

## **4.11 WIND ENERGY FACILITY ORDINANCE**

### **DEFINITIONS**

**Abandonment** - will mean to give up, discontinue, and withdraw from any wind energy facility or system that ceases to produce energy on a continuous basis for 12 months. Any facility or system that ceases to produce energy on a continuous basis for 12 months will be considered abandoned.

**Alternate Energy** - will mean any energy generated or produced from solar or wind.

**Alternate Energy Construction Permit (AECP)** - Permit needed for construction.

**Arc second** - A unit of measurement when finding the exact point of Latitude and Longitude.

**Decibel** - A unit of sound measurement, abbreviated db. dBA is a frequency weighting that relates to the response of the human ear. The weighted sound pressure level using the A metering characteristic and weighting specified in American National Standards Institute (ANSI) specification of Sound Level Meters.

**Electric Line** - A set of conductors used to transmit and/or distribute electrical energy within the wind energy facility or with outside transmission lines.

**Gate** - a door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier as a part of the fence to which it is attached.

**Height (of turbine)** - The vertical distance from the construction grade of the property to the highest point of a turbine rotor blade when in the upright position.

**MET Tower** - Temporary or permanent meteorological towers used for the measurement of wind speed.

**Non-Participating Property** - A parcel of real estate that is not a participating parcel.

**Occupied Structure** - A building in which people live, work or frequent.

**Participating Property** - A parcel of real estate on which a participation agreement or contract has been executed.

**Permittee (Wind Energy Facility)** - An individual, group of individuals, corporations, partnerships, joint venture, owners, or any other business entity, or combination thereof, that leases or owns the wind rights, wind turbines and the associated improvements, and

all subsequent assignees and/or transferees of these rights, and that submits a Wind Energy Facility application, develops the wind energy facility and subsequently operates such facility.

**Public** - will mean belonging to or open to, enjoyed and used by and/or maintained for the public generally, but not limited to, a facility the control of which is wholly or partially exercised by some government agencies.

**Public Road** - will mean any road, highway or section line which is now or hereafter designated and maintained by Benson County, or organized townships, as part of the county or township road system, whether primary or secondary, hard-surfaced, or other dependable road. Setbacks will be measured from the road right-of-way.

**Recreation** - areas designated for the refreshment of body and mind through forms of play, amusement, or relaxation. The recreational experience may be active, such as boating, fishing, swimming, hunting or hiking, or be passive, such as enjoying the natural beauty of the shoreline or area wildlife.

**Residence** - will mean a building used as a dwelling for one or more families or persons.

**Residential Area** - will mean an area zoned for residential use.

**Rotor Diameter** - The diameter of the circle formed by the swept area of the wind turbine blades.

**Shooting Range** - Is defined as an area, for the discharge of weapons for sport under controlled conditions where the object of the shootings is an inanimate object such as, but not limited to paper, metal, or wooden targets.

**Site Plan** - A detailed plan for making improvements to parcel(s) of land for the purpose of building and development as provided in this ordinance.

**Total Height**- When referring to wind turbine, the distance measured from the ground level to the blade extended at its highest point.

**Variance** - A relaxation of the terms of these regulations where such variance will not be to the contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, the literal enforcement of these regulations would result in unnecessary and undue hardship.

**Waterfowl Rest Area** - Those areas declared by proclamation of the Governor of North Dakota to be "Waterfowl Rest Areas" as of the date of an application for a Conditional Use Permit for a wind energy facility.

**Wildlife Management Area** - An established area set forth by a state or federal agency for the protection of wildlife.

**Wind Energy Facility** - A facility directly generating electricity or indirectly generating electricity of energy through production of hydrogen, compressed air, or other energy carrier from conversion of wind to energy and consisting of one or more wind turbines under common ownership or operating control, and includes substations, permanent MET towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity directly, or through wind energy conversion to another form of energy, to off-site customer(s).

