy facility*** together with the planned financial assurances necessary to insure the decommissioning.

(vi) Legal Access. ***Provide evidence sufficient for the board of county commissioners to determine if the proposed wind energy facility has adequate legal access. The application also shall describe how private roadways within the facility will be marked as private roadways and shall acknowledge that no county is required to repair, maintain or accept any dedication of the private roadways to the public use. The application also shall include a traffic study of any public roadways leading to and away from the proposed facility and the board of county commissioners***

may require the applicant to enter into a reasonable road use agreement for the use of county roads prior to construction of the facility.

(vii) Project Plan. ***Provide a project plan indicating the proposed roadways, tower locations, substation locations, transmission, collector and gathering lines and other ancillary facility components. If the application is granted, the board of county commissioners shall require that the project plan be revised to show the final location of all facilities.***

(viii) No Advertising. ***Certify that there shall be no advertising or promotional lettering on any tower, turbine, nacelle or blade beyond the manufacturer's or the applicant's logo on the nacelle of the turbine*** and the facilities components shall be made up of natural colors to blend into the surrounding environment, unless state or federal agencies governing markings on wind towers for safety determine otherwise.

(ix) Facility Reclamation and Decommissioning Plan. ***Provide a site and facility reclamation and decommissioning plan which indicates the planned life of the wind energy facility and the means by which the facility and its site will be decommissioned and reclaimed at the end of the facility's life,*** together with the planned financial assurances necessary to insure the decommissioning, ***and which certifies that any owner of land within the wind energy facility and its site who is not the applicant has been consulted in development of the reclamation and decommissioning plan. Such plan shall comply with all requirements adopted by the industrial siting council under W.S. 35-12-105(d). If the permit is granted, the plan shall be updated every five (5) years until site reclamation and decommissioning is complete.*** If state law or rule and regulation preempts county rules and regulation, then the Applicant shall only be required to file a copy of the plan approved by the State with the County.

(x) Facility Assurances. Provide satisfactory evidence that the applicant has the financial capability to construct, maintain and operate the facility.

(xi) Adverse Effects. ***For wind energy facilities not meeting the definition of a facility as defined in W.S. 35-12-102(a)(vii),*** (30 or more wind turbines) ***provide a detailed summary of any significant adverse environmental, social or economic effects that the proposed wind energy facility may have together with any preliminary plans developed to alleviate any of the adverse effects.***

(b) ***A wind energy facility subject to*** W.S. 18-5-501 et. Seq. and these rules and regulations ***shall meet the requirements adopted pursuant to W.S. 35-12-105(d) and (e) regardless of whether the facility is referred to the industrial siting council pursuant to W.S. 18-5-509 or is otherwise subject to the industrial siting act.***

Section 7. **Minimum Standards** for Issuance of a Permit.

(a) ***No board of county commissioners shall issue a permit for a wind energy facility if that facility:***

(i) Adopted Standards. ***Does not comply with standards properly adopted by the board of county commissioners for the construction of wind energy facilities, which standards shall not be less stringent than the standards required by*** Wyoming Statute 18-5-501 thru 18-5-513.

(ii) Property Line. ***Would locate the base of any tower at a distance of less than one hundred ten percent (110%) of the maximum height of the tower from any property line contiguous or adjacent to the facility, unless waived in writing by the owner of every property which would be located closer than the minimum distance.***

(iii) Public Road. ***Would locate the base of any tower at a distance of less than one hundred ten percent (110%) of the maximum height of the tower from the public road right-of-way.***

(iv) Platted Subdivision. ***Would construct any tower or other structure, other than underground structures, transmission lines, roadways and structures appurtenant to roadways, at a distance of less than five and one-half (5.5) times the maximum height of the tower, but in no event less than one thousand (1,000) feet from any platted subdivision unless this restriction is waived in writing by the owners of all lands included within the distance specified in this paragraph*** and all owners of land within the remainder of the subdivision.

