

Wind Energy Ordinance

X. Wind Energy Facilities

1. Purpose. The purpose of this subsection pertaining to Wind Energy Facilities is to provide a regulatory framework for the siting, construction, and operation of wind energy facilities in the 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.
2. Definitions.
 - (a) Decibel -A unit of sound measurement, abbreviated db. dB(A) - A frequency weighting that relates to the response of the human ear. The weighted sound pressure level by the use of the A metering characteristic and weighting specified in American National Standards Institute (ANSI) Specification of Sound Level Meters.
 - (b) Habitable premises-refers to a legal standard requiring a residential dwelling to be safe, sanitary, and fit for human occupation. It means a property is structurally sound and provides essential services that do not pose risks to the health or safety of the occupants.
 - (c) 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.
 - (d) Non-Participating Dwelling - A dwelling on a non-participating parcel.
 - (e) Non-Participating Parcel - A parcel of real estate that is not a participating parcel.
 - (f) Non-Participating Property Line Setback-Is the legally required distance a large-scale development must keep from the boundary of a neighboring parcel whose owner has not leased land to the project.
 - (g) Occupied Structure - A building in which people live, work or frequent.
 - (h) Participating Dwelling - A dwelling on a participating parcel.
 - (i) Participating Parcel - A parcel of real estate on which any turbine of the wind energy facility will be constructed, or for which a participation agreement has been executed.
 - (j) Sound Pressure Level (SPL) - The physical intensity of sound.
 - (k) Wind Energy Facility - One or more wind turbines, including appurtenant structures and facilities, rated at an individual or combined nameplate capacity of 100 kilowatts or greater.
3. Conditional Use Permit Required. No work, except for wind monitoring, soil testing, and

other survey work, may commence to develop a wind energy facility until a county Wind Energy Facility Conditional Use Permit ("Permit") has been issued by the Board of County Commissioners.

4. Applicability - The requirements of this Ordinance shall apply to all wind energy facilities with one or more wind turbines rated at one hundred (100) kilowatts nameplate capacity or larger per turbine constructed after the effective date of this Ordinance or relevant amendments. No operation of an existing wind energy facility shall be allowed without full compliance with this Ordinance and its Wind Energy Facility Conditional Use Permit, and no modification or alteration of an existing wind energy facility shall be allowed without issuance of a new Wind Energy Facility Conditional Use Permit pursuant to this Ordinance.
5. Application Requirements for a Wind Energy Facility Conditional Use Permit. The prospective permittee for a Wind Energy Facility shall submit an application for said Permit to the Planning and Zoning Code Administrator. The application shall be signed by an authorized representative of the prospective permittee and include (1) a fee to be determined by the Board of County Commissioners for each proposed wind turbine and (2) the following information:
 - (a) The complete name, legal address, and phone number of the prospective permittee and responsible contact person.
 - (b) Details as to how the prospective permittee will comply with each item in this Ordinance and all conditions and requirements of the Wind Energy Facility Conditional Use Permit.
 - (c) A schedule for the proposed start and completion of construction of the wind energy facility.
 - (d) Copies or signed summaries of all leases and easements for wind turbines and associated equipment and infrastructure to be sited within the county and any written agreements between the prospective permittee and affected parties holding associated wind rights on adjoining properties established for the purpose of seeking a setback variance(s) pursuant to this Ordinance.
 - (e) Two (2) copies of a site plan submitted on high quality paper on sheets thirty (30) inches by thirty-six (36) inches, provided that when more than one sheet is required, there shall also be submitted an index sheet on high quality paper and of the same dimensions, showing the entire wind energy facility project on one sheet and giving section, township and range numbers. The applicant must also submit this data in electronic digital format as specified.
 - (f) The site plan shall be drawn to a scale of one (1) inch equals one thousand (1,000) feet or less with scale to be shown graphically.
 - (g) To provide adequate coverage, the site plan shall show an area up to a minimum of three-quarters ($\frac{3}{4}$) mile (3,960 feet) beyond the outermost wind turbine towers, meteorological towers, all wind energy facility access roads and appurtenant project structures.
 - (h) Site plans shall contain the following elements:
 - 1) Name of the wind energy facility
 - 2) Name and address of the wind energy facility owner
 - 3) Name, address, and registration number of the professional surveyor involved in

