

Draft/starting point for possible amendments to wind energy facility component setbacks. The first public hearing was at the June 22 Planning & Zoning Commission regular meeting. The second public hearing is taking place at the July 27 regular Planning & Zoning Commission meeting.

Key to amendments

Black: existing text in the Morton County Land Use Code

Green: proposed new text

Red: existing text proposed to be removed

Section 5-180 / Wind Energy Facility

- (a) **Permitted Districts:** A wind energy facility may be permitted in an Agricultural (A) District and an Estate (E) District with a special use permit, subject to additional standards in this section.
- (b) **Standards:** A wind energy facility shall meet the following standards:
 - (1) **Appearance Standards**
 - A) Turbines shall be installed on tubular, monopole-type towers.
 - B) Wind turbines and related towers shall be painted a non-reflective, non-obtrusive color.
 - C) Wind turbines and related towers shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.
 - D) The design of buildings and related structures at wind energy facility sites 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.
 - E) Wind turbines shall not be artificially lighted, except to the extent required by Federal Aviation Administration (FAA) or other applicable authority.
 - (2) **Construction and Maintenance Standards**
 - A) 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 Morton County.
 - B) The applicant shall promptly replace or repair all fences or gates removed or damaged during all phases of the wind energy facility's life, unless otherwise negotiated with the affected landowner. When the permittee installs a gate where electric fences are present, the permittee shall provide for continuity in the electric fence circuit.
 - C) The applicant shall ensure that, following completion of construction of a wind energy facility, all county roads will be repaired or restored to a condition at least equal to the condition prior to construction of such facility, as inspected and approved by the County Engineer.

- D) The applicant is responsible for abiding by the state and local overweight load permitting process in accordance with NDCC Chapter 39-12. A special use permit issued under this ordinance to erect a wind turbine facility does not negate a hauler's obligation to obtain overweight load permits for hauling.
- E) The applicant shall take into account, avoid, promptly repair or replace all drainage tiles broken or damaged during all phases of project life unless otherwise negotiated with the affected landowner.
- F) The applicant shall minimize the removal of trees and shall not remove groves of trees or shelter belts without the written approval of the affected landowner. Trimming or removal of trees within the public right-of-way to allow for safe construction of power lines shall be allowed
- G) Laydown yards shall be set back from the nearest occupied dwelling a distance of not less than 1/2 mile (or 2,640 feet). This setback may be reduced or waived, if stated in writing, by both the owners and the inhabitants (if different from the owners) of the dwelling.

(3) Public Safety Standards

- A) Prior to construction, the applicant shall prepare fire protection and medical emergency plans in consultation with the rural fire district, Sheriff's Department, Emergency Management, and local emergency medical service provider having jurisdiction over the area.
- B) Each wind tower shall be marked with a visible identification number to assist with provision of emergency services, and the permittee shall file with the Morton County Emergency Manager a wind energy facility map identifying wind turbine locations and numbers.
- C) The applicant is encouraged to provide educational material 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 is encouraged to also provide any necessary safety measures, such as warning signs and gates for traffic control or to restrict public access to turbine access roads, substations, and wind turbines. The applicant shall comply with provisions outlined in their public safety plan.
- D) Within twenty-four (24) hours of an occurrence, the applicant shall notify the Morton County Emergency Manager of any extraordinary event. Extraordinary events include, but shall not be limited to, fires, tower collapse, thrown blade, collector or feeder line failure, or injured wind turbine facility worker or private person. The applicant shall, within thirty (30) calendar days of the occurrence, submit a report to the County Emergency Manager describing the cause of the occurrence and the steps taken to avoid future occurrences.

(4) Collector System Standards

- A) The permittee shall place electrical lines, known as collectors, and communication

cables underground to a depth of at least four (4) feet when located on private property. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads unless otherwise negotiated with the affected landowner. Overhead collection facilities may be permitted where necessary.

- B) The permittee shall not place overhead feeder lines on public road or drainage easement rights-of-way. When placing feeders on private property, the permittee shall place the feeder in accordance with the easement negotiated with the affected landowner. If the permittee cannot place overhead feeder lines on private property a request may be made to place feeder lines on public rights-of-way with approval from the governmental unit responsible for the affected right-of-way.
- C) 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.

