

Wind Energy Conversion System Ordinance No. 467

AN ORDINANCE ESTABLISHING A PERMITTING PROCESS FOR WIND ENERGY
CONVERSION SYSTEMS

ADOPTED BY THE Big Timber City Council on this ____ day of _____, 2006.

ADOPTED BY THE Sweet Grass County Commissioners this ____ day of _____ 2006.

This Ordinance shall take effect as of _____.

TITLE 14

WIND ENERGY CONVERSION SYSTEM ORDINANCE

SUBJECT	CHAPTER
Purpose	1
Legal Authority	2
Definitions	3
Applicability	4
General Standards.....	5
Permitting Process	6
Severability	7
Penalties.....	8

CHAPTER 1

GENERAL PROVISIONS

SECTION:

- 14-1-1 Title**
- 14-1-2 Purpose**
- 14-1-3 Minimum Requirements**
- 14-1-4 Definitions**
- 14-1-5 Applicability**
- 14-1-6 Severability**

14-1-1 Title

This ordinance shall be known and cited as the “Wind Energy Conversion System Ordinance of the City of Big Timber and City-County Jurisdictional Area” and referred to as the Wind Energy Chapter of the Big Timber Municipal Codes.

14-1-2.1 Purpose:

To accommodate the development of wind energy facilities in appropriate locations within the City of Big Timber and the surrounding city-county jurisdictional area, while protecting the public health, safety and general welfare by minimizing potential adverse impacts associated with such facilities.

These standards shall be construed to be consistent with any federal or state regulations, which pre-empt or take precedence over the standards herein. In the event that either federal or state government adopt standards more stringent than those described herein, the more stringent standards shall apply.

14-1-3 Minimum Requirements:

In their interpretation and application, the provisions of this title shall be held to be minimum requirements adopted for the promotion of the health, safety, morals and general welfare of the community. Whenever the requirements of this title are at variance with the requirements of any other lawfully adopted rules and regulations, the more restrictive, or that imposing the higher standards, shall govern.

14-1-4 **Definitions:** For the purposes of this Ordinance, the following definitions shall apply:

Clear Area: Area surrounding a wind turbine to be kept free of habitable structures.

Wind Energy Conversion System (WECS) Facility: The equipment, physical plant and portion of the property needed to convert wind power into energy, including but not limited to the base, tower, cables and wires, rotor blades, inverters, conductors, transmission lines, storage, collection and supply equipment, transformers, site access, accessory buildings, landscaping, fencing and screening, and parking areas.

Wind Monitoring or Meteorological Towers: Towers used for supporting anemometer, wind vane and other equipment to assess the economic potential of the wind resource at a predetermined height above the ground that will not generate electricity intended for production or offsite use.

Wind Turbine: A device that converts kinetic energy of the wind into rotational energy to turn an electrical generator shaft. A wind turbine typically consists of a rotor, nacelle and supporting tower.

14-1-5 **Applicability:**
Any WECS structure or facility located within the jurisdictional area of the City of Big Timber and City-County Planning jurisdiction shall require a permit, whether upon public or private lands.

14-1-6 **Severability:**
If any part or portions of this Ordinance shall be declared invalid or unenforceable for any reason by a court of competent jurisdiction, the remainder shall nonetheless continue in effect.

CHAPTER 2

LAND USE

SECTION:

14-2-1 Land Use

14-2-1: Land Use:

1. WECS structures or facilities shall be permitted uses in areas zoned ICC, MI or PLI, and outside of the city zoning district but within the City-County Jurisdictional area provided the requirements of this ordinance are met.
2. Wind Monitoring or Meteorological Towers shall be permitted uses in areas zoned ICC, MI or PLI and outside of the city zoning district but within the City-County Jurisdictional area, subject to issuance of a WECS permit

CHAPTER 3

CRITERIA

SECTION:

- 14-3-1 Site Control**
- 14-3-2 Public Safety**
- 14-3-3 Compatibility with Adjoining Land Uses and Scenic Resources**
- 14-3-4 Migratory Birds**
- 14-3-5 Annual Permit Renewal**
- 14-3-6 Abandonment**
- 14-3-7 Indemnification and Insurance**
- 14-3-8 Bonding for abandoned facilities**
- 14-3-9 Easement**
- 14-3-10 Modification to WECS or Wind Monitoring/Meteorological Towers**

All WECS facilities, and Wind Monitoring or Meteorological Towers (hereinafter referred to as “facility”), must demonstrate compliance with the following general standards prior to issuance of a permit.