- preparing the site plan
 - 4) Date the site plan was prepared
 - 5) North point indication
 - 6) Section, township and range numbers
 - 7) Topographic contours with a minimum contour interval of ten (10) feet, with indication of datum used
 - 8) A location map inset showing the township(s) in which the project is located and the boundary of the proposed project
 - 9) Location of all existing public roadways and rights-of-way within three-quarters($\frac{3}{4}$) mile (3,960 feet) of proposed turbine locations
 - 10) General location and railroad rights-of-way, as available from public documents, within three-quarters($\frac{3}{4}$) mile (3,960 feet) of proposed turbine locations
 - 11) Name, dimensions and location of any utility easements, as available from public documents, within five hundred (500) feet of proposed turbine locations
 - 12) Name, dimensions and location of any parks, public land, historic resources, multi-use trails, or areas of recreational significance, as available from public documents, within three-quarters($\frac{3}{4}$) mile (3,960 feet) of proposed turbine locations
 - 13) Name, dimensions and location of habitable structures
 - 14) Location of any corporate or township boundaries
 - 15) General location and identification of section lines, as available from public documents
 - 16) General property ownership boundary lines, as available from public documents, for properties within three-quarters($\frac{3}{4}$) mile (3,960 feet) of proposed turbine locations
 - 17) Names of property owners, identified as participating or non-participating, within three-quarters ($\frac{3}{4}$) mile (3,960 feet) of proposed turbine locations
 - 18) Streams, rivers, watercourses, lakes, and any marshy or swampy areas
 - 19) Federally designated wetland areas
 - 20) All affected public or private airstrips with the FAA identification number
 - 21) Proposed turbine locations
 - 22) Participating residences, non-participating residences within three-quarters($\frac{3}{4}$) mile (3,960 feet) of proposed turbine locations, and parks, boat ramps, swimming beaches or other public recreation areas within three-quarters ($\frac{3}{4}$) mile (3,960 feet) of proposed turbine locations, as available from public documents or as reasonably apparent during the applicant's examination and consideration of the site
- (i) Other Submittal Items:
 - 1) Statement of assurance that the project will not alter any existing surface water drainage patterns.
 - 2) Plan for Restoration of the Site after Construction
 - 3) Sound Modeling Study
 - 4) Shadow Flicker Study
 - (j) Copies of letters of application from the applicant to the following agencies requesting review of the proposed wind energy facility:
 - 1) United States Fish and Wildlife Service (USFW)

- 2) North Dakota Game and Fish Department (NDGF)
- 3) The State Historic Preservation Office (SHPO) at the State Historical Society of North Dakota

