

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SAN MIGUEL COUNTY, NEW MEXICO**

IN THE MATTER OF A RESOLUTION
PROPOSING ADOPTION AND FINAL
PASSAGE OF A WIND ENERGY
FACILITY ORDINANCE, AS REQUIRED
BY SECTION 4-37-7, NMSA 1978

COUNTY OF SAN MIGUEL)
STATE OF NEW MEXICO) ss

SAN MIGUEL COUNTY
PAGES: 23

I Hereby Certify That This Instrument Was Filed for
Record On The 8TH Day Of February, 2011 at 02:26:28 PM
And Was Duly Recorded as Instrument #201100458
Of The Records Of San Miguel

Witness My Hand And Seal Of Office

Deputy Melanie Y. Rivera County Clerk, San Miguel, NM

**RESOLUTION NO. 02-08-11,
PROPOSING FINAL PASSAGE AND ADOPTION
OF AN ORDINANCE RELATING TO WIND ENERGY FACILITIES**

WHEREAS, the Board of County Commissioners of San Miguel County, New Mexico, has heretofore determined that existing County Ordinance No. SMC-10-14-03-ORD, relating to and regulating the placement, construction and modification of renewable energy facilities that generate electrical energy using wind as an energy source, does not reasonably and adequately address and assess issues and matters relating to the issuance of conditional use permits for said wind energy facilities; and

WHEREAS, by prior Resolution No. 11-09-10-WIND ENERGY FACILITY ORDINANCE, the Board of County Commissioners heretofore determined that it was necessary and proper to propose the adoption of a new, comprehensive ordinance relating to wind energy facilities, thereby repealing and replacing said existing Ordinance No. SMC-10-14-03-ORD; and

WHEREAS, said prior Resolution No. 11-09-10-WIND ENERGY FACILITY ORDINANCE, duly adopted by the Board of Commissioners on November 09, 2010, and filed for record in the office of the San Miguel County Clerk on November 19, 2010, as instrument No. 201004706, is hereby adopted and incorporated herein by reference and made an integral part of this Resolution as if set forth in full; and

WHEREAS, pursuant to said prior Resolution No. 11-09-10, the Board of County Commissioners, after public notice as required by law, met and convened on December 14 and 20, 2010, to entertain and solicit public comment from all interested persons concerning the proposed adoption of an ordinance relating to and regulating wind energy facilities in San Miguel County, and at its aforesaid meeting and hearing of December 20, 2010, the Board of Commissioners made amendments to and revisions of the proposed ordinance relating to and regulating wind energy facilities, and

instructed County staff to incorporate said revisions and amendments into a final draft proposed ordinance for final passage and adoption by the Board of Commissioners; and

WHEREAS, said final draft of a proposed ordinance relating to and regulating wind energy facilities in San Miguel County has been duly drafted by County staff as heretofore directed by the Board of Commissioners on December 20, 2010, and is attached hereto as Exhibit "A" and made an integral part of this Resolution; and

WHEREAS, the Board of Commissioners hereby determines that it is necessary and proper to adopt said proposed Ordinance for the purpose of protecting the health and safety, and promoting the general welfare, of the citizens of San Miguel County; it is now, therefore,


RESOLVED AND DETERMINED, by the Board of County Commissioners of San Miguel County, New Mexico, that proposed ordinance No. SMC-03-08-11-WIND, attached hereto as Exhibit "A" and made an integral part hereof, be submitted for final passage and adoption by the Board of County Commissioners at its regular monthly meeting to be held March 08, 2011; and it is further,

RESOLVED AND DETERMINED, by the Board of County Commissioners that the County Manager publish the title and a general summary of the subject matter of said proposed Ordinance No. SMC-03-08-11-WIND, in the Las Vegas Optic, at least two weeks before March 08, 2011, and provide therein public notice of the time, date and place when such proposed ordinance will come on for final hearing, adoption and passage, as required by law.

MOVED, SECONDED AND ADOPTED, this 8th day of February, 2011, by the Board of County Commissioners of San Miguel County, New Mexico.