**Wind Turbine** - A wind energy conversion system which converts wind energy into electricity, hydrogen, compressed air, or some other energy carrier and includes the turbine, bases, tower, base and pad transformer, if any, provided that such a system shall only be a wind turbine for the purposes of section 1.11, if it has a nameplate capacity of 50 kilowatts or greater.

#### **4.11.1 PURPOSE**

The purpose of this provision is to provide a regulatory framework for the siting, construction and operation of Wind Energy Facilities in Benson County, subject to reasonable restrictions, which will preserve the safety and well-being of the residents, while allowing equitable and orderly development of Wind Energy Facilities.

#### **4.11.2 REGULATORY FRAMEWORK**

##### 1. Zoning

Wind energy facilities constructed within Benson County are subject to the restrictions and conditions of this ordinance.

##### 2. Principal of Accessory Use

A different existing use or an existing structure on the same parcel will not preclude the installation of a wind energy facility or a part of such a facility or parcel. Wind energy facilities that are constructed and installed in accordance with the provisions of this code shall not be deemed to constitute expansion of a non-conforming use or structure.

##### 3. Applicability

The requirements of this code shall apply to all wind energy facilities with one or more wind turbines rated at fifty (50) kilowatts nameplate capacity, or larger, constructed after the effective date of this code. No operation of an existing wind facility will be allowed without full compliance with this code and an approved conditional Use Permit, and no additions or expansions of an existing wind facility will be allowed without issuance of a new Conditional Use Permit application pursuant to Section 1.11.3. Agricultural applications are exempt from this ordinance if rated less than fifty (50) Kilowatts. Modifications or alterations to the turbine locations set forth in the final site plan approved when issuing the Alternate Energy Construction Permit may be completed through a Change Order, which if approved, will allow movement of a tower by one arc second of latitude and longitude. Setbacks still apply. Modifications or alterations to the turbine

locations set forth in the final site plan approved when issuing the Alternate Energy Construction Permit of more than one arc second will require an amendment, and approval by the Planning and Zoning Board, to the Alternate Energy Construction Permit for the turbine location(s) affected.

#### 4. Archaeology Resource Surveys

Unless the project is under the purview of the North Dakota Public Service Commission (PSC), and an Archaeological Resource Survey is being prepared as a part of that process, the applicant will work with the State Historic Preservation Office (SHPO) at the State Historical Society of North Dakota at the beginning of the planning process for the wind energy facility to determine whether an archaeological survey is recommended for any part of the proposed project.

If recommended, the applicant will contact a qualified archaeologist to complete such surveys and shall submit the results to the Planning and Zoning Board and the SHPO. The SHPO will make recommendations for the treatment of any significant archaeological sites which are identified. Any issues in the implementation of these recommendations will be resolved by the County Commissioners in consultation with SHPO. All information provided/submitted under this provision is subject to North Dakota Century Code 55-02-07.1. In addition, if any archaeological sites or human remains are found during construction, the applicant shall follow standard operating procedures as established by the SHPO and in accordance with the NDCC Section 23-06-27 and associated North Dakota Administrative Code 40-02-03.

#### **4.11.3 FEES**

The Wind Energy Facility Fee will be One-thousand Dollars (\$1,000.00) per megawatt and prorated accordingly. The appropriate Fee amount of seventy-five (75) percent (non-refundable) of the total project amount must accompany the Conditional Use Permit. The remaining twenty-five (25) percent will be due and payable upon approval of the Alternate Energy Construction Permit. The fee payment must be payable to Benson County.

#### **4.11.4 WIND ENERGY FACILITY**

##### 1. Conditional Use Permit

The Planning and Zoning Board must receive the following items prior to approval of a Conditional Use Permit: The applicant must submit a payment of seventy-five percent (75%) (non-refundable) of the total project amount with the Conditional Use Permit application. The remaining twenty-five percent (25%) will be due and payable upon approval of the Alternative Energy Construction Permit and prior to construction beginning.