4) Dunn County Airport Authority

- (k) Proof of compliance with Federal Aviation Administration (FAA) requirements
6. Planning and Zoning Commission Review. Upon receipt of the application, the Planning and Zoning Commission and any experts it may retain shall review the application-**may hold a public hearing on the application within no more than ninety (90) days from receipt of the application** , providing at least fifteen (15) days' notice prior to the hearing in the official newspaper of Dunn County and mailing written notice to property owners whose parcels are, partly or entirely, within **five (5) miles** of a quarter section containing any part of a participating parcel **of the proposed wind energy facility perimeter or wind turbine location.** The applicant shall be responsible for providing the names and addresses of all such property owners. **The applicant shall be responsible for mailing out certified notice letters to property owners within five (5) miles of the proposed wind energy facility perimeter or proposed wind turbine location. The applicant will be responsible for the cost of the certified notice letter mailing. The County will provide a copy of the property owner notice letter to be sent out by certified mail. At least two weeks prior to the certified letter mailing, a list of property owners within five (5) miles, and a signed statement with a notary seal certifying all property owners within five (5) miles of the request have been noticed.**
7. Deliberation and Decision. If the Planning and Zoning Commission finds that the prospective permittee will comply with all requirements, it may submit a recommendation pertaining to the application for a Wind Energy Facility Conditional Use Permit to the Board of County Commissioners. If the Planning and Zoning Commission does not make a recommendation to the Board of County Commissioners within or before its third regularly-scheduled meeting after having begun a public hearing on the application for a Wind Energy Facility Conditional Use Permit, the Board of County Commissioners shall take up consideration of the Wind Energy Facility Conditional Use Permit application, and make a decision on said application.
8. Transfer of Wind Energy Facility Conditional Use Permit - In the event of a change in ownership or controlling interest in a wind energy facility and the transfer of the Permit, any successors and assigns of the original permittee shall comply with the requirements and conditions of such Permit for the duration of operation of a wind energy facility permitted in the county. Within thirty days of such change in ownership or controlling interest of any entity owning a wind energy facility, the parties to the transaction shall notify the Board of County Commissioners and the Code Administrator by letter and provide information pursuant to this Ordinance. The letter shall be signed by the authorized representatives or agents of both the original permittee and the entity to which the Permit is being transferred.
9. Zoning District - Wind energy facilities may only be constructed within the Rural Preservation District of the county, subject to the restrictions and conditions of this Ordinance.
10. Principal or Accessory Use - A different existing use or an existing structure on the same parcel shall not preclude the installation of a wind energy facility or a part of such facility on

such parcel. Wind energy facilities that are constructed and installed in accordance with the provisions of this Ordinance shall not be deemed to constitute expansion of a nonconforming use or structure.

11. Demonstration of Compliance - The permit issued pursuant to Section IV.X.S shall be contingent upon the permittee's final demonstration of compliance with the requirements of the permit following completion of construction of the wind energy facility. Within 180 days of substantial completion of wind energy facility construction, the permittee shall submit to the Planning and Zoning Code Administrator a copy of the as-built plans and specifications, in both hard copy and in electronic digital format as specified by the Code Administrator, providing all information pursuant to Section IV.X.5 and demonstrating actual compliance with the requirements and conditions of the Permit. Status updates shall be submitted every 90 days until substantial construction is complete.
12. Standards for Wind Energy Facilities - All applicants for proposed Wind Energy Facilities shall demonstrate that the following standards shall be met by their proposed facility.
 - (a) Setbacks. The following setbacks and separation requirements shall apply to all wind turbines in a wind energy facility:
 - (a) Setbacks from Dwellings, Commercial Buildings, Publicly Used Structures or Facilities
 - Each wind turbine shall be set back (measured from the center of the turbine monopole) at least **1 mile** from participating residences. unless the participating property owner agrees to a lesser distance in which case the minimum distance shall be 1.1 times the height of the turbine. **A Variance may be granted if all legal owners of the structure or facility agree, in writing, that the setback distance may be waived. -At least 2 miles from existing non-participating residences. A Variance may be granted if an authorized representative or agent of the permittee and those affected parties on adjoining properties with associated wind rights signs a formal and legally-binding agreement expressing all parties' support for a variance that waives or reduces the setback requirement. At least 2 miles from commercial or public buildings, and further as necessary to meet the sound level requirements in this Ordinance. The horizontal distance between the center of a turbine monopole and any Historical Natural Resource, park, boat ramp, swimming beach or other public recreation area shall not be less than one-half(½) mile (2,640 feet).**
 - (b) Setbacks from Public Roads, Railroads, and Above Ground Communication and Electrical lines - Each wind turbine shall be set back (measured from the center of the turbine monopole) **at least one (1) mile from the nearest edge of the following roadways: State Highway 22, State Highway 200, State Highway 8 and State Highway 1806. Otherwise, each wind turbine shall be set back at least** 1.1 times the height of the turbine from **nearest edge of an** interstate or state roadway right-of-way; not less than 75 feet greater than 1.1 times the height of the turbine from the centerline of any county or township road or from a section line without a road. Each wind turbine shall be set back not less than 1.1 times the height of the turbine from any railroad right-of-way or from any above ground communication or electrical line (excluding transmission, feeder, and collector lines proposed for the wind energy facility).
 - (c) Wind Energy Facility Perimeter - Each wind turbine shall be set back from the wind energy facility perimeter at a distance not less than two and one half (2.5) times the

rotor diameter of the wind turbine.