David R. Salazar, Chairman



Nicolas T. Leger, Vice Chairman



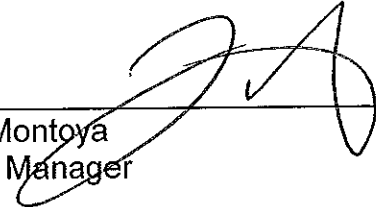
Marcellino A. Ortiz, Member



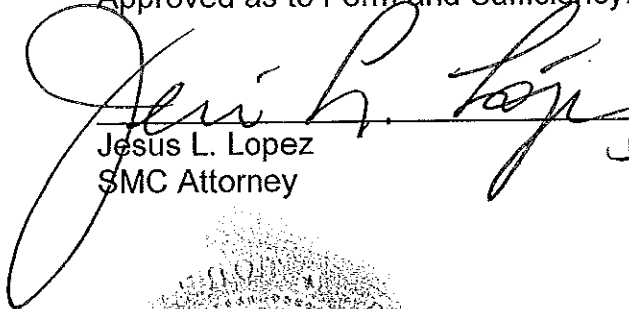
Ron R. Ortega, Member


Arthur J. Padilla, Member


Submitted:


Les Montoya
SMC Manager

Approved as to Form and Sufficiency:


Jesus L. Lopez
SMC Attorney

ATTEST


Melanie Y. Rivera
SMC Clerk

(SEAL)

SAN MIGUEL COUNTY ORDINANCE NO. SMC-03-08-11-WIND

RELATING TO AND REGULATING THE PERMITTING, PLACEMENT, CONSTRUCTION AND MODIFICATION OF RENEWABLE ENERGY FACILITIES THAT GENERATE ELECTRICAL ENERGY BY MEANS OF ZERO-EMISSIONS GENERATION TECHNOLOGY, AND USING WIND AS AN ENERGY SOURCE.

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SAN MIGUEL COUNTY ORDINANCE NO. SMC-12-14-10-WIND

AN ORDINANCE RELATING TO AND REGULATING THE PERMITTING, PLACEMENT, CONSTRUCTION AND MODIFICATION OF RENEWABLE ENERGY FACILITIES THAT GENERATE ELECTRICAL ENERGY BY MEANS OF ZERO-EMISSIONS GENERATION TECHNOLOGY, AND USING WIND AS AN ENERGY SOURCE; PROVIDING ENFORCEMENT THEREOF; IMPOSING PENALTIES FOR VIOLATION; REPEALING SAN MIGUEL COUNTY ORDINANCE NO. SMC-10-14-03-ORD; AND PROVIDING AN EFFECTIVE DATE.

Section 1. Title: This Ordinance shall be known as the “Wind Energy Facility Ordinance” and the full title hereof is as appears hereinabove as the title of the Ordinance.

Section 2. Authority: This Ordinance is adopted pursuant to and in accordance with the enabling provisions of Sections 3-21-1, et seq., and 4-37-1, NMSA, 1978, as amended, and as otherwise provided by law.

Section 3. Purpose: The purpose of this Ordinance is to set forth regulations that govern the locating, construction and regulation of wind energy facilities in San Miguel County, taking into consideration the health and safety of the citizens of the County, and in furtherance thereof, to:

3.1. Locate industrial wind energy facilities in appropriate areas where there are sufficient and adequate wind speeds to support commercial wind energy development.

3.2. Analyze the impact of wind energy projects and protect the private property rights of residential property owners adjacent to or in the immediate vicinity of proposed wind energy facility sites.

3.3. Provide adequate set-back requirements to prevent any potential damage to adjoining landowners and their property.

3.4. Further the goals of the County’s Comprehensive Plan, and promote orderly economic development within the County, with minimal impact on existing uses.

3.5. Protect and preserve the historic, scenic, archeological, cultural and visual character of San Miguel County as provided in the County’s Comprehensive Plan.

3.6. Protect and preserve endangered or threatened species, and migratory bird species by ensuring that wind energy facilities have no adverse impacts on such species and to protect and preserve the habitat and natural resources for wild and domesticated animals.

3.7. To provide a reasonable process that allows renewable energy providers to recover costs incurred for procuring or generating renewable energy, and to compete in the open market.

Section 4. Definitions: The following definitions shall apply to and control all words and terms used in this Ordinance:

