

Approved by the Board of Supervisors October 5, 2021

### Section 436. Introduction and purpose

- A. The purpose of this section is to:
1. Specify Conditional Use Permit (CUP) application requirements for the development of utility-scale renewable energy production facilities, while providing a uniform and comprehensive set of standards for the entitlement and operation of commercial-scale renewable energy systems. These production facilities include but are not limited to: utility-scale wind energy projects, utility-scale solar energy projects. Utility-scale wind and solar projects must have actual or planned generating capacity of at least one megawatt. The ordinances and permits contained herein are designed to promote the development of commercial renewable energy systems, and to promote the economic and environmental health of Apache County.
  2. Establish standards for the permitting, construction, operation, maintenance, and decommissioning of utility-scale renewable energy generation facilities.
- B. This section does not apply to personal or institutional renewable energy generation equipment that is intended to generate electricity or heat water for use primarily on the property on which the equipment is located, or to facilities with an actual or planned generating capacity of less than one megawatt. These include but are not limited to: small wind energy systems, small solar energy systems, including ground-mounted systems, roof-mounted systems, pole mounted systems, and systems affixed to shade structures located over parking areas.

### Section 437. Definitions

- A. The following terms are defined as follows for purposes of this section. Other definitions may be found in Article 2.

**Utility-Scale Renewable Energy Production Facility** – A Utility-scale energy system used to generate electricity for off-site customers tied into the local electrical grid. With the actual or planned ability to generate at least one megawatt. The term does not include stand-alone wind, or solar electricity generating systems primarily for on-site residential, institutional, or agricultural use which does not feed residual power into the electrical grid as defined by the Arizona Corporation Commission.

**Utility-Scale Solar Energy Project** – An energy generation facility using solar energy from the sun to generate electricity by photovoltaic effect using photoelectric cells, also known as solar panels, to generate electricity for off-site customers tied into the local electrical grid, with the actual or planned ability to generate at least one megawatt. The term does not include stand-alone solar electricity generating systems primarily for on-

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site residential, institutional, or agricultural use which does not feed residual power into the electrical grid as defined by the Arizona Corporation Commission.

**Utility Scale Wind Energy Projects** - An energy generation facility using wind technology and consisting of one or more wind turbines and accessory structures and buildings, including substations, anemometers and associated electrical infrastructure, with an actual or planned generating capacity of at least one megawatt. The term does not include stand-alone wind electricity generating systems primarily for on-site residential, institutional, or agricultural use which does not feed residual power into the electrical grid as defined by the Arizona Corporation Commission.

**Photovoltaic Cells/Solar Panel** - An electrical system or device that converts the energy from the sun directly into electricity by the photovoltaic effect using photoelectric cells, also known as solar panels.

**Project boundary** - The boundary of a Renewable Energy Generation project as set forth in the project site plan and incorporated into the CUP.

**Setback distance** - The distance from the center of a wind turbine electrical generator tower foundation or from one to two edges of a solar photovoltaic system to the nearest property line, edge of a public road right-of-way or railroad right-of-way, third-party transmission line, above-ground pipeline, communication tower, other structure or other boundary established by Apache County.

**Wind turbines (or towers)** - A wind energy system that uses the wind to turn a set of aerodynamic blades or devices attached to an electric generator or turbine. The term does not include small wind turbines used primarily to generate electricity for on-site residential, institutional, commercial, or agricultural use.

#### **Section 438. Zones in which allowed / CUP required**

- A. Renewable Energy Generation facilities are allowed only in the A-General and Industrial Zones subject to securing a CUP and to the applicable site development standards set forth herein. The CUP application shall comply with Article 11 of the Apache County Zoning Ordinance

#### **Section 439. General development standards for Renewable Energy Generation facilities**

- A. A minimum of on-site roadways shall be constructed. Temporary access roads and excess roadway widths for initial equipment/facility installation shall be re-vegetated, using native species plants and seeds, to a pre-project condition (to the extent reasonably possible) after completion of installation as a condition of the CUP. The applicant shall submit a plan of all proposed roads, temporary and permanent, for review and approval with the CUP application.