(v) Residential Dwelling or Occupied Structure. ***Would locate the base of any tower at a distance of less than five and one-half (5.5) times the maximum height of the tower, but in no event less than*** one mile ***from a residential dwelling or occupied structure,*** when the shadow, flicker, or reflection from the turning blades will strike the residential dwelling or occupied structure (based upon orientation or line of sight) ***unless waived in writing by the person holding title to the residential dwelling or occupied structure.***

(vi) City and Towns. ***Would locate the base of any tower at a distance of less than one-half (1/2) mile from the limits of any city or town;***

(vii) Public Property. Would damage any public property or improvement including but not limited to roads, fences, cattleguards, and bridges without paying up front for the damage.

(viii) Noise. Would exceed 40 decibels as measured from the closest residential dwelling, occupied structure, or from any property line contiguous or adjacent to the facility, whichever is closer to the tower unless waived in writing in a binding recorded document by every owner of the adjoining property.

(ix) Reflection. Would cause a shadow, flicker, or reflection from the turning blades to strike a residential dwelling or occupied structure (based upon orientation or line of sight) within one (1) mile of a residential dwelling or occupied structure unless waived in writing by all of the owners of the dwelling or structure.

(x) Decommissioning. Would not have a decommissioning bond or other financial assurances that will insure that the entire facility would be removed upon a tower no longer being used to generate electricity.

(xi) Safety. Would harm the health, safety and welfare of the citizens of Crook County.

(b) No board of county commissioners shall issue a permit for a wind energy facility if the Applicant:

(i) Fee. Has not deposited along with the Application for a permit the fees required by these rules with Crook County Growth & Development.

(ii) Rules. Has not complied with these or any other County policy, rules and regulations, and any other State laws or state Industrial Siting rules and regulations.

(c) Minimum Standards. ***No rule, regulation or law promulgated or applied by any county in this state shall adopt a standard less stringent than the minimum standards established in*** W.S. 18-5-504 (a) and (b). ***The minimum standards stated in subsection (a)*** and (b) ***of this section shall be incorporated into every existing or future county permitting or licensing process to which they are applicable so that no applicant for a permit under this article is required to submit more than one (1) application addressing these standards to any county.***

(d) Mineral Rights. ***No board of county commissioners shall issue a permit under W.S. 18-5-502(a) until that county has adopted rules and regulations governing the notice that the application for a permit must provide to the record owners and claimants of mineral rights located on and under lands where the wind energy facility will be constructed. The rules shall conform to rules adopted by the industrial siting council for the same purpose pursuant to W.S. 35-12-105.***

Section 8. Review of Application.

(a) Review. ***Upon receipt of an application*** by Crook County Growth & Development ***the board of county commissioners shall conduct a review of the application to determine if it contains all the information required by W.S. 18-5-503***, these rules and regulations, ***and any*** other ***applicable rules and regulations***

which can be acquired from the Crook County Clerk and Wyoming Secretary of State including but not limited to:

(i) County:

(A) 1998 Land Use Plan Amended February 5, 2003;

(B) Resolution No. 9-2004 Crook County Small Wastewater Treatment Facility Installation Rules and Regulations;

(C) Crook County Rural Addressing Rules and Regulations Amended May 6, 2009;

(D) Agreement for Installation for of Cattleguards;

(E) Policy on the Redevelopment of County Roads;

(F) Rules and Regulations Construction of Access Driveways and Turnouts to Crook County Roadways Amended January 7, 2009;

(G) Private Water Line License;

(H) Utility License Upon County Road;

(I) Resolution No. 12-2007 Setting Size and Weight Limits on County Roads in Crook County, Wyoming;

(J) Policy on Set Backs from County Road Right of Ways;

(K) Snow Removal and Sanding Policy;

(L) Any amendments and modifications to these rules and policies or other rules and regulation adopted by the County.

(ii) State:

(A) The Industrial Siting Rules and Regulations, Chapter 1;

(B) Any amendments and modifications to these rules and policies or other rules and regulation adopted by the State.