- (d) Setbacks from Non-Participating Property Line Setback. Wind energy facilities and wind turbines or accessory structures thereto shall not be permitted within 1 mile of any Non-Participating Property Line Setback. A variance may be granted if an authorized representative or agent of the permittee and those affected parties on adjoining properties with associated wind rights signs a formal and legally-binding agreement expressing all parties' support for a variance that waives or reduces the setback requirement.
 - (e) Reverse Setbacks. Building permits will not be issued to construct any proposed habitable structure within 1.1 times the height of any existing turbine (the center of a turbine monopole) or approved turbine location.
 - (f) No Wind Energy Facility or wind turbine shall be installed within 2.5 miles of any doppler radar station, or fixed broadcast, retransmission, or reception antennas for television, radio, or wireless phone or other personal communication systems with an estimated value of \$25,000 or more that would produce electromagnetic interference with signal transmission or reception. A variance may be granted if an authorized representative or agent of the permittee and those affected parties on adjoining properties with associated wind rights signs a formal and legally-binding agreement expressing all parties' support for a variance that waives or reduces the setback requirement.
 - (g) Setback from cities-Each wind turbine shall be set back (measured from the center of the turbine monopole) at least two (2) miles from the nearest edge of the extraterritorial jurisdiction of any city within the county.
 - (h) Setbacks from platted residential developments-each wind turbine shall be setback (measured from the center of the turbine monopole) at least two (2) miles from a platted residential development, unless such development has not seen any development of residential structures or infrastructure sporting such development for five (5) or more years.
 - (i) Airport setback: Setback from Commercial Airport-must be approved by the Dunn County Airport Authority Board. Private Registered Airstrips-setback of 2 miles.
 - (j) The Board of County Commissioners may require the permittee to avoid sensitive sites within Dunn County when granting a Conditional Use Permit.
- (b) Electrical Lines Location.
- 1) The permittee shall place overhead or underground electric lines, known as feeder lines, on private land immediately adjacent to public rights-of-way (whether improved or not) except as necessary to avoid or minimize human, agricultural, or environmental impacts.
- (c) Appearance.
- 1) Wind turbines, towers, and blades shall be painted with a non-reflective coating and in a uniform, off-white color. A color sample should be submitted with the application.
 - 2) Wind turbines shall 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 shall be marked with a visible identification number to assist with provision of emergency services. The permittee shall file with local fire departments, law enforcement, and the county emergency management coordinator a wind

energy facility map identifying wind turbine locations and numbers.

- 4) Wind turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.
 - 5) At wind energy facility sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, and location that will blend the wind energy facility to the natural setting and existing environment.
- (d) Turbine Design.
- 1) All turbines shall be commercially available, utility scale, with an operational history of at least one year. Prototype turbines are not allowed.
 - 2) Turbines shall be installed on tubular, monopole-type towers.
 - 3) Minimum Ground Clearance - The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.

4) Maximum Wind Turbine Height: No Wind Turbine with a height of more than Five Hundred (500) feet shall be allowed.