## 2. Conditional Use Permit Application Requirements

### A. Twelve (12) copies of a Map (to scale) showing:

1. A USGS Topographical Map (to scale) of the wind energy facility and all adjoining properties along the wind energy facility perimeter and internal boundaries, which show all existing features, including property boundaries, structures, improvements, roads, utility lines, restricted areas, public facilities, and natural features.
2. The detailed map (to scale) must also show the location of all proposed improvements for the wind energy facility, including wind turbines, MET towers, electrical lines (both buried and above-ground) and roads. All wind turbines must have associated Global Positioning System (GPS) positions identified.
3. Locations of recreational properties, game and fish wetlands and conservation lands and all PLOTS lands within or adjacent to the wind energy facility internal boundaries and external perimeter.
4. Ingress and egress routes from the site as proposed during construction and operations thereafter indicating:
  - a. Locations of all roadways
  - b. Widths and lengths of roadways
  - c. Proposed roadway surface and cover

### B. Twelve (12) copies of:

1. Name of wind energy facility.
2. Name and address of wind energy facility owner.
3. Name and address of wind energy facility current operator.
4. Legal description(s) of the wind energy facility (all properties located within the wind energy facility perimeter).
5. Name, dimensions and location of any parks, public land, historic resources, churches, multi-use trails, or areas of recreational significance, as available from public documents, within two thousand six-hundred and forty (2,640) feet of all proposed wind turbine locations.
6. Names of property owners, identified as participating or non-participating, within 2.5 times rotor diameter distance of proposed turbine locations.
7. All affected public or private airstrips with their FAA Identification Number.

### C. Twelve (12) copies of the following must also be provided:

1. **Product Description:** A description of the proposed technology to include the type of generator, rotor diameters, model numbers, height and support systems to include manufacturers numbers and identifications. Measurement in feet from all property lines and from any existing improvements must be presented for each proposed wind turbine.
2. **Owner Agreement(s):** A notarized affidavit as evidence of an agreement between the property owner and the facility's owner or operator confirming the owner or operator has permission of the property owner to apply for the necessary permits for

construction and operation of the wind energy facility and the removal of vegetation, if necessary.

3. **Documents to Provide Proof of Easement with Adjacent Property and Easement Owners:** Evidence of covenants, easements or similar documentation with abutting property owners to allow the crossing of their property with any part of the wind energy facility infrastructure, to include but not limited to, output and utility lines.
4. **Airport Notification Proof:** Proof of delivery to Benson County Airport Authority, of location of each tower plus tower and blade tip heights. A Letter of Approval from the Benson County Airport Authority (or from the respective airport authorities in the County) is required.
5. **Environmental Impact Documentation:** The applicant will have a third party, who is a qualified professional, conduct an analysis to identify and assess any potential impacts on the natural environment including wetlands and other fragile ecosystems, historical or cultural sites, antiquities, and adjacent agricultural uses such as rotating crops. The applicant will respond appropriately to minimize, eliminate or mitigate adverse impacts identified in the analysis. The applicant will identify and evaluate the significance of any effects or concerns that will remain after mitigation efforts. In addition, a water usage or impact study must be completed that will indicate any impact that the wind energy facility will have on township resources.
6. **Avian and Wildlife Impact documentation:** The applicant will have a third party, who is a qualified professional, conduct an analysis to identify and assess any potential impacts on wildlife and endangered species. The applicant will respond appropriately to minimize, eliminate or mitigate adverse impacts identified in the analysis. The applicant will identify and evaluate the significance of any net effects or concerns that will remain after mitigation efforts, to include effects on pollinators.
7. **Operation and Maintenance Plan:** A plan for the operation and maintenance of the wind energy facility, which will include measures for maintaining safe access to the installation, as well as general procedures of operational maintenance of the wind energy facility.
8. **Emergency Plan:** The applicant or owner/operator of the wind energy facility will cooperate with local emergency management in developing an Emergency Response Plan and/or Emergency Operation Plan must be submitted with the application. A means of shutting down the wind energy facility must be clearly identified. The current owner/operator will identify a responsible person for public inquiries throughout the life of the wind energy facility. An information sign must be posted and maintained at all entrance(s), which lists the name(s) and phone number(s) of the current owner/operator.
9. **Complete Decommissioning Plan:** The decommissioning Plan must contain the following information that provides for the removal and reclamation of the facility or site(s) within nine (9) months:
  - a. All wind towers and components, aboveground improvements and outside storage.
  - b. All foundations, pads, and underground electric wires removed to a depth of four feet.
  - c. Restoring the site to its original, pre-construction, condition.