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- B. Electrical collector lines, which connect electricity generation devices to any substations, shall be placed underground except where (a) they cross sensitive biological or archaeological resources, such as canyons, wetlands or sites eligible for the national register, or rugged terrain that would prevent the use of underground trenching technology, (b) project terrain is found to be unsuitable, as determined by the applicant and confirmed by the County Engineer, or (c) burying the lines would violate applicable laws or regulations. In these cases, collector lines will be allowed above ground subject to approval through the CUP. Utility lines serving the electricity or phone requirements of buildings shall be placed in accordance with the utility's easement requirements.
- C. Renewable Energy Generation projects shall include fire control and prevention measures as outlined in the Uniform Fire Code and as required by the local Fire District or State Fire Marshall.
- D. Renewable Energy Generation projects shall comply with applicable Federal Aviation Administration (FAA) lighting, navigation, and other requirements. Lighting shall be the minimum required by FAA regulations or other public safety considerations. The use of low-intensity, red pulsating/blinking lighting is preferred so long as consistent with FAA regulations. The use of strobes and strobe-type lighting for nighttime use is prohibited unless specifically required by the FAA.
- E. Renewable Energy Generation projects shall comply with applicable Federal Communication Commission (FCC) requirements, including those applicable to microwave communication links in the vicinity. Renewable Energy Generation facilities shall minimize and mitigate telecommunication interference (electromagnetic fields and communications interference generated by the project). No interference with public communication systems shall be allowed.
- F. Towers, generator housings, hubs, blades, and solar panel stands shall be painted a non-reflective, unobtrusive color which shall complement the surrounding landscape, including but not limited to white, off-white, beige or tan. The design of other buildings and other structures shall, to the extent reasonably feasible and consistent with public safety, use materials, colors, textures, screening, and landscaping that will blend the facility into the existing environment.
- G. Towers and solar panels shall be designed so as not to attract nesting birds or serve as perches for raptors. The CUP holder shall refer to the Arizona Game and Fish Department's and the U.S. Fish and Wildlife Services' wind guidelines that have been developed to aid the project proponents in reducing impacts to wildlife.
- H. A letter from the Arizona Game and Fish Department will be required prior to scheduling of the CUP application for a hearing before the Planning and Zoning Commission, detailing the agency's comments and/or recommendations for the project. Pre-construction and post-construction wildlife studies, if required, shall be developed and

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performed through direction given by the Arizona Game and Fish Department or U.S. Fish and Wildlife Service guidelines.

- I. All Renewable Energy Systems must be designed and constructed, to the greatest extent feasible, to prevent interior/exterior access by the public and shall have interior ladders and locking doors.
- J. Experimental or prototype wind towers or solar panels are prohibited. All must be standard production models commercially available from the manufacturer.
- K. Wind turbine designs with blades downwind of the tower are prohibited.
- L. For construction and permit purposes, all wind towers and solar panels shall conform to the regulations for the applicable seismic zone of the building code.
- M. Documentation confirming an interconnection agreement, or a power purchase agreement (or equivalent agreements) shall be required prior to issuance of any building or construction permits.
- N. All necessary building, grading and other permits shall be obtained from the Apache Community Development Department prior to any site preparation or construction. All wind towers, solar panels and other structures shall comply with all applicable county, state and federal laws, ordinances, and regulations.
- O. No building or structure may be constructed or occupied prior to full compliance with all applicable Community Development Department requirements, including but not limited to requirements concerning grading and drainage plans, flood control requirements, and the issuance of building and other permits for the proposed structures.
- P. Floodplain Use Permits (where required) for any development in a floodplain shall be obtained through the Flood Control District prior to any such development.
- Q. Signs associated with the project are limited to one project identification, information, interpretive and address sign of not more than 24 square feet located on the project site at each point of ingress and egress. No other signs shall be installed except for required warning and directional signs. Limited logos and/or manufacturer names shall be permitted on the generator housing or hub. No other advertisements, prominent logos, or other prominent messages are allowed on any tower, blade, generator housing, hub or any other part of any structure. Signage shall not be used for advertising. Prior to installation of any signs, the CUP holder shall obtain sign permits from the Community Development Department for all signs for which permits are required. All sign requirements are found in Apache County Ordinance Article 7.