14-3-1 **Site Control**

The applicant shall submit documentation of the legal right to install and use the proposed facility on the property location at the time of application. Documentation shall include a deed, lease, or other contract allowing applicant to occupy and control the property for the intended facility.

14-3-2 **Public Safety**

The proposed facility shall be located and designed to ensure public safety. The following measures shall be implemented:

1. From property lines, rights-of-way, occupied structure, or overhead power lines, each element of the facility shall be set back a minimum distance that is equal to 120% of its maximum height. This setback shall be known as the “clear area.” A smaller setback may be allowed, if it can be demonstrated that there will be no public safety hazard.
2. A weatherproof warning sign shall be posted at the site. The tower may not be used for advertisement signs. Any permitted signs must comply with sign ordinance.
3. A water supply adequate for firefighting may be required.

14-3-2

14-3-4

4. Facilities shall be designed to prevent unauthorized access. In this regard, monopole towers are preferred although towers with guy wires or lattice towers may be permitted subject to a variance request. Facilities shall include safeguards to prevent unauthorized climbing of towers and to require lockable doors to tower and equipment.
5. Power shall be placed underground to power lines.

14-3-3

Compatibility with Adjoining Land Uses and Scenic Resources

The proposed WECS or Wind Monitoring/Meteorological facility shall be located and designed to maximize compatibility with adjoining land uses and minimize negative impacts on scenic resources.

1. The facility shall comply with Federal Aviation Administration (FAA) recommendations for airspace and shall not penetrate any airport influence area designated by the County.
2. Existing natural vegetation and grades on the site shall be preserved and maintained to the fullest extent possible.
3. A noxious weed management plan shall be required for the site from the County Weed Supervisor.
4. All elements of the facility (except the warning sign discussed in 5.2.2 above) should maintain a galvanized steel finish or, subject to any applicable standards of the FAA or other applicable local, state, or federal agency, be painted a neutral color so as to reduce visual obtrusiveness.
5. Security lighting on the site may be mounted up to 20 feet in height and shall utilize cut-off lighting directed towards the ground to reduce or minimize light pollution
6. Except for 5.3.5 above, the facility shall not be artificially lighted unless required by the FAA or other state or federal agency. If lighting is required, the use of red beacons is preferred to flashing strobe lights.
7. Audible noise due to operation of the facility shall not exceed 60 dBA for any period of time when measured at the nearest neighboring property boundary.
8. Stormwater run-off and erosion control shall be managed in a manner consistent with all applicable state and local regulations.
9. The facility owner or operator is responsible for ensuring that the facility does not create signal interference with electromagnetic communications.

14-3-4

Migratory Birds

The proposed facility shall be located and designed to minimize negative impacts on migratory birds.

14-3-5

14-3-6

14-3-5 **Annual Permit Renewal**

Facility owners or operators must submit documentation annually to the Planning Office for a permit renewal. Failure to provide the required documents by April 1st of each year will be evidence of abandonment under 5.6 below:

1. Certificate of Insurance in the amounts required pursuant to this Ordinance;
 - a. Maintenance log providing or proof of compliance with manufacturer's maintenance criteria, or,
 - b. Engineer's certification that the facility is in good working order;
2. Statement of inspection review and approval from the City of Big Timber Public Works Director or County Public Works Department;
3. Proof that bonding remains in place to cover removal/restoration of the site.

The Planning Office will provide the City of Big Timber or the County Commissioners, depending on location of the facility, with copies of the foregoing documents. Provided that no modifications have been made to the facility, the facility owner need not apply for a new permit but must meet the requirements of this section for renewal of the facility permit.

14-3-6 **Abandonment**

A facility will be considered to be abandoned if it is totally unused or inoperable for a period of 90 consecutive days. Determination of abandonment shall be made by the City Public Works Director or County Commission depending on location of the facility, who shall have the right to require documentation from the facility owner regarding the record of facility usage. Upon determination of abandonment, the facility owner shall have 90 days to:

1. Reactivate the facility, or transfer it to another owner who will reactivate it for its intended purpose; or
2. Removal of the facility. If the facility is not reactivated or removed within 90 days of determination and abandonment, the City or County may remove the facility at the facility owner and/or property owner's expense, unless the landowner assumes responsibility for the facility and has an alternate use for the same.