- d. Hazardous material(s) from the property must be disposed of in accordance with Federal, State and Local Laws.
  - e. A Reclamation Plan for the site.
  - f. On-site buildings may remain if a notarized Bill of Sale is provided to the Planning & Zoning Board from the landowner, showing a change in ownership.
10. **Shadow Flicker Analysis:** A shadow flicker analysis, assuming typical meteorological conditions, will be submitted for all occupied residences of non-participants within one (1) mile of a wind turbine. The maximum acceptable level of shadow flicker exposure for homes in this study will be 30 hours per year. The applicant will provide commercially reasonable efforts to remedy shadow flicker complaints from any non-participating owners of an occupied residence with a window view of a wind turbine on a case-by-case basis by undertaking measures such as trees or vegetation plantings, awning installations or providing light-blocking curtains or shades.
11. **Road Use Agreement:** The applicant, permittee or current owner and the county, will enter into a road use agreement governing the use, improvement, maintenance and repair of county, township, and public roads to be used by the applicant, permittee, or current owner. The road use agreement will require the applicant, permittee, or current owner to provide the county with a letter of credit, bond, or other form of financial security for road repair in the event repairs are not completed by the applicant, permittee, or current owner per the terms of the agreement.
12. **Storm Water Pollution Prevention Plan (SWPPP):** Watershed Assessment Plan for drainage disposal and erosion control approved by the Benson County Soil Conservation District Office, all costs of which will be incurred by the applicant.

### 3. General Requirements for Wind Energy Facilities

1. Wind turbines must be painted a non-reflective, non-obtrusive color.
2. Wind turbines will not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.
3. **Each wind turbine will be marked with a visible identification** number to assist with the provision of emergency services, and the applicant, permittee or current owner will file with the local fire departments, law enforcement, emergency medical services and the County Emergency Management a wind energy facility map, (to scale), identifying all wind turbine and facility locations and numbers.
4. Wind turbines will not be artificially lit, except to the extent required by FAA or other applicable authority and the current law.
5. At all wind energy sites, the design of the buildings and related structures will, to the extent reasonably possible, use materials, colors, textures and locations that will blend with the wind energy facility into the natural setting and existing environment.
6. At all wind energy facility sites, the location and construction of access roads and other infrastructure will, to the extent reasonably possible, minimize disruption of rangeland, agricultural land, the landscape and agricultural operations within Benson County. All access roads will be low-profile roads within slopes and backslopes of 5:1 or flatter so that farming equipment can cross them if needed. Prior to construction, the applicant

or current owner, will make satisfactory arrangements (including obtaining permits) for road use, access road intersections, approach construction, maintenance and repair of damages with governmental jurisdiction with authority over each road. If the applicant wishes to build an access road on a section line, in accordance with North Dakota Century Code (NDCC) Section 24-07-05, the applicant shall first petition the Township Board or the County Commissioners (for unorganized townships). If the petition is granted, the applicant must build the road to township or county standards under the supervision of the township or county road foreman or supervisor, whom the applicant or current owner must notify for each road request.