- A. ACCESSORY STRUCTURE means any use or detached structure clearly incidental, subordinate and related to the principal use or structure and located on the same lot with an existing or proposed use or structure, and any object or structure erected, installed or located with the principal use or structure, but does not mean a wind turbine or other wind energy conversion structure (WECS) or distribution facility or transmission line.
- B. ANSI means American National Standards Institute.
- C. APPLICANT means any person, partnership, company, or other firm or intermediary who submits an application for a conditional use permit under this Ordinance, to install, construct, maintain, or operate a wind energy facility.
- D. BLADE THROW CALCULATIONS FAILURE ANALYSIS means a report from a qualified professional registered engineer that calculates the maximum distance that pieces of turbine blades can be thrown.
- E. BUFFER means (i) any strip of land adjoining the larger tract(s) of land, (ii) the land adjoining a watercourse or drainage channel with a vertical bank of at least 45 degrees, (iii) the land extending perpendicularly from the vertical bank of the watercourse or drainage channel to a distance three times the depth of the watercourse or drainage channel measured from the bottom of the watercourse or drainage channel to the top of the vertical bank, (iv) and the strip of land completely surrounding the outermost boundary or perimeter of a facility.
- F. CATASTROPHIC TOWER FAILURE ANALYSIS means an analysis, report or other compilation, from the turbine manufacturer indicating wind speed and conditions that the turbine is designed to withstand, the incidence of catastrophic failures and the conditions reported at the time of failure.
- G. COMPUTER SIMULATION OR DRAWINGS means one or more detailed computer or photographic simulation drawings showing the proposed site fully developed with all proposed wind turbines and accessory structures.
- J. COUNTY means San Miguel County, New Mexico, and may mean a certain officer or employee of the County, including the Supervisor of the Planning and Zoning Division, or such other county official or employee to which the particular use of the term may refer, and may mean the Board of County Commissioners.

K. COUNTY COMMISSION is the Board of County Commissioners of San Miguel County, New Mexico, a body politic and corporate, organized and existing under and by virtue of the laws of the State of New Mexico.

L. COVENANT means a condition tied to the use of the land and contained in an agreement such as a property deed.

M. DECOMMISSION means the permanent closure of the facility, and contemporaneous removal of all facility structures, including towers and accessory buildings, transmission lines and all other appurtenances, and remediation of the premises.

N. DESIGN means the appearance of a wind energy facility as noted on a site plan, engineering specification, computer simulation or drawing, or any similar document.

O. ENERGY RELATED SERVICE means any competitive service that relates to or supports the provision of electric energy, but does not include supply service.

P. FAA NOTIFICATION means written notification to the Federal Aviation Administration.

Q. FACILITY means the entirety of the wind generation facility, without limitation, including towers, accessory structures, appurtenances, transmission lines and roads.

R. HEIGHT is the distance measured from base of tower structure to the highest point of the tower or highest radius of tower wind blade, even if the highest point is a lightning rod.

S. HISTORIC AREA OR RESOURCE is an area or resource identified and designated as such by a governmental agency, including the State of New Mexico Historic Preservation Division, an Indian Tribe or appropriate Land Grant, as having significant value as a historic or archaeological resource or district, and any areas identified as such in the County's Comprehensive Plan.

T. IEC-61400-11 STANDARD is the International Electrotechnical Commission, international standard to provide a uniform methodology to ensure consistency and accuracy in the measurement and analysis of acoustical emissions by wind turbine generation systems, which provides guidance in the measurement, analysis and reporting of complex acoustic from wind turbine generator systems.

U. ICE THROW CALCULATIONS means an analysis, report or other calculation that calculates the maximum distance that ice from turbine blades can be thrown, prepared by a registered professional engineer determined by the County to be qualified to undertake said analysis.

V. MEASNET ACOUSTIC NOISE MEASUREMENT PROCEDURE is a noise measurement procedure based on the IEC-61400: Ed.2, 2002, Wind Turbine Generator Systems – Part 11: Acoustic Noise Measurement Techniques. A network of measurement institutes, which have been established to harmonize wind energy related measurement procedures.

W. OWNER means the person, corporation, association or other firm, of whatsoever nature or kind, which owns a majority interest in the project or project site, and has lawful authority to make decisions affecting the project or project site, and to lawfully bind the project to the requirements of this Ordinance and to any conditional use permit issued by the County.

X. P&Z COMMISSION is the Planning and Zoning Commission appointed by the Board of County Commissioners of San Miguel County.

Y. PERSON means an individual, association, joint venture, organization, partnership, firm, syndicate, corporation, cooperative or any other legal entity.

Z. PRC means the New Mexico Public Regulation Commission.

AA. PREMISES means the land and real estate upon which the wind energy facility is or will be located.

BB. PRESCRIBED SOUND LEVEL MEASUREMENT METHOD means a test to measure, analyze, and report acoustic emissions of a wind turbine conducted according to the IEC-61400-11 standard and the MEASNET Acoustic Noise Measurement Procedure.

CC. PROJECT means the entirety of the wind generation project, without limitation, including all towers, structures, accessory structures, appurtenances, transmission lines and roads.

DD. PROJECT SITE means the land used for wind energy facilities, including property owned or controlled by an applicant or owner, and property utilized for ingress or egress to a project site, or for transmission lines or other appurtenances related to a wind energy facility.

EE. REMEDIATION means that part of the decommission process which returns the premises to the natural state of the same before the construction of the facility.

FF. RENEWABLE ENERGY means electrical energy generated by means of a low or zero-emissions generation technology that has substantial long-term production potential and may include solar, wind and geothermal resources, but does not include fossil fuel or nuclear energy.