14-3-7 Indemnification and Insurance

The facility owner and/or property owner, jointly and severally, shall indemnify, defend, and hold harmless the City of Big Timber or Sweet Grass County, and all of its agents and employees from all claims, damages, and causes of action arising from the operation and presence of the facility, and occasioned by the conduct of the facility owner and/or property owner. The facility owner shall maintain insurance against any liability arising from the operation and presence of the facility, including bodily injury, death, and damage or destruction of the property of others, in the following amounts as per (2-9-108, MCA): \$750,000 for each claim, and \$1.5 million for each occurrence.

14-3-8 Bonding for abandoned facilities:

The facility owner and/or property owner shall submit an engineer's cost estimate for removal of the facility in order to determine the bond amount.

14-3-9 Easement:

Any WECS facility claiming the existence of a wind easement for its benefit, must have a written agreement specifying the terms and conditions of the easement, the benefited and burdened properties, and any restrictions that would apply to the burdened property.

14-3-10 Modification to WECS or Wind Monitoring/Meteorological Towers:

Any modification to a facility shall undergo permit review in accordance with these procedures, and may require a new permit if the modification affects any of the review criteria.

CHAPTER 4

PERMITTING PROCESS

SECTION:

- 14-4-1 Permit Application**
- 14-4-2 Consultation with Pertinent County, State and Federal Agencies**
- 14-4-3 Notification of Adjoining Property Owners**
- 14-3-4 Application Submittal and Review**
- 14-3-5 Application Decision**

A permit must be obtained from the City of Big Timber or Sweet Grass County prior to construction and operation of a new or modified facility, if such modification affects any of the review criteria.

14-4-1 Permit Application -- General Requirements

Applicants should use Exhibit A. in assembling their permit application package.

14-4-2 Consultation with Pertinent County, State, and Federal Agencies.

Applicant shall submit an application to the Sweet Grass City-County Planning Office, who will then provide copies of the application to the following agencies, allowing 21 working days for the interested agencies to contact the Planning Office with any comments:

- Sweet Grass County Airport Board
- Sweet Grass County Road Department
- City of Big Timber Public Works Director, who may also require plan and siting review by the City Engineer, such review to be at the applicant's cost
- Sweet Grass County Weed Board
- Local Fire Department
- Montana Aeronautics Division, ~~Montana Department of Transportation~~
- Montana Department of Environmental Quality (if transmission lines are proposed that would require review under the Montana Major Facility Siting Act)
- Montana Department of Transportation (if project would require highway access)
- Federal Aviation Administration
- Fish, Wildlife and Parks
- U.S. Fish and Wildlife Service
- Army Corps of Engineers if wetlands in vicinity of facility

14-4-3 Notification of Adjoining Property Owners

Applicant shall submit a list of adjacent landowners to the Planning Office at least 21 working days in order to contact the affected landowners' for their comment.

14-4-4 Application Submittal and Review:

1. Ten copies of a facility application shall be submitted to the Planning Office, along with an application review fee of \$500.00. The planning office shall verify that the application is complete, send letters to the agencies, and wait 21 days after receipt of the application for comments from the agencies and adjacent property owners;
2. The Planning office shall, after receipt of the comments from neighbors or agencies, or the passage of 21 days from receipt of a complete application, shall schedule a public hearing before the City-County Planning Board to make a recommendation on the application to either the City Council, or the County Commissioners.
3. The Planning Office shall issue a legal notice of the public hearing by publication in a newspaper of general circulation in the county. Said notice should appear not less than 7 days prior to the public hearing. The notice need run only for one week.
4. The Planning Office shall notify the applicant, each adjoining property owner, and any applicable property owners association (as identified by the county planner) of the hearing by first-class mail not less than 7 days prior to the date of the hearing.
5. The applicant and property owner shall allow the Planning office and/or representatives of the governing body to visit the site as a part of their application review. Such visit shall be conducted in accordance with Montana open meeting law.
6. Prior to the public hearing, the planner shall prepare a report and recommendation for the appropriate review board and governing body. The report should address the extent to which the proposal complies with this Ordinance.
7. The City County Planning Board shall hold the public hearing and accept both written comment and verbal testimony from the public and the applicant.
8. The City County Planning Board shall make a recommendation to the Big Timber City Council or Sweet Grass County Commissioners, to permit, deny or permit with conditions.