7. The permittee, applicant, or current owner, will promptly replace or repair all fences or gates removed or damaged during all phases of the wind energy facilities construction and/or life, unless otherwise negotiated with the affected landowner. When the permittee, applicant or current owner installs a gate where electric fence is present, the permittee, applicant or current owner will provide for continuity in the electric fence circuit.
8. The applicant, permittee or current owner will place all electric lines and communications cables underground to a four-foot depth. All county roads must be bored and cased, as defined in the Benson County Utility Permit Application.
9. The applicant, permittee or current owner will only place overhead electric lines on public right-of-way if approval or the required permits have been obtained from the governmental jurisdiction responsible for the affected right-of-way. When placing electric lines on private property, the applicant, permittee, or current owner, will place the electric lines in accordance with the easement negotiated with the affected landowner(s). All underground electric lines must be placed at a depth of at least four (4) feet.
10. The applicant, permittee or current owner will be responsible for compliance with all federal, state, and local laws applicable to the generation, storage, transportation, clean-up, and disposal of any hazardous wastes generated during any phase of the wind energy facilities life. The applicant, permittee or current owner shall remove all waste and scrap that is the product of construction, operations, restoration and maintenance from the facility and properly dispose of it upon completion of each task. Personal litter, bottles, and paper products deposited by facility personnel shall be removed daily. The use of chemicals on or in the wind energy facility is limited to those herbicides and methods approved by the North Dakota Department of Agriculture and the North Dakota Department of Health. The applicant, permittee or current owner must contact the affected landowners prior to application.
11. All noxious weeds must be controlled as per the Benson County Weed Board requirements.
12. The applicant, permittee or current owner will pay for any documented damage caused by ice thrown from a turbine.
13. Setbacks-

Occupied Structures and Facilities: Each wind turbine will be set back from the nearest occupied dwelling, commercial building or publicly used facility at a distance not less than two thousand six hundred forty (2,640) feet. Setbacks will be measured as the horizontal distance between the Monopole of the turbine and any object.

A Variance may be granted if an authorized representative or agent of the applicant, permittee or current owner and those affected parties on adjoining properties with associated wind rights sign a formal, notarized and legally binding agreement expressing all parties support for a Variance that waives or reduces the setback requirements.

Public Roads and Above Ground Communications and Electric Lines: Each wind turbine will be set back from the nearest public road or above ground communications or electric line at a distance not less than five hundred (500) feet or 1.1 times the rotor diameter, whichever is the greater of the two as measured from the edge of the existing right-of-way.

Setbacks will be measured as the horizontal distance between the monopole of the turbine and any object. A Variance may be granted if an authorized representative or agent of the applicant, permittee, or current owner and those affected parties on adjoining properties with associated wind rights sign a formal, notarized and legally binding agreement expressing all parties support for a Variance that waives or reduces the setback requirements.

Non-Participating Parcels: Each wind turbine will be set back from the property line between the participating property and any non-participating property that adjoins the participating property at a distance not less than 2.5 times the rotor diameter of the wind turbine. Public roads, above ground communications and electric lines are excepted from this 2.5 times rotor diameter requirement. A Variance may be granted if an authorized representative or agent of the applicant, permittee, or current owner and those affected parties on adjoining properties with associated wind rights sign a formal, notarized and legally binding agreement expressing all parties support for a Variance that waives or reduces the setback requirements.

Recreational Setbacks: A one-quarter (1/4) mile or one thousand three hundred twenty (1,320) foot setback will be required from recreational areas to provide an adequate buffer zone between recreation areas that are private and/or open to the public and a wind turbine.

1. Public Recreation Areas:
  - a. North Dakota Game and Fish private lands open to sportsmen (PLOTS Lands).
  - b. North Dakota Game and Fish Wildlife Management Areas.
  - c. US Fish and Wildlife Service National Wildlife Refuges.
  - d. US Fish and Wildlife Service Waterfowl Production Areas.
  - e. US Army Corps of Engineers Lands and Lakes.
  - f. Waterfowl Rest Areas.
  - g. Community Centers.
  - h. Public Parks.
  - i. Public Playgrounds.
  - j. Golf Courses.
  - k. Fairgrounds.
  - l. Sports and/or Rodeo Arenas

- m. Bars, Saloons or Taverns
- n. Dance Halls or Community Centers

- 2. Churches and Cemeteries
- 3. Shooting Ranges: For established, permanent shooting ranges, the wind energy facility must be located at a minimum of five thousand two hundred eighty (5,280) feet from the shooting position, as measured down range.
- 4. Extra-Territorial Areas: No wind turbine will be erected within one (1) mile, extending outward from a city limit boundary.