- (e) Sound Levels. A sound study which includes modeling of wind turbine sound levels within 100 feet of every residence and commercial or public building within one mile of any proposed wind turbine shall be completed. The modeled sound levels caused by wind turbines at a distance of 100 feet from any non-participating residence and commercial or public buildings shall not exceed 40 dBA (leg). The modeled sound levels caused by wind turbines at a distance of 100 feet from any participating residence shall not exceed 50 dBA (leg). Construction noise or reasonable and necessary maintenance activities are allowed to exceed this sound limit except between the hours of 11 p.m. and 7 a.m. Upon receipt of a complaint regarding noise, the Land Use Administrator may require the applicant, at the applicant expense, to have prepared, by an independent acoustical consultant an acoustical study that shall demonstrate compliance with the above noise standard. If it is determined that the noise standard is not met, the applicant shall implement and maintain all necessary remedial measures. The noise level generated by the operation of the wind energy facility will be determined by comparing the sound level measured when the turbine blades are rotating to the sound level measured when the blades are stopped.

- (f) Shadow Flicker Levels. A shadow flicker analysis, assuming typical meteorological conditions, shall be completed for every residence and commercial or public building within one mile of any proposed wind turbine. The maximum acceptable level of shadow-flicker exposure for homes in the study shall be 30 hours per year. The applicant shall provide commercially reasonable efforts to remedy shadow-flicker complaints from any non-participating owners of a residence or commercial building 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.

- (g) Stormwater Management Requirements as required in this Ordinance and additional requirements as may be directed by the Code Administrator

13. Conditions for Approval. In addition to other conditions which may be determined during the application review and hearing process, the following list are potential conditions for approval which shall be considered by the Planning and Zoning Commission when

considering an application for a Wind Energy Facility Conditional Use Permit:

- (a) Site Plan shall be submitted demonstrating setback requirements will be met
- (b) Project Description shall be submitted demonstrating appearance and design standards will be met
- (c) Applicant shall provide proof that insurance requirements have been met
- (d) Public Safety Plan shall be submitted and determined acceptable by all relevant agencies and organizations. The Public Safety Plan shall provide a wind energy facility map identifying all wind turbine and accessory building locations, identification, and addresses, and shall document needs for any special rescue equipment and training necessary to accommodate emergency operations within the facility. The identifying system must be acceptable for registry in Dunn County's emergency 911 system. The applicant and operator of the wind energy facility shall provide to the Emergency Manager contact information of a person or persons who are always available to respond to any issue pertaining to the construction and operation of the facility. This contact information shall be continuously updated by the applicant and operator of the facility. The applicant shall meet with all local fire departments, law enforcement, local ambulance and first responder units, and the County Emergency Manager to explain the Public Safety Plan, to discuss their capacity, and to obtain their approval of the Public Safety Plan. The applicant shall provide educational materials to landowners within the site boundaries and, upon request, to interested persons, about the project and any restrictions or dangers associated with the project. The applicant shall also provide any necessary safety measures, such as warning signs and gates for traffic control, and restricted public access to turbine access roads, substations and wind turbines.
- (e) **The LoadPass system shall be utilized for all heavy haul loads, as set forth in the road use and maintenance agreement.** A conditional use permit issued under this ordinance to erect a wind energy facility does not negate a hauler's obligation to obtain overweight load permits prior to hauling.
- (f) Approach Permits for all temporary and permanent approaches and new or improved access points are approved by the County Road Superintendent before any materials or heavy equipment is moved into the County.
- (g) **Turbine access roads and protection of agricultural operations. The location and construction of access roads and other infrastructure shall, to the extent reasonably possible, not disrupt farming, agricultural operations, or the landscape of the County, in order to preserve the integrity of fields and capacity for efficient tilling, planting, and harvesting, the applicant shall work with the landowner to determine the most appropriate routing of access road locations. If landowner would like to keep the access road, the landowner will have to contact the County Road Superintendent and sign off on the reclamation of the Access Road.**
- (h) Road Maintenance Agreement with Dunn County must be approved by the County Road Superintendent. Prior to the start of any construction, and the movement of any materials or heavy equipment into the County, a road maintenance agreement shall be signed by the applicant and approved by the County Road Superintendent. The road maintenance agreement shall address details (including obtaining permits) for road use, access road intersections, maintenance and repair of damages.