GG. SITING means the method and form of placement, locale, location, place, position or spot.

HH. VARIANCE is a permitted departure from one or more requirements of this Ordinance, provided an applicant shall at all times comply with the set back requirements contained and prescribed in Section 8 of this Ordinance, which requirements are not subject to the grant of any variance, except as provided in said Section 8.

II. WIND ENERGY CONVERSION SYSTEM or WECS is a panemone wind horizontal and vertical axis energy harvester having a type of perpendicular to wind energy conversion system, and having a rotating axis positioned at 90 degrees to the direction of the wind, while the wind catching blades move parallel or perpendicular to the wind.

JJ. L90 is the value the sound level exceeded for 90% of the test time. L90 will be used to determine the existing (ambient) background sound level. If your L90 value is 45 db, that is the same as saying the sound level was 45 db or higher 90% of the time.

KK. UNDERGROUND WATER RESOURCES means groundwater located beneath the ground surface in spaces or fractures of rock formations. An aquifer or water table.

LL. WATERCOURSE means any river, creek, acequia, spring, stream, canal, drain, natural or man-made pond, lake, reservoir or wetland.

Section 5. Exemptions: The following wind generation facilities shall be exempt from the provisions of this Ordinance:

5.1. Any wind generation facility that produces electricity for personal residential use, and not for commercial use or for re-sale, and which utilizes a single tower which is less than one hundred (100) feet in height, including rotary blade diameter.

Section 6. Application Process: No application for conditional use permit shall be considered, and no permit issued, unless the County determines that the applicant has complied with each requirement set forth in Section 6; and no conditional use permit shall be issued unless the County determines that the conditional use sought is not harmful to the health, safety and welfare of the citizens of San Miguel County, and not contrary to the land development standards set forth in the County's Comprehensive Plan.

6.1. The following fees, which are not refundable, shall be paid by applicant:

A. Application Fee: \$10,000.00 to be paid with certified funds, or attorney trust account check, at the time application is submitted, which is imposed

and shall be used by the County to defray administrative costs incurred in reviewing and passing upon the application.

B. Tower Approval Fee: \$1,000.00 for each tower which is finally approved by the County.

C. Technical Review Application Fee : A fee in such amount as shall be determined by the Planning & Zoning Supervisor, to defray the County's expense in securing professional and technical independent review of the application, which fee shall be paid in the manner noted above for the application fee, within such time as shall be determined by the Planning & Zoning Supervisor.

D. Publication and Notification Fee: \$ 246.00 (Planning & Zoning Commission)

E. Publication and Notification Fee: \$ 246.00 (County Commission)

F. Extension of Time Fee: \$ 2,500.00

6.2. Each application for conditional use permit for a wind energy facility shall include the following:

A. Conditional use permit application form with a letter of intent and application fee, technical review fee, and publication and notification fees.

B. A detailed written statement explaining in full the proposed project.

C. A site plan drawn in sufficient detail to clearly describe the following:

(i). Dimensions of the property, existing structures and proposed structures.

(ii). Location of existing and proposed electrical transmission lines and facilities.

(iii). Location of proposed and secured easements for such electrical lines and facilities.

(iv). Existing topographical features.

(v). Plan for grading and removal of existing vegetation.

(vi). Site restoration plan.

(vii). Wind characteristics and dominant wind direction.

(viii). Proposed setbacks.

- (ix). Proposed ingress and egress to proposed project site.
- (x). Location and distance to any town, village, community and watercourse within a one-half (1/2) mile perimeter of the proposed site.
- (xi). Location and distance to the nearest watercourse, regardless of distance.
- (xii). Dust control plan.
- (xiii). Location and distance to any cultural, historical, or archaeological area or resource within one-half (1/2) mile perimeter of the proposed site, and location and distance to the nearest cultural, historical or archaeological area or resource, regardless of distance.
- (xiv). Location of roads proposed for project site.
- (xv). Transportation Plan, to include (a) a listing of all required equipment needed for construction of facility, including cranes, trucks, bulldozers, loaders, and similar heavy equipment, (b) specifications for road construction, if applicable, and (c) specifications for lighting, signage, speed limits and appropriate traffic control signals.
- (xvi). Storm Water Prevention Plan, utilizing the forms, specifications, plans and requirements of the New Mexico Environment Department.
- (xvii). Pollution Prevention Plan, utilizing the forms, specifications, plans and requirements of the New Mexico Environment Department.
- (xviii). Safety Plan, to include provision for (a) traffic control during construction, (b) fire protection during construction and upon completion of facility, (c) blasting and explosion, and (d) in the event of lightning strikes to facility, and (e) proper signage during life of facility to warn of electrical shock or high voltage.
- (xix). Inventory and Remediation plan for County roads to be utilized during the construction phase, which plan shall: (a) indicate the condition and use of such County roads prior to construction, (b) how the same shall be restored to the condition existing prior to construction of the facility, (c) indicate the frequency of restoration and repair that will occur during construction activity, in the event such construction activity damages such roads or renders them impassable, as determined by the San Miguel Public Works Supervisor.
- (xx). Traffic analysis describing the impact and effect of the proposed project on traffic conditions and safety on all public roads from which there is access to or from the project, within three (3) miles of the project.