14. Minimum Ground Clearance- The blade tip of any wind turbine will, at its lowest point, have a ground clearance of no less than seventy-five (75) feet.

15. Sound Levels- Sound levels of wind turbines within one hundred (100) feet of any non-participating residence will not exceed 45 dBA. Construction noise or reasonable and necessary maintenance activities are allowed to exceed the sound limit except between the hours of 10 PM to 6 AM local time. This sound standard does not apply to participating dwellings.

#### 16. Review and Inspections

The Zoning Administrator(s) or designee will review the Site Plan and inspect the facilities to insure conformity with the requirements of this ordinance. Inspections will occur during construction and may occur periodically during operations.

#### 17. Variances

The Planning and Zoning Board may grant a variance to these requirements based upon good cause, if shown. Applicants for such variance must be made to the Planning and Zoning Board through the Zoning Administrator(s). Completed and notarized variance request forms must accompany the permit, if needed.

#### 18. Appeals

Appeals of a Planning and Zoning Board decision must be made to the County Commissioners.

### **4.11.5 PUBLIC HEARINGS**

Upon receipt of the Conditional Use Permit application, the Planning and Zoning Board, and any experts it may retain, will review the application, and hold a public hearing on the application giving notice of which shall be published a least two (2) weeks prior to the hearing in the official newspaper of the county. The notice shall include the time, date and place of the hearing, description of the property to be affected and the time and place for the public inspection of the documents prior to the hearing.

- 1. **Deliberation and Decision:** The Benson County Planning and Zoning Board, following the public hearing for the Conditional Use Permit, will make a recommendation to the County Commissioners for the approval or denial, modification, and/or imposition of conditions on the application.
- 2. **Remaining Application Fee Due:** Remaining Application Fee due upon final approval of the Alternative Energy Construction Permit, the remaining twenty-five (25) percent of the total application fee will be due and payable to Benson County. The

receipt of which will be required prior to the Alternate Energy Construction Permit being issued.

#### **4.11.6 Alternate Energy Construction Permit (AECPP)**

##### **Twelve copies of the following must be provided:**

- A. A copy of the site plan with the name, address, and registration number of the professional surveyor involved in preparing the site plan and the final blueprint to scale.
- B. Name, dimensions, and locations of any above-ground utility easements, as available from public documents, within 2,640 feet of all proposed wind turbine locations.
- C. A copy of the SWPPP approved by the Benson/Slope Soil Conservation office.
- D. Proof of financial surety for decommissioning: the applicant or current owner of a wind energy facility must provide a form of surety that can be assessed by the County Commissioners and is agreeable to the County Commissioners. This is to cover the cost of decommissioning in the event Benson County must remove the installation.

The form of surety for decommissioning will be one hundred twenty-five (125) percent of the estimated removal and restoration costs. A professional engineer or contractor who has expertise in the removal of a wind energy facility will prepare a cost estimate for the decommissioning of the facility.

The County Commissioners reserves the right to hire their own engineer to determine cost estimates and facts of decommissioning on an annual basis. The form of surety must be in place before and construction can begin.

The decommissioning cost estimate shall explicitly detail the cost before considering any project salvage value of the wind energy facility. The amount shall include a mechanism for calculating and providing increased removal costs due to inflation.

The County Commissioners have the right to revisit decommissioning costs annually to determine the inflation calculated costs.