14-4-5 **Application Decision**

1. The Big Timber City Council or Sweet Grass County Commissioners, depending on the location of the facility, shall act to approve, conditionally approve, or deny the application.
2. Written notification of the Big Timber City Council or Sweet Grass County Commissioners' decision shall be mailed to the applicant and shall include an explanation of the basis for the decision.
3. In the event of conditional approval, all conditions must be met prior to the issuance of the permit.
4. The approved permit shall be filed in the City-County Planning Office.

CHAPTER 5

INSPECTION, COMPLAINT and PENALTIES

SECTION:

14-5-1 Inspection

14-5-2 Penalties

14-5-1 INSPECTION:

The City of Big Timber Public Works Director or the County Public Works Department may inspect the facility at any time during or after construction for compliance with this Ordinance, and in response to any written complaints regarding operation of the facility. Such complaint shall state fully the causes and basis thereof, and shall be filed with the appropriate Public Works Director and Planning Office. If the Public Works Department believes that the facility is being constructed or operated in violation of this Ordinance, the Public Works Director may issue a stop-work order. In conducting any inspection or reviewing the facility in response to complaints, the Public Works Director may consult with the City Engineer or any other agency charged with review of the facility pursuant to this Ordinance or under existing local, state or federal laws or regulation.

14-5-2 PENALTIES:

Any person, firm, or corporation that violates the provisions of this Ordinance shall, upon conviction thereof, be guilty of a misdemeanor and punishable by a fine of up to \$500 and/or a jail term of not greater than six months, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall constitute a separate offense and shall be punishable as such. Criminal responsibilities of firms or corporations shall be governed by relevant provisions of 45-2-311 and 45-2-312, MCA.

PERMIT APPLICATION FORM

For

Wind Energy Conversion Systems

Permit Application is for (check one):

- Wind Energy Conversion System (WECS)
- Wind Monitoring or Meteorological Tower

Property Location and Legal Description: _____

Applicant (Property Owner and Owner/Operator of Proposed Facility Must Sign):

Property Owner Name(s): _____

Address: _____

Telephone Number: _____

Signature and Date: _____

[Note to Property Owner: If approved, this permit will be issued to both you and the facility owner/operator. The permit will be recorded and the rights and obligations pertaining thereto will run with the land. You will be liable for the cost of removing an abandoned facility. An approved permit will affect your legal rights. You may wish to check with legal counsel before signing this application.]

Owner/Operator of Proposed Facility:

Facility Owner/Operator Name(s): _____

Address: _____

Telephone Number: _____

Signature and Date: _____

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Date application submitted: _____ Hearing Date: _____

Permit Application is: Approved Conditionally Approved Denied

BY: _____

Comments: _____

Please submit application to:
Sweet Grass City-County Planning Office
PO BOX 1256
Big Timber, MT 59011
Telephone: (406) 932-5470
FAX: (406) 932-5433

Checklist of Permit Application Requirements:

- Site plan.
- Vicinity map. Identification of existing adjoining landowners and land uses.
- Topographical map at a scale which accurately represents ground features, location of facility and setback requirements.
- Drawings and description of proposed facility.
- Photo renderings of the proposed facility from public vantage points.
- Verification of agency approvals, if necessary.
- Verification of review and approval by appropriate Public Works Department
- Verification of neighborhood notifications.
- Proof of liability insurance (Provide either now or prior to permit issuance).
- Road encroachment permit, as appropriate.
- Approved noxious weed management plan.
- Signatures of both the facility owner/operator and the landowner.

Application Submittal Instructions:

1. Ten complete copies of the permit application shall be submitted to the Sweet Grass City-County Planning Office. An application review fee of \$ 500.00 must accompany the application.
2. Where more than one facility is proposed, a permit application and review fee shall be submitted for each site, unless the facilities will be located on the same property

Permit Recording Requirement:

A permit takes effect once it has been approved by the City of Big Timber or County Commissioners.

Note: Lease agreements between the property owner and facility owner/operator are subject to the Montana Subdivision and Platting Act. Easement agreements must be recorded.