(xxi) Complaint resolution procedure with an appropriate form indicating how complaints received during the construction phase of the facility will be resolved. Such procedure should indicate the minimum amount of time required to address and resolve complaints and how complainant will be advised of such resolution with notification to complainant.

(D). Facility specifications to include at a minimum:

(i). Turbine information, to include size, type, height, rotor material, rated power input, performance safety, noise characteristics, tower and electrical transmission equipment.

(ii). Turbine drawings of each turbine model, including the tower and foundation.

(iii). Computer simulation or drawing showing the site fully developed with all proposed wind turbines and accessory structures.

(iv). Ice throw calculations.

(v). Blade failure analysis.

(vi). Catastrophic tower failure analysis.

(vii). Foundation design for all proposed structures.

(viii). Projected useful life of facility

(E). Noise report to include at a minimum:

(i). An analysis of any noise levels in the project using the ANSI 12 standard.

(ii). Map of any noise sensitive environment, including occupied residences, hospitals, schools, and places of worship, located within one-half (1/2) mile of the proposed facility.

(iii) A predictive analysis that assesses the range in wind turbine noise levels that can be reasonably expected to occur throughout the range of predominate daytime/nighttime meteorological conditions that are prevalent in the project areas based upon reasonably public available meteorological data with a report to be prepared by a qualified acoustics engineer who analyses and determines pre-existing, pre-development noise regime levels within one-half (1/2) mile of the proposed facility.

(iv). Owner shall provide acceptable noise resolution program to be utilized by owner if complaints concerning documented noise level at one-half (1/2) or

more above the pre-development background levels indicated in the report prepared under Letter E (iii) above.

(F). Avian and Mammalian Species Impact Study Plan which shall:

(i) Provide available information on the potential impact of the project on local migratory and non-migratory bird species and mammalian species of San Miguel County and whose migratory paths traverse San Miguel County.

(ii) Provide a mitigation plan for impact on such migratory bird species, indicating how such plan will be revised as industry standards and research become available.

(iii). Identify the aforesaid migratory bird and mammalian species.

(iv). Identify all seasonal migratory routes of such bird species.

(vi). Contain a statement to indicate how the applicant will comply with the Migratory Bird Treaty Act, 16 U.S.C., Section 703, et seq., the Bald and Golden Eagle Protection Act, 16 U.S.C., Section 668, 54 U.S. Stat. 250; the Endangered Species Act, 16 U.S.C. 1531, et seq.; the National Wildlife System Improvement Act of 1997, Public Law 105-57; and the National Environmental Policy Act, Public Law 91-190, 42 U.S.C. 4321-4327, January 1, 1970, et seq.

(G). A Decommission and Removal Plan for the facility, which shall:

(i). Include a provision indicating who shall be responsible for the decommission and removal, whether applicant, landowner, owner, or other persons, as described in said Plan, and include the proposed agreement which will be executed between such parties, for decommission and removal, and which shall provide that the rights and responsibilities there under shall be binding upon the successors and assigns of the parties.

(ii). Include a financial assurance in the form of a surety bond or other financial assurance acceptable to the Board of County Commissioners for the life of the facility, that ensures decommission and removal will be undertaken and completed, without regard to the then existing ownership of or title to the land and facility, and that the same shall be binding on all successors and assigns of the owner of the project and premises.

(iii) The aforesaid bond shall be subject to review and approval by the County, at least every five years, for a determination as to its adequacy for removal and site restoration.

(H). A Soils Report which shall include:

- (i) An overlay map of the natural features, showing the location of each soil type, and a description of the soil types.
- (ii) A soil analysis concerning the limitations for each soil type for the intended land use common to the facility, which analysis shall conform with the standards set forth by the USDA Natural Resources Conservation Service.

(I). A plan for the intended protection and preservation of cultural properties, national registered historic districts, archaeological sites and unmarked burials as defined in the Cultural Properties Act, Section 18-6-1, et seq., NMSA 1978, as amended, which plan shall be subject to review by the Historic Preservation Division of the New Mexico Office of Cultural Affairs as provided in Section 7 of this Ordinance.