- E. **The owner/operator of the wind facility must show proof** of the form of surety to the County Commissioners annually, or within 30 days of a transfer of ownership after construction has begun. Any form of surety required by the state would be credited towards the Benson County surety amount if the amount is greater.
- F. **A copy of the approved Water Acquisition, Reclamation and Disposal Plan.**
- G. **Utility Permit-** All county roadways will need to be bored for all electrical lines buried between the wind energy facilities or sites. Prior to the start of construction, a completed application must be received and approved for each occurrence/incident by the County Road Superintendent and the County Commissioners. Proof of all Utility Permits approved by the County Commissioners prior to the start of construction. Failure to do so may be considered grounds of revocation of the Alternative Energy Construction Permit due to non-compliance.

- H. **A copy of the State Historical Preservation Officer (SHPO) report of approval** must be submitted, in addition to any other relevant studies, reports or certificates for approval as maybe reasonably required by the Planning and Zoning Board.
- I. The applicant will have a third party, who is a qualified professional, and approved by the Planning and Zoning Board to conduct an analysis to identify and assess any potential impacts on the natural environment including wetlands and other fragile ecosystems, historical or cultural sites, antiquities, and adjacent agricultural uses such as rotating crops. The applicant will respond appropriately to minimize, eliminate or mitigate adverse impacts identified in the analysis. The applicant will identify and evaluate the significance of any effects or concerns that will remain after mitigation efforts. In addition, a water usage or impact study must be completed that will indicate any impact that the wind energy facility will have on township resources.
- J. Upon final approval of the Alternative Energy Construction Permit, the remaining twenty-five (25) percent of the total application fee will be due and payable to Benson County. The receipt of which will be required prior to the Alternate Energy Construction Permit being issued.
- K. Prior to the start of any construction, the applicant will conduct a pre- construction meeting with the Planning and Zoning Board to coordinate field monitoring of the construction activities. The pre- construction meeting shall be open to the public and all interested parties and shall address staging, schedules, complaints, emergency plans and other pertinent issues. Proof that a permit issued by the state, in accordance with all applicable state laws, has been issued will be required to be submitted to the Planning and Zoning Board.
- L. The Planning and Zoning Board must vote on granting the Alternative Energy Construction Permit. Upon a determination of compliance with the Alternative Energy Construction Permit (AECPP) any additional requirements stipulated in the approved Conditional Use Permit, construction of the project may proceed. If the Planning and Zoning Board finds that the conditions or restrictions set forth in the AECPP are not being complied with the Planning and Zoning Board may revoke the Alternative Energy Construction Permit after a public hearing. If substantial construction has not been instituted within three years of the date of approval of the AECPP, the permit shall be null and void.

#### **4.11.7 DEMONSTRATION OF CONSTRUCTION COMPLIANCE**

The Application issued pursuant to Section 1.11.3 will be required upon the applicant(s) or current owner(s), final demonstration of compliance with the requirements of the permit following completion of the wind energy facility. Within ninety (90) days from the start and within ninety (90) days of completion of the wind energy facility construction, the applicant, permittee, or current owner, must submit to the Planning and Zoning Board all updated and final USGS Maps (to scale), surveys, or blueprints, if available, providing all the information pursuant to Section 1.11.3 and demonstrating actual compliance with the requirements and conditions set forth for the Conditional Use Permit and Alternative Energy Construction Permit.

#### **4.11.8 LIABILITY INSURANCE**

The applicant, permittee, or current owner and/or operator of the wind energy facility will defend, indemnify, and hold harmless Benson County and its officials from and against all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever, including attorney's fees, without limitation, arising out of unlawful acts or missions of the applicant, permittee, current owner and/or operator associated with the construction and/or operation of the wind energy facility.

The current owner and/or operator of the wind energy facility will maintain a current general liability policy covering bodily injury and property damage and name Benson County, its employees, officers, agents, and contractors as additional insured with limits of at least two million (\$2,000,000) dollars per occurrence and five million (\$5,000,000) dollars in aggregate with a deductible of no more than five thousand (\$5,000) dollars. Any loss of coverage, an expired insurance certificate or failure to maintain the minimum coverage amount will be considered grounds for revocation of the Wind Energy Facility Application. Certificates evidencing required insurance must be provided to Benson County upon approval of the Wind Energy Application and prior to commencement of any construction. A letter indicating continued annual coverage must be submitted to the Benson County Auditor annually.