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- R. Project fencing, if applicable, shall include minimum 18-inch by 18-inch signs warning of the presence of high voltage. Such signs shall be located a maximum of 300 feet apart and at all points of site ingress and egress. Projects without fencing shall place such warning signs on each transformer building and all points of ingress and egress. Project fencing, if applicable, shall be a minimum of six feet and maximum of eight feet in height (excluding barbed wire or cyclone wire fencing, which is permissible).
- S. Apache County reserves the right to contract with a qualified third-party consultant for the review and evaluation of the proposed project and any of the application materials, particularly the sound study. The selection of a consultant shall be made in consultation with the applicant, with a mutually agreed-upon "not to exceed" contract amount prior to final selection of the consultant. The cost for any such review shall be reimbursed to Apache County by the applicant before any building permit is issued. Additionally, and if deemed necessary, the reasonable cost for any third-party review(s) of any long-term monitoring or response to complaints or operational changes shall be reimbursed to Apache County by the CUP holder within 30 days after written demand by the County. In such cases Apache County shall provide written notice of the use of a third-party consultant to the applicant prior to such use.
- T. Concentrated reflections or glare for solar panels and wind turbines shall be constructed to minimize glare at occupied structures, recreation areas, roads, highways or airport flight landing or takeoff areas.

**Section 440. Termination and Decommissioning:**

- A. If the applicant ceases operation of the energy project or begins, but does not complete, construction of the project, the applicant shall restore the site according to a plan approved by Apache County Board of Supervisors.
  - 1. The applicant shall submit a plan that ensures that the site will be restored to a useful, non-hazardous condition without significant delay, including but not limited to the following:
    - i. Removal of aboveground and underground equipment, structures, and foundations to a depth of at least three feet below grade. Underground equipment, structures and foundations need not be removed if they are at least three feet below grade and do not constitute a hazard or interfere with agricultural use or other resource uses of the land.
    - ii. Restoration of the surface grade and soil after removal of aboveground structures and equipment.
    - iii. Removal of graveled areas and access roads.
    - iv. Restoration of surface grade and soil.
    - v. Re-vegetation of restored soil areas with native seed mixes, plant species suitable to the area, consistent with the Apache County's weed control plan.

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- vi. For any part of the energy project on leased property, the plan may incorporate agreements with the landowner regarding leaving access roads, fences, gates, or buildings in place or regarding restoration of agricultural crops or forest resource land.
  - vii. The plan must provide for the protection of public health and safety and for protection of the environment and natural resources during site restoration.
  - viii. The plan must include a schedule for completion of site restoration work.
2. Before beginning construction of the energy project, the applicant must submit a bond in a form and amount satisfactory to Apache County.
    - i. The bond shall be in the name of the applicant, landowner and Apache County assuring the availability of adequate funds to restore the site to a useful, non-hazardous condition, if the operator fails or is otherwise unable to restore the site as required by the permit.
  3. The amount of the bond should be adjusted for inflation using the U.S. Gross Domestic Product Implicit Price Deflator. The applicant shall increase the amount of the bond annually by the percentage increase in the Index and shall pro-rate the amount within the year to the date of retirement. If at any time the Index is no longer published, Apache County shall select a comparable index for adjusting the amount.
  4. The bond holder shall describe the status of the bond in an annual report submitted to the Apache Community Development Department.
  5. The bond may not be subject to revocation or reduction before retirement of the energy project site.

#### **Section 441. Noise requirements and mitigation measures**

##### **A. Audible sound limits:**

1. Audible noise due to project operations shall not exceed the greater of: (a) 55 dBA LAeq,10; or (b) the measured background, LA90,10 plus 5 dB, as measured at the exterior at any legal residence, school, library or hospital in existence at the time of approval of the CUP.
2. If sound levels resulting from a proposed facility exceed the criteria specified above, a waiver may be granted by the Board of Supervisors

- ##### **B. Before a CUP is issued, the applicant's independent consultant shall complete a sound evaluation by determining existing (pre-project) background sound levels and forecasting ambient sound levels anticipated upon completion of the facility**

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**Section 442. Setbacks.**

- A. The minimum safety setback distance, location and spacing requirements for Wind Energy Generation facilities shall be as follows: As used herein, "total tower height" means the height as measured from the finished foundation to the top of the structure, including the uppermost extension of any blade (i.e., "straight up").
- B. Wind towers shall be placed in accordance with the greater of the applicable setback and location requirements as set forth below:
1. Setbacks shall be such that the sound standards established in Section 441 A. will not be exceeded. The proposed energy project needs to comply with the noise regulations found in section 441 A. and Apache County reserves the right to require the applicant to submit a qualified third part expert's analysis and written report for audible noise due to project construction and operations.
  2. Setback to existing residence: Individual wind towers shall be placed within the project boundary at least 1/2-mile (2640 feet) from an existing residence that is located outside of the project boundary.
  3. Individual wind towers shall be placed at least 1.1 times (110%) the total tower height from the project boundary.
  4. A minimum set back as determined by local EMS and local fire district. will be required on all commercial solar projects.
  5. The applicant agrees to implement fire protection measures for the construction and operation of the energy project that are acceptable to the [county/city] and other land management agencies adjacent to the proposed energy project, if any. For power generation projects, the applicant must have an approved fire prevention or protection plan in place with the [county/city] or local fire protection district during construction and operation. A copy of the approval shall be included with the CUP application.
  6. Setbacks related to areas within or outside the project boundary:
- C. Individual wind towers or solar panels shall be set back from any public or publicly maintained roadway (as measured to the nearest edge of the right-of-way) at least 1.1 times (110%) the total tower height.
- D. Railways, utility lines, interior phase lines and structures: Individual wind towers shall be set back from any railway (as measured to the nearest edge of the right-of-way), or from any utility line (above or below ground - as measured to the nearest edge of the utility easement), or from any interior phase line or structure (regardless of use), at least 1.1 times (110%) the total tower height.