(b) Notice of Deficiencies. ***If the board of county commissioners determines that the application is incomplete, it shall*** at a regular meeting or special meeting as soon as practicable ***within thirty (30) days of receipt of the application notify the applicant of the specific deficiencies in the application.***

(c) Request for Additional Information. ***The applicant shall provide the additional information necessary within thirty (30) days of receipt of a request for additional information from the board.***

(d) Notice of Hearing. ***When the board of county commissioners determines that the application is complete it shall notify the applicant that the application is complete and*** the Applicant ***shall provide notice of the*** location, ***date and time at which the hearing required by W.S. 18-5-506 will be conducted.***

Section 9. ***Hearing and Public Comment.***

(a) Public Hearing. ***Any board of county commissioners receiving an application to permit a wind energy facility shall hold a public hearing to consider public comment on the application no less than forty-five (45) days and not more than sixty (60) days after determining that the application is complete.***

(b) Written Comments. ***Written comment on the application shall be accepted by the board of county commissioners for not less than forty-five (45) days after determining that the application is complete.***

(c) Oral Comments. All oral comments on the application shall be accepted by the board of county commissioners no later than the public hearing.

(d) Type of Hearing. The hearing is a legislative type hearing and not a contested case hearing.

Section 10. ***Decision of the Board;*** and Required Findings.

(a) Permit Granted. ***Within forty-five (45) days from the date of completion of the hearing required by*** Section 9 and ***W.S. 18-5-506, the board shall make complete findings, issue an opinion, render a decision upon the record either granting or denying the application and state whether or not the applicant has met the standards required by*** W.S. 18-5-501 et. Seq. and these rules and regulations. ***The decision shall be subject to the remedies provided in W.S. 18-5-508. The board shall grant a permit if it determines that the proposed wind energy facility complies with all standards properly adopted by the board of county commissioners and the standards required by*** W.S. 18-5-501 et. Seq.

(b) No Permit Granted. ***No permit shall be granted if the application is incomplete or if all notices required by W.S. 18-5-503 have not been timely given.***

(c) Notice of Decision. ***A copy of the decision shall be served upon the applicant.***

Section 11. ***Remedies.***

(a) Contested Case. If the permit is granted or denied in whole or part the applicant may request a contested case hearing pursuant to the Administrative Procedures Act within thirty (30) days of the mailing date of the final order from the County Clerk's office.

(b) Final Decision. ***When a decision is issued after*** the contested case hearing ***on an application for a permit under this article, the decision is final for purposes of judicial review.***

(c) Appeal. ***Any party aggrieved by the final decision of the board of county commissioners may have the decision reviewed by the district court pursuant*** to W.S. 16-3-115 and ***Rule 12 of the Wyoming Rules of Appellate Procedure.***

Section 12. ***Referral.***

(a) Cause for Referral. ***Any board of county commissioners which receives an application to permit a wind energy facility which does not meet the definition of a facility as defined in W.S. 35-12-102(a)(vii) may refer the facility to the industrial siting council for additional permitting consistent with the requirements of the Industrial Development Information and Siting Act, W.S. 35-12-101 through 35-12-119, but the provisions of W.S. 39-15-111 and 39-16-111 shall not apply. A referral shall be made only when a board of county commissioners finds there are potentially significant adverse environmental, social or economic issues which the county board of commissioners does not have the expertise to consider or authority to address.*** If Crook County lacks the expertise to consider the adverse environmental and economic issues involved, determination of the adequacy of decommissioning and site reclamation plans and of the adequacy of the financial assurances therefore required by or referenced by WS 35-12-105, (d) and (e); 18-5-503, (a) (x), and (b); and Chapter 1, Section 2, (o), Section 10, (d) and (e), Rules and Regulations of the Industrial Siting Council. All decommissioning plan and financial assurance matters maybe referred to the Industrial Siting Council pursuant to WS 18-5- 509 or may be determined by the Board of County Commissioners after consultation with the Industrial Siting Council, their staff or other sources.

(b) Waiver of Permit. ***Any facility referred to the industrial siting council under this section may apply to the council for a waiver of permit application pursuant to W.S. 35-12-107.***

(c) Rejection. ***Upon receiving a referral pursuant to this section and within fifteen (15) days after receipt of the referral, the director of the department of environmental quality may reject the referral by giving written notice of the rejection to the county making the referral and the applicant. No appeal from the decision of the director under this subsection shall be allowed.***

(d) Commissioners Obligation. ***A referral made pursuant to this section shall not relieve a board of county commissioners from its obligation to consider whether the proposed wind energy facility should be permitted under the standards required by this article.***

(e) Time Requirement. ***A referral made pursuant to this section shall be made no later than thirty (30) days after an application is deemed complete pursuant to W.S. 18-5-505.***