#### **4.11.9 RESTORATION OF PROPERTY**

Decommissioning Plan and Bonding Requirements:

The wind facility project will develop a wind turbine Decommissioning Plan in accordance with NDCC 49-02-27 and NDAC 69-09-09 and this plan and be submitted as a part of the Wind Facility application. The bond must be submitted upon approval of the Conditional Use Permit prior to construction.

Within nine (9) months of termination of operations or abandonment of the wind energy facility, leases, or easements for a wind energy facility in the county, the permittees or current owner(s) and/or operators will, at its expense, comply with the following decommissioning requirements:

- A. Dismantling and removal of all towers, turbine generators, transformers and overhead cables.
- B. Removal of all underground cables to a depth of twenty-four (24) inches and backfill all trenches.
- C. Removal of all foundations, buildings, and ancillary equipment to a depth of four (4) feet.
- D. Removal of surface road materials and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the commercial wind energy facility and wind turbines, unless prior arrangement has been made in writing, with a notarized signature from the current landowner, to keep the roadways in place.
- E. All sites must be restored and reclaimed to the same general topography that existed prior to the beginning of construction of the wind energy facility. Areas disturbed by

the construction of the facility and decommissioning activities must be graded, top soiled and seeded according to the Natural Resources Conservation Services Technical Guide recommendations and other agency recommendation, unless the landowner requests, in writing, that the land surface areas be maintained. An established stand is required within three (3) years. If not established, re-seeding is required.

#### **4.11.10 TRANSFER OF WIND ENERGY FACILITY OR PROJECT**

Prior to any change in ownership or assignment of a controlling interest of any entity owning a wind energy facility or project permitted in Benson County, including any assignment or transfer of a controlling interest to any corporation, partnership or other entity controlled by or a subsidiary or affiliate of the wind energy facility or project permitted in Benson County, notification will be made to the Planning and Zoning Board, requesting transfer of the Wind Energy Facility or project. Such transfer will be conditioned upon explicit agreement by the new applicant to comply with the requirements and conditions of this ordinance, as amended, in the permit, if applicable. The notification will also include the new applicant's agent and contact information. A change in ownership that results in the inability, unwillingness or failure to abide by the conditions of this ordinance will be the basis for revocation of the project or permit, if applicable. [This limitation will apply to all transfers by operation of law and any transfers by trustee in bankruptcy, receivers, administrators, executors and legatees.]

#### **4.11.11 PREEMPTION**

The regulations for Wind Energy Facilities must follow county and state regulations and the government with the greater or stronger regulation will apply to the project.

#### **4.11.12 SEVERABILITY**

The provisions of this Ordinance are hereby declared to be severable and if any provision, section or part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, such decision will only affect those particular provisions, section or part involved in such decision and will not affect or invalidate the remainder of such Ordinance, which will continue in full force and effect.

#### **4.11.13 ENFORCEMENT AND PENALTIES**

Any person, firm or corporation violating any of the provisions of this Ordinance will be subject to the following penalties:

- A. Violations of this Ordinance will be a Class B Misdemeanor, punishable upon conviction by a fine not to exceed \$1,000.00 or by imprisonment for a period not to exceed 30 days, or by both. Each day the violation exists will constitute a separate offense. In addition, to the forgoing penalties, anyone convicted of violating this

Ordinance under this provision will be assessed the costs of prosecuting, including all attorney fees that have been, or will be, incurred.

- B.** The Zoning Administrator, and/or their designee will enforce this Ordinance.
- C.** Benson County will have the right to petition the District Court for an injunction prohibiting the continuing violation of this Ordinance. Anyone found to be in violation of this Ordinance and enjoined by said Court will be assessed the cost and attorney fees incurred by Benson County in seeking said injunction.