(J). A Construction Schedule which shall include:

- (i) The proposed beginning and completion dates for all clearing and grading activity.
- (ii) The expected duration of exposure of all disturbed areas.
- (iii) The expected date for stabilization of all disturbed areas.
- (iv) Plans and specifications for the construction and maintenance of any proposed or required road system.
- (v) Proposed beginning and completion dates for wind towers, related structures and accessory buildings.

(K). County Assessor's property tax identification code map for premises.

(L). Geo-hydrological report for the project site, containing maps and cross-sections showing geology, depth to the water bearing formation, water level contours and estimated thickness of saturation in aquifer, with sufficient information relevant to the study area; and such report should include a technical narrative, spreadsheets, tables, graphs, maps and cross-sections.

Section 7. Request for Agency Review and Comment:

7.1. For each agency review required hereunder, applicant shall submit, with copy to the Planning & Zoning Supervisor, a request for review to the state agency, by certified mail, return receipt requested, on such form as is prescribed by the County Planning and Zoning Department, as follows:

- A. The request for review shall be the sole responsibility of applicant, who shall

allow the agency not less than ninety (90) calendar days for review and comment.

B. The application submitted by applicant to the Planning and Zoning Department, shall include each request for agency review, and the comments received from the agency or, if no such comments were received, a verified statement executed by applicant, that (i) request for review was submitted to the agency by certified mail, return receipt requested, (ii) that more than ninety (90) calendar days have passed since the request was received by the agency, (iii) that applicant did not receive comments or other correspondence from the agency, and (iv) that after the exercise of reasonable diligence, applicant is unaware of any such comments or review issued by the agency.

7.2. Review and comment shall be requested from the following state agencies for the reasons noted for each:

(1).. The Historic Preservation Division of the Department of Cultural Affairs, to determine if the project site will affect or impact cultural properties, national registered historic districts, archaeological sites and unmarked burials, as defined in the Cultural Properties Act, Section 18-6-1, NMSA 1978, as amended.

(2). The Soil and Water Conservation District located within San Miguel County, to determine whether the applicant can furnish terrain management sufficient to protect against flooding, inadequate drainage and erosion.

(3). The New Mexico Game and Fish Department, to determine whether the project will affect adversely the continued existence of any endangered or threatened species or the habitat of such species.

(4). The Board of Trustees of any Spanish or Mexican Land Grant, if the premises are within the exterior boundaries of such Grant, to determine whether the Board of Trustees claims any interest in, title to or lien upon the premises or whether the project will affect or impact any Land Grant property, or if the premises are outside any such Grant, to determine whether the project will affect or impact any adjacent Land Grant property.

(5). The United States Forest Service, to determine whether an environmental impact study should be required for the project.

(6). The New Mexico Department of Transportation, to determine whether the project will have any impact and effect on traffic conditions and safety on any state roads from which there is access to or from the project, or which exist within three (3) miles of the project site.

(7). The San Miguel County Public Works Division, for the same determination as noted in the immediately preceding Subparagraph, as concerns any county roads.

(8). Any affected Indian Tribes as determined by the listing maintained by the Historic Preservation Division of the New Mexico Department of Cultural Affairs.

(9). The Federal Aviation Administration, to determine if the proposed project site is within a FAA-designated civilian airport runway clear zone or runway protection zone, or a military airfield clear zone or accident potential zone, based upon information from the local or regional airport manager or military airfield administrator identifying the boundaries of such zones.

(10). The office of the State Engineer, to determine from the information to be submitted by applicant under Section 6.2(L), above, whether the project will affect or have any impact upon underground water resources.

Section 8. Setbacks for all Project Sites: The following minimum setbacks are required for all project sites, and are not subject to variance, except as provided in Section 17 of this Ordinance:

8.1. Project buildings and accessory structures shall be at least one hundred (100) feet distant from property boundary.

8.2. Each project tower shall be 2.0 times to WECS height (tower height = WECS height x 2 distance from all property boundaries).

8.3. Each project tower shall be at least 2.0 times to WECS height (tower height = WECS height x 2) distant from any existing railroad track.

8.4. Each project tower shall be at least 2.0 times to WECS height (tower height = WECS height x 1.25) distant from any existing above-ground transmission lines..

8.5. Each project tower shall be at least one-half (1/2) miles distant from any occupied residence, commercial building, hospital school or place of worship.

8.6. Each project tower shall be at least one-half (1/2) mile distant from any scenic or historic area, or resource significant site, designated as such by the Historic Preservation Division of the New Mexico Office of Cultural Affairs, or any site that has national historic designation.