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- E. All wind energy systems proposed to be located within four (4) miles from the nearest point of the nearest runway of the nearest airport, the applicant shall comply with all the requirements imposed by the Federal Aviation administration (FAA) and provide a written statement from the FAA that sets forth the FAA's comments, prohibitions, and requirements, if any, for the proposal.
- F. Interference with Communications the operation of the energy project would not create conditions that unduly reduce or interfere with public or private television, radio, telemetry, or other electromagnetic communication signals. If undue reduction or interference occurs, the applicant must restore reception to the level present before operation of the energy project
- G. The minimum setbacks from the project boundary for all non-electrical generating systems uses and structures (such as administrative buildings, meteorological or anemometer towers, maintenance buildings, operations buildings, transformers, etc.) shall conform to the setback requirements for the zone in which the use or structure is located.
- H. The Board of Supervisors may approve a reduction in the setback requirements set forth above in accordance with any or a combination of the following circumstances:
  - 1. The project shares a common property line with another approved Renewable Energy Generation facility.
  - 2. An irrevocable written consent from an affected property owner has been obtained, stating that the owner is aware of the proposed facility and the setback requirements imposed by this section, that consent is granted to allow lesser setbacks than those specified herein, and that such consent will be memorialized in a notice recorded with the Apache County Recorder to notify future owners of the subject property that setbacks are less than those specified herein.
  - 3. An adjacent property owner who is also pursuing the development of a Renewable Energy Generation facility or similar use has filed a letter of consent to the proposed setback reduction with the Community Development Department.
  - 4. The parcel on which the project is located, and an adjacent parcel are held in common ownership.
  - 5. The current use of an adjacent property generates sound more than that permissible for the Rewindable Energy Generation facility under the terms of this section.
- I. Setback areas may be used for access within the development but are otherwise to remain in their current vegetative state.



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### **Section 443. Use of CUP, terms, and conditions.**

- A. Any Renewable Energy Generation facility that is granted a CUP shall be developed in accordance with the schedule for development and stipulations set forth in the CUP.
- B. A CUP for a Renewable Energy Generating facility will need to be reviewed every 60-months, additional reviews shall be at the directors' discretion. The fee may be waved so long as the previous CUP issued has not expired.
- C. A CUP for a Renewable Energy Generation facility shall be granted in the name of the applicant and may be transferred or assigned to a new holder with notification to the Community Development Department. The new holder shall be obligated to agree to all existing conditions and shall provide adequate bond as outlined in Section 439.T.1.b to demonstrate that the new holder assumes the financial obligations and the financial ability to fulfill the obligations as specified in the CUP.

### **Section 444. CUP Suspension and Revocation**

- A. Any CUP issued pursuant to this section may be suspended or revoked in whole or part by the Board of Supervisors for material non-compliance with the requirements of this section or the stipulations set forth in the CUP. A CUP shall be subject to suspension or revocation at a duly noticed public hearing only if the CUP holder has failed to cure the material non-compliance after no less than 30 days' written notice of such non-compliance from the Community Development Director.
- B. If a Renewable Energy Generation facility becomes unsafe or inoperable, the CUP is likewise subject to suspension or revocation by the Board of Supervisors as follows:
  - 1. An "Inoperable Renewable Energy Systems Facility" is one that does not generate at least one megawatt of electricity for 360 consecutive days, unless such non-generation is due to an act of nature, declared emergency or other cause beyond the reasonable control of the CUP holder or unless the CUP holder demonstrates that modernization, rebuilding, or repairs are in progress or are planned and will be diligently completed.
  - 2. An "unsafe Renewable Energy Generation facility" is one that has been found by a state or federal administrative agency or a court of competent jurisdiction to have materially violated applicable health or safety laws, unless the CUP holder demonstrates that measures to cure such violations are in progress or are planned and will be diligently completed.