Section 13. ***Binding Effect*** of Referral. ***Upon referral of a facility to the industrial siting council pursuant to W.S. 18-5-509, the facility shall not be withdrawn from the council's consideration without consent of the council. Any decision by the council shall be final except as provided in this article or pursuant to the remedies provided to other facilities permitted by the council.***

Section 14. ***Revocation or Suspension of Permit.***

(a) ***A permit may be revoked or suspended for*** any one of the following reasons:

(i) False Statement. ***Any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the refusal to grant a permit;***

(ii) Failure to Comply. ***Failure to comply with the terms or conditions of the permit after notice of the failure and reasonable opportunity to correct the failure;***

(iii) Violation. ***Violation of this article, the rules and regulations adopted pursuant to this article or valid orders of the board of county commissioners or the industrial siting council;***

(iv) Failure to Receive Required Permit. ***Failure of the proposed wind energy facility to receive a required permit from the industrial siting council pursuant to the Industrial Development Information and Siting Act, W.S. 35-12-101 through 35-12-119; or***

(v) ***Failure of the permitted wind energy facility to:***

(A) ***Transmit electricity created by wind energy for a period of two (2) consecutive years or more;***

(B) ***Maintain land rights necessary to operate the wind energy facility.***

Section 15. ***Penalties for Violations.***

(a) Pursuant to Wyoming Statute 18-5-512 ***No person shall:***

(i) ***Commence to construct a wind energy facility on or after July 1, 2010 without first obtaining a permit required by this article;***

(ii) ***Construct, reconstruct, operate, locate, erect, maintain, enlarge, change or use a wind energy facility, after having first obtained a permit, other than in specific compliance with the permit; or***

(iii) ***Cause any of the acts specified in this subsection to occur.***

(b) ***Any person violating subsection (a) of this section is liable for a civil penalty of not more than ten thousand dollars ($10,000.00) for each violation. Each day of a continuing violation constitutes a separate offense.***

(c) ***Any wind turbine tower or wind generator erected in violation of this article shall subject the owner of the tower or generator to a penalty of seven hundred fifty dollars ($750.00) per day for every tower or generator so erected.***

(d) ***Any penalties collected pursuant to this section shall be paid and credited as provided by WS. 8-1-109.***

Section 16. ***Fees.***

(a) Processing Fee. ***A board of county commissioners which receives an application under this article for the permitting of a wind energy facility may charge the applicant a reasonable fee which shall not exceed the reasonably anticipated costs of processing and considering the application and conducting public hearings.***

(b) Building Permit Fee. ***The board of county commissioners also may collect a reasonable building permit fee prior to commencement of construction which shall not exceed the reasonably anticipated administrative costs of issuing the building permit and overseeing compliance with permit conditions and requirements.***

(c) Application Fee. The Applicant shall pay the county an application fee of $2,000.00 per wind turbine at the same time the application for the permit is filed, which shall be deposited in the general fund of the county.

Section 17. Forms. The Board of County Commissioners may from time to time without notice create and adopt Forms that the Applicant shall be required to use.

Section 18. Effective Date and Approval. This Crook County Wind Energy Facility Resolution shall become effective on the date it is filed in the office of the Crook County Clerk.

APPROVAL

Approved and adopted this 6th day of June, 2012.

BOARD OF COUNTY COMMISSIONERS OF CROOK COUNTY

J.W. Hadley, Chairman

Kelly B. Dennis, Vice-Chairman

Jeanne A. Whalen, Member

Duly filed in the Office of the Crook County Clerk this 6th day of June, 2012.

Connie D. Tschetter, Crook County Clerk

(Seal)

MY TERM EXPIRES THE FIRST MONDAY IN JANUARY 2015

State of Wyoming)
:ss.
County of Crook)

This instrument was acknowledged before me on June 6, 2012 by J.W. Hadley, Chairman, Kelly B. Dennis, Vice-Chairman and Jeanne A. Whalen, Member as Board of Crook County Commissioners.

Connie D. Tschetter, Crook County Clerk

(Seal)

MY TERM EXPIRES THE FIRST MONDAY IN JANUARY 2015

My commission expires: _____