8.7. The noise report required by Section 6 (E) shall verify that wind turbine noise levels are not predicted to exceed any hourly LEQ [as determined by independent consultant retained by the county, and previously amended hereinabove] at any of the closest noise sensitive receptors, including in the report occupied residences, schools, hospitals, and places of worship. The County may impose a noise setback that exceeds the distance setbacks in Section 8 of this Ordinance, as specified above, if based on the Noise Report submitted by applicant under Section 6.2 (E) of this Ordinance, such additional setbacks are necessary to protect the public health and safety and promote the general welfare of the citizens of San Miguel County .

Section 9. Procedure for Notice and Hearing Before Planning and Zoning Commission:

9.1 When the Planning and Zoning Division deems the project application complete, the Planning and Zoning Commission shall, at a public hearing, consider and act upon the application for conditional use permit, in accordance with the following procedure and requirements:

9.2. A public hearing before the Planning and Zoning Commission shall be held within ninety (90) days from the date the application is deemed complete by the Planning and Zoning Division.

9.3. Notice of the time, place and purpose of the hearing shall be given as follows:

A. By publication not less than twenty (20) calendar days before the public hearing in a newspaper published and of general circulation in San Miguel County; and

B. By posting not less than twenty (20) calendar days before the public hearing, upon the premises where the project is proposed to be located, and upon any perimeter fence of said premises, and adjacent to any public road or right-of-way nearest said premises; and

C. By certified mail, return receipt requested, to all adjoining landowners identified in the San Miguel County Assessor's tax map submitted under Section 6.2(K) of this Ordinance, which certified mail shall be postmarked not less than twenty (20) calendar days before the date of the public hearing.

D. By certified mail to all agencies identified for agency review under Section 7.2 of this Ordinance.

E. By ordinary first class mail to all interested persons who have requested notice of the public hearing before the Planning and Zoning Commission.

9.4. After providing notice as specified in Subsection 9.3, above, the Planning and Zoning Commission shall:

A. Hold and conduct a public hearing on the application for conditional use permit for the project, and entertain any evidence and testimony under oath, and upon the conclusion of the public hearing, take action on the application for conditional use permit, by making its recommendations to the Board of County Commissioners, for approval or denial of the application.

B. Any continuances of the public hearing shall be in accordance with the requirements of the Open Meetings Act, Section 10-15-1, *et seq.*, NMSA 1978, as amended.

C. The recommendation to the Board of County Commissioners shall include findings of fact supporting the recommendation, and if the recommendation is to grant the conditional use permit, such conditions as should be imposed, if any.

D. The recommendation by the Planning and Zoning Commission shall be rendered by written resolution to be filed in the office of the San Miguel County Clerk, which shall be reviewed *de novo* by the Board of County Commissioners as hereafter provided, which resolution shall be delivered to the applicant and to any person requesting notice thereof.

Section 10. Procedure for Notice and Hearing Before Board of County Commissioners:

10.1 Not later than ninety (90) days after the resolution of recommendation rendered by the Planning and Zoning Commission is filed in the office of the San Miguel County Clerk, said resolution of recommendation on the project application shall come on for a *de novo* public hearing before the Board of County Commissioners, pursuant to and in accordance with the notice and hearing requirements set forth in Section 9 hereinabove.

10.2 Upon conclusion of said public hearing, the Board of County Commissioners shall:

- A. Make and render its decision granting or denying the project application for conditional use permit, which decision shall include findings of fact supporting the decision, and if the decision is to grant the conditional use permit, the conditions imposed for the granting of the same, if any, and the effective date of said conditional use permit.
- B. Not later than thirty (30) days from the conclusion of the public hearing, render its aforesaid decision by written resolution which shall be filed forthwith in the office of the San Miguel County Clerk, and deliver copy of said resolution to the applicant, and to any person who has requested notice.

Section 11. Appeal: Any person aggrieved by the decision of the Board of County Commissioners may appeal the same to the District Court of the Fourth Judicial District in and for San Miguel County, as by law provided.

Section 12. Suspension and Revocation of Conditional Use Permit; Injunctive Relief

12.1. If the project owner fails to comply with any term, condition or requirement set forth in the conditional use permit by which the project is granted, said permit is subject to suspension and revocation as herein provided.

12.2. The County shall give written notice of non-compliance to the owner, specifying which conditions are in default, and upon the owner's failure to cure the default within thirty (30) days from receipt of said notice, the County may seek suspension or revocation of the conditional use permit, in whole or in part.