(5) **Turbine Setback Standards:** setbacks shall be measured as the horizontal distance between the monopole of the turbine and any object.

- A) Each wind turbine shall be set back from the nearest occupied dwelling, commercial building, or publicly used structure or facility, ~~or state and county park~~ a distance not less than one and a quarter ($1\frac{1}{4}$) times the height of the turbine or 1,320 feet, whichever is greater.
- B) Each wind turbine shall be set back from any state park and any county park a distance not less than $\frac{1}{2}$ -mile (or 2,640 feet).
- C) Each wind turbine shall be set back from the nearest interstate, state, or county road or above ground communication or electrical lines or railroad right-of-way a distance not less than 1.1 times the height of the turbine plus seventy-five (75) feet from the centerline of the existing right-of-way or object.
- D) Each wind turbine shall be set back from all section lines a distance not less than one hundred (100) feet.
- E) Each wind turbine shall be set back from the wind energy facility perimeter a distance not less than one and a half ($1\frac{1}{2}$) times the height of the wind turbine. A variance may be granted if an authorized representative or agent of the applicant and those affected parties of adjoining properties with associated wind rights sign a formal and binding agreement expressing all parties' support for a variance that may reduce the setback requirements.
- F) Morton County has many sensitive sites, and the Board of County Commissioners may ask the permittee to avoid these sites in granting a special use permit.

(c) **Minimum Ground Clearance:** The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than seventy (70) feet.

- (d) **Additional Application Requirements:** In addition to the general materials required to be submitted with a special use permit application in **Error! Reference source not found.**, the following materials are required:
- (1) **Electromagnetic Interference Assessment:** The applicant shall submit an assessment of microwave signal patterns in the project area prior to commencement of construction of the project.
 - A) 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.
 - B) The applicant shall be responsible for alleviating any disruption or interference caused by the turbines or any associated facilities of cell phone, television, radio, computer, satellite or other electronic transmissions, receptions, or services.
 - C) The applicant shall not operate the wind turbine 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.
 - D) In the event the wind turbine facility or its operations cause such interference as described in this section, the applicant shall take measures necessary to correct the problem within thirty (30) calendar days.
 - (2) **Archeological Resource Survey and Consultation:** Unless the project is under the purview of the North Dakota Public Service Commission (PSC), and an Archeological Resource Survey is being prepared as part of that process, the applicant shall 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.
 - A) If recommended, the applicant shall contract with a qualified archaeologist to complete such surveys, and shall submit the results to the Zoning Administrator 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 Morton County Board of Commissioners in consultation with the SHPO. All information submitted under this provision is subject to NDCC Section 55-02-07.1.
 - B) 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 NDCC Section 23-06-27 and associated North Dakota Administrative Code 40-02-03.
 - (3) **Biological Resources Survey:** The applicant, in consultation with the US Fish & Wildlife Service - Ecological Services Office (USFWS) and the North Dakota Department of Game and Fish (NDGF) shall, for the project site, conduct a preconstruction 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 Zoning Administrator, USFWS and NDGF.

- (e) **Road Use Arrangements:** Prior to construction, the applicant shall make satisfactory arrangements (including obtaining permits) for road use, access roads, intersections, maintenance and repair of damages with the governmental jurisdiction with authority over each road. The applicant shall notify the County Engineer of such arrangements upon request.
- (f) **Restoration of Property:** Within six (6) months of termination or abandonment of leases or easements for a wind energy facility in Morton County, the current permittee shall cause, at its own expenses, removal of all structures to a depth of three (3) feet below pre-construction grade. Underground collection cables do not have to be removed, but any easements of record must be released.
- (g) **Changes to Permit:** After a special use permit has been granted, any minor changes in the location or character of wind turbine facilities and structures may be authorized in writing by the Zoning Administrator. All other changes shall require approval of an amended special use permit under these same ordinance requirements.
- (h) **Change of Ownership:** Prior to any change in ownership or controlling interest of any entity owning a wind energy facility permitted in Morton County, application shall be made to the Morton County Board of County Commissioners, requesting transfer of the wind energy facility special use permit. Approval of such transfer shall be conditioned upon explicit agreement by the new permittee to comply with all provisions of this section and the original permit. The application may be in letter form and shall be signed by the authorized representatives or agents of both the current permittee and the prospective permittee.