1. Any road damage caused by the applicant, its independent contractor, employee, agent, contractor, or subcontractor shall be promptly repaired at the applicant's expense to current standards as established by the Dunn County Road Superintendent. If it is reasonably foreseeable that continued trips will make prompt repair to this standard unreasonable, intermediary measures must be taken by the applicant, if approved by the political subdivision in charge of the road, to ensure the public road remains passable and useable as has been the tradition in the community. Final repairs to these standards must be made promptly after the completion of the construction of the wind energy facility.
When road damages are repaired, the County Road Superintendent must sign off repairs after completion
 2. A Dust Control Plan must be submitted to the County Road Superintendent and approved prior to start of project. Dust control measures, including the source and location of water used for dust control, shall be identified and approved by the County Road Superintendent.
- (i) At wind energy facility sites, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, minimize disruption to farmland, the landscape, and agricultural operations within the county.
- (j) Lay down yards must be at least 1500 feet from any inhabited residence.
- (k) Weed Control and plan
1. The Dunn County Weed Board shall be consulted to address weed control on all properties included in the wind energy facility project
 2. A detailed weed control plan, developed in consultation with the Dunn County Weed Board, shall be submitted, outlining measures to prevent and control invasive and noxious weeds on all project-affected properties.
 3. The applicant shall implement and strictly adhere to a weed control plan approved by the Dunn County Weed Board.
 4. For disturbed area and the right of way, the applicant shall provide all chemicals required for weed control outlined in the weed control plan to and apply at their own cost during the construction and for the life of the project until decommissioning, as per the weed control plan
 5. Fines shall be levied for failure to comply with weed control requirements, as determined by the Weed Board and enforced by the Board of County Commissioners. If Dunn County determines that there has been a violation of the requirements in this section of the Ordinance, the applicant shall be provided with written notice of the violation, including a specific description of the noncompliance. The applicant shall have a reasonable amount of time from the date of the notice to initiate such action required to address the noncompliance and shall continue to pursue such action through completion using diligence and commercially reasonable efforts. If the applicant fails to address the non-compliance within a reasonable time, the County may take further action.
- (l) Hazardous Waste. The applicant shall be responsible for compliance with all federal, state and local laws applicable to the generation, storage, transportation, clean up and disposal of hazardous wastes generated during any phase of the project's life.
- (m) Trimming or removal of trees within the public right-of-way to allow for safe construction of power lines shall be allowed.
- (l) Pre-construction Meeting must be conducted. Prior to the start of any construction, the applicant shall conduct a preconstruction meeting with the Code Administrator to coordinate field monitoring of construction activities. The pre-construction meeting shall be open to all interested parties and shall address staging, complaints, emergency

plans, and other pertinent issues. The applicant shall submit a construction plan which governs the process of construction, including the minimization of agricultural field soil compaction, and mitigates other potential impacts to the maximum extent possible. No construction shall be allowed until the County Board of County Commissioners approves the construction plan.