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3. Every unsafe or inoperable Renewable Energy Generation facility is hereby declared to be a public nuisance per se which shall be subject to abatement by all available legal and equitable remedies.
  4. Upon a complaint to the Community Development Department that a Renewable Energy Generation Facility is inoperable or unsafe, the Board of Supervisors shall *convene* a public hearing as soon as possible after written notice to the CUP holder. Pending a final determination that the facility is inoperable or unsafe, the Board may suspend the CUP in whole or part or impose such conditions as may be appropriate to protect the public health, safety, and welfare. Upon a final determination that the facility is inoperable or unsafe, the Board may suspend or revoke the CUP in whole or part or impose such conditions as may be appropriate to protect the public health, safety, and welfare.
- C. No later than 30 days after the revocation or expiration of the CUP, the decommissioning plan shall be implemented, and decommissioning shall proceed diligently to completion. The time for decommission shall be determined by a Professional Engineer registered in the State of Arizona. If decommissioning has not started within 30 days of revocation or expiration of the CUP Apache County may seek redress of the bond.

#### **Section 445. Joint agency approvals**

- A. If the applicant is also applying to the State of Arizona, U.S. Bureau of Land Management (BLM) Forest Service (USFS) or other federal agency for a right-of-way grant, lease or any other form of authorization or approval for a renewable energy project in Apache County to be located in whole or part on land managed by the State, BLM, USFS or other federal agency, or the applicant is also applying to the Western Area Power Administration or other federal power marketing agency (PMA) for an interconnection or transmission agreement for a renewable energy project in Apache County. Then the applications may be jointly considered by the Planning and Zoning Commission and Board of Supervisors and the State, BLM, USFS, other federal agency or PMA (including without limitation joint hearings and coordinated application and mitigation requirements), and any and all findings, reports, studies, statements, assessments or analyses issued, approved or adopted by the State, BLM, USFS, other federal agency or PMA, including any mitigation measures required by any of those agencies, may be considered and adopted by the Planning and Zoning Commission and the Board of Supervisors in connection with the CUP application.
- B. Article 4 does not purport to regulate renewable energy generation projects on state or federal land except insofar as state or federal agencies may require compliance with Apache County zoning requirements as part of their own application processes.

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- C. In the event of any inconsistency between any requirement of this Section 445 and any requirement of state or federal law, now or in the future, the state or federal requirement shall control, and this section shall be interpreted and applied consistently therewith.

**Section 446. Public Outreach.**

As part of the CUP review and approval process, and to ensure adequate public outreach, the applicant shall do the following:

- A. Provide the following:
1. A list of all property owners of record within one mile of the project boundary, with current contact mailing address information.
  2. A list of all property owners of record within a minimum of 300 feet of each access route to the project from a public roadway, as well as within 300 feet of each public roadway that requires any improvements in connection with the project, with current contact mailing address information.
  3. Notice by first class mail to all property owners listed under subparagraphs (1) and (2) above, such notice to include a narrative description of the project, identification of transportation routes, vicinity map showing surrounding properties, and a layout of the proposed facility and accessory buildings indicating setback distances to property lines.
  4. Notice by first class mail to all incorporated and unincorporated community officials within three miles of the project boundary. Officials may include, mayors, city councils, community development, board of supervisors, planning and zoning commissions, or local fire officials.
- B. Schedule, publicize and conduct at least two public meetings (in collaboration with neighborhood groups and property owner associations, where available) in the project area at least 30 days before the Planning and Zoning Commission hearing as outlined in Apache County Ordinance Article 11.
- C. Establish a web site or ". ftp" site, linked to the Apache County web site if possible, giving a summary of the project (site plan, context plan and summary description) and applicant contact information before holding the first public meeting as required above. Provide a mechanism on this site for the submission of public comments.
- D. Provide a contact name and telephone hotline, the details of which are printed on a prominent sign at each project entrance and maintained on record with the Community

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Development Department, by which citizens can leave comments and complaints 24 hours a day for the life of the project. The CUP holder shall take all reasonable efforts to review and address (including returning the call when appropriate) all non-urgent messages within 72 hours and all urgent messages within 24 hours. Provide the County with a monthly summary of complaints and the way they were addressed.