- (m) Biological Resource Evaluation must demonstrate no conflicts. The applicant, in consultation with the US Fish & Wildlife Service - Ecological Services Office (USFW) and the North Dakota Department of Game and Fish (NDGF) shall, for the project site, conduct a pre-construction inventory of existing wildlife management areas, scientific and natural areas, recreation areas, native prairies and forests, wetlands, and any other biologically sensitive areas and wildlife resources, particularly birds and bats, within the site and assess the presence of state- or federally-listed or threatened species, and other protected species, such as migratory birds. The results of the survey shall be submitted to the Code Administrator, USFWS and NDGF.
- (n) Electromagnetic Interference Evaluation must demonstrate no conflicts. The applicant shall submit an assessment of microwave signal patterns in the project area prior to commencement of construction of the project.
 - 1) The assessment shall be designed to provide data that can be used in the future to determine whether the turbines and associated facilities are the cause of disruption or interference of microwave patterns in the event residents complain about such disruption or interference after the turbines are placed in operation. The assessment shall be completed prior to operation of the turbines.
 - 2) The applicant shall be responsible for alleviating any disruption or interference caused by the turbines or any associated facilities of residents' cell phone, television, radio, computer, satellite or other electronic transmissions, receptions, or services.
 - 3) The applicant shall not operate the wind energy facility so as to cause microwave, television, radio, telecommunications or navigation interference contrary to Federal Communications Commission (FCC) regulations or federal, state or local laws.
 - 4) In the event the wind energy facility or its operations cause such interference as described in items 2 and 3 above, the applicant shall take measures necessary to correct the problem within thirty (30) calendar days.
- (o) Complaint and Communications Plan must be approved by the Board of County Commissioners. The Complaint and Communications Plan shall provide local contact information, and a plan to receive and address any complaints pertaining to the facility construction and operation. The local contact shall be authorized by the applicant to receive service and respond to all notices, demands, complaints, concerns or other requests. Local contact information must include the name of the local representation, local phone number and physical address. Said contact information must be filed with the Code Administrator prior to commencement of construction of the wind energy facility.
- (p) Operational Plan must be approved by the Board of County Commissioners. The applicant shall submit a plan explaining the anticipated operations of the proposed wind energy facility. The plan shall explain the circumstances under which the facility and individual turbines are anticipated to be in operation, in lockdown, and undergoing maintenance. The plan shall include provisions for extraordinary events and wildlife

incidents as follows:

- 1) Within twenty-four (24) hours of an extraordinary event, the applicant shall notify the Code Administrator. Extraordinary events include, but shall not be limited to, fires, tower collapse, thrown blade, collector or feeder line failure, or injured wind energy facility worker or private person. The applicant shall, within thirty (30) calendar days of the extraordinary event, submit a report to the Code Administrator describing the cause of the extraordinary event and the steps taken to avoid future extraordinary event.
 - 2) Any fatality or injury to any state- or federally-listed species or migratory bird or bat shall immediately be reported to the U.S. Fish and Wildlife Service (USFWS)-North Dakota Field Office and the USFWS Office of Law Enforcement. Also, if a dead or injured whooping crane or sandhill crane is found, operation of all turbines shall be immediately curtailed until it has been determined by the USFWS that there is no longer a threat to other birds in the area. If a whooping crane or sandhill crane is sighted by a wildlife biologist within two (2) miles of any wind turbine, that turbine or turbines must be immediately shut down until the USFWS determines that there is no threat to these species in the area.
- (q) Bonding and Insurance Requirements.
- 1) The owner/operator of a wind energy facility must provide a reclamation bond and proof of liability insurance prior to commencing construction. The bond shall cover the first ten years of operation until such time as the bond required by the Public Service Commission becomes effective.
 - 2) **Bond Amounts and limitations. The bond shall be in the minimum amount of 1,000,000 (one million)-per wind turbine or as otherwise set by the Commission. All bond amounts must be adjusted on a biennial basis to account for US-Consumer Price Index (CPI) value of the bond.**
 - 3) **Bond terms. The bond shall be considered a compliance, decommissioning and reclamation bond, If the Principle does not satisfy the bond's conditions, then a surety shall satisfy the conditions or forfeit to the county face value of the bond.**
 - 4) **Transfer under bond. Transfer of property does not release the bond.**
 - 5) **Penalty for failure to submit bond. If the permittee does not submit an acceptable bond to the county within the timeframe required herein, the county may assess an administrative penalty up to \$2,000 for each day the bond is out of compliance or an amount to be determined by the commission.**
 - 6) **Bond release or use of bond. The permittee upon completion of decommissioning and reclamation must submit a report and photographs of all reclamation processes, including written statements from all participation landowners approving the final reclamation. The county commission shall, in writing, advise the permittee and any sureties on any bond as to whether the decommissioning and reclamation is approved after review of the permittee's report. If approved, liability under such bond may be formally terminated upon receipt of a written request by the permittee. The request must be signed by an officer of the principal or a person authorized to sign for the permittee. The applicant may forfeit a bond in full or part if the county finds the permittee has violated any of the terms or conditions of the bond, fails to properly**

decommission or reclaim the site, refuses or is unable to perform or has abandoned the wind energy facility or wind turbine.

The Bond shall cover the full cost of decommissioning and removing the wind energy facility as required by this Ordinance. Dunn County shall be listed as a certificate holder for the liability insurance coverage. Certificates shall provide not less than thirty (30) calendar days' notification to the certificate holder prior to cancellation or material change in coverage. Throughout the duration of this conditional use permit, the owner/operator of a wind energy facility shall provide liability and other insurance coverages as established by the Board of County Commissioners, but not for less than the amounts specified below:

- 7) Workers' Compensation: Statutory
- 8) Employer's Liability:
Each Accident: \$1,000,000 Disease,
Policy Limit: \$1,000,000
Disease, Each Employee: \$1,000,000
- 9) General Liability:
General Aggregate: \$2,000,000
Each Occurrence
(Bodily Injury and Property Damage): \$1,000,000
- 10) Excess Umbrella Liability:
Each Occurrence: \$5,000,000
General Aggregate: \$5,000,000
- 11) Automobile Liability:
Combined Single Limit (Bodily Injury and Property Damage): Each
Accident \$1,000,000
- 12) Other Conditions (specify):
A Commercial General Liability policy shall be endorsed to add Dunn County, its employees, officers, agents and contractors as additional insured.
Certificates evidencing required insurance shall be provided to Dunn County upon approval of the conditional use permit and prior to commencement of construction.

(r) Decommissioning Plan.

- 1) A decommissioning plan which complies with the North Dakota Century Code and the North Dakota Administrative Rules shall be submitted as part of the Building or Conditional Use Permit application.
- 2) Within one hundred and eighty (180) days of termination or abandonment of any leases or easements for a wind energy facility or wind turbine located in the county, the permittee shall, at its expense, begin the decommissioning process and fully comply with the following decommissioning requirements:
- 3) Submit for county approval a detailed decommissioning and reclamation plan.
Decommissioning and site restoration by permittee, at permittee's cost includes but not

limited to, dismantling and removal of all towers, turbine generators, foundations, buildings and ancillary equipment; and removal of surface road material and restoration of the roads; and turbine sites to the same physical condition that existed immediately before construction of the commercial wind energy facility or wind turbine. The site must be restored and reclaimed to the same general topography that existed prior to the beginning of the construction of the wind energy facility above and below grade.

(s) **Reclamation and Reseeding**

- 1) All property disturbed by the wind energy facility shall be seeded with appropriate species approved by the Dunn County NRCS, Soil Conservation District and landowner.
- 2) A good growth of vegetation must be established and approved by each affected landowner. Reseeding shall be performed as needed to achieve satisfactory growth.

(t) Changes to Plans must be approved by the Board of County Commissioners. Any minor changes in the location or character of wind turbine facilities and structures may be authorized in writing by Board of County Commissioners as long as affected property owners have given written acceptance of the minor changes. All other changes shall require approval of an amended conditional use permit under these same ordinance requirements.

(u) PSC approval must be provided to the Board of County Commissioners

14. Restoration of Property Following Cessation of Operations - When a commercial wind energy conversion facility has been determined by the Public Service Commission to be at the end of its useful life, the facility owner or operator shall decommission the facility and restore the facility site within eighteen months after it reaches the end of its useful life. The current permittee shall cause, at its own expense, removal of all structures to a depth of four (4) feet below pre-construction grade. Underground collection cables do not have to be removed, but any easements of record must be released.
15. Building Permit Application Requirements - The Codes Administrator shall in consultation with Building Inspection staff establish building permit application requirements which shall include information needed to perform inspections, and documentation to verify the Conditional Use Permit conditions have been satisfied. No building permit shall be issued for construction of any part of the wind energy facility unless all application requirements have been met.