12.3 Written notice to suspend or revoke the conditional use permit, specifying the reasons therefor, shall be delivered to the owner, and the Board of County Commissioners shall hold and conduct a hearing on said notice, and issue a decision of suspension or revocation, under the notice and hearing requirements set forth in Section 10 of this Ordinance.

12.4. Any person aggrieved by the decision of suspension or revocation made by the Board of County Commissioners may appeal the same to the District Court of the Fourth Judicial District in and for San Miguel County, as by law provided.

12.5. Nothing contained herein shall preclude the County from seeking injunctive, or other equitable or legal remedy from the District Court for any violation by the owner of the terms, conditions and requirements of the conditional use permit granted for a project.

Section 13. Indemnification:

San Miguel County shall not grant a conditional use permit for a project, until applicant submits to the County an indemnity bond or other assurance approved by the County, which shall:

13.1. Indemnify and hold harmless San Miguel County, its elected and appointed officers, agents, and employees, from and against any and all claims, demands or causes of action, of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys fees, liabilities, damages, orders, judgments or decrees sustained by San Miguel County or any third party, arising out of or by reason of tower or equipment failure or collapse, or arising from the negligent acts, errors or omissions of any and all project owners, officers, employees or agents; and

13.2. Provide that the assurances, covenants and representations relating to the indemnification shall survive the term of any agreement and continue in full force and effect for the life of the project, and that the same will be binding upon all successors and assigns of the applicant.

Section 14. Liability Insurance

A conditional use permit of a project shall not be granted until the applicant or owner provides proof that it has secured and maintains for the project and project site, general liability insurance, as follows:

14.1. Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence; \$2,000,000 aggregate. Shall specifically include the County and its officers, employees, agents and assigns as additional named insured.

14.2. Automobile coverage: \$1,000,000 per occurrence; \$2,000,000 aggregate.

14.3. Worker's compensation and disability: statutory amounts.

14.4. Insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.

Section 15. Commencement and Operation; Expiration; Extension of Time: The construction of a project for which a conditional use permit has been issued, shall be commenced not later than two (2) years after the conditional use permit is issued, and shall be completed and in operation not later than three (3) years after the permit is issued, or such other time as may be determined by the County; and upon failure of project commencement or completion as aforesaid, the conditional use permit shall expire, and re-application shall be required.

Section 16. Removal of Wind Generation Facility and Equipment:

16.1. Any project facility that is not in continuous and uninterrupted operation for twelve (12) consecutive months, shall be deemed non-operational and abandoned, and upon written notice thereof by the County to the owner/operator, such owner/operator shall within thirty (30) days or receipt of such notice advise the County that such project facility will be removed, and the estimated time for said removal.

16.2. Removal of the project shall include removal of the entire facility, including all towers, foundations, buildings, accessory structures, fences, transmission lines, and all other appurtenances of and relating to the facility.

16.3. Decommission of the project site shall be in accordance with the Decommission and Removal Plan submitted by the applicant and approved by the County, to include remediation to the natural state of the premises, as provided in Section 6(G) of this Ordinance.

Section 17. Variance:

17.1. The County may approve a variance for any provision or application of this Ordinance upon application of the owner or operator of a proposed wind energy facility so long as the application for variance is reasonable and does not jeopardize the health, safety and general welfare of the citizens of San Miguel County; except that the setback requirements as provided under Section 8 hereof shall at no time be subject to variance, except that all affected landowners within the one-half (1/2) mile setback may waive any

objection or requirement, whereupon a variance of Section 8 requirements may be considered and approved.

17.2. An application for variance may be considered at any time by the County, and whether part of the initial project application, or a subsequent submission, shall at all times be subject to and considered under the notice and hearing requirements set forth in Sections 9 and 10 of this Ordinance.

Section 18. Penalty:

Any person, firm or corporation, whether as principal, agent or employee, who violates or causes a violation of this Ordinance, or any part hereof, shall upon conviction, be punished for each violation, by a fine not exceeding three hundred dollars (\$300.00) or by imprisonment not exceeding ninety (90) days in the county jail, or by both such fine and imprisonment, which penalty is the maximum allowed by Section 3-21-13, NMSA 1978. Each day the violation occurs shall constitute a separate offense and shall be punishable as provided herein.

Section 19. Notification to County of Change in Ownership:

When a project owner conveys, transfers, assigns or otherwise divests itself of the project, written notice of such conveyance, transfer, assignment or other divestiture shall be given to the County forthwith, and not later than thirty (30) days from the effective date of said conveyance, transfer, assignment or other divestiture.

Section 20. Compliance With Zoning Development Permit Process:

Construction of any project for which a conditional use permit is granted under this Ordinance, shall not commence without approval of the Planning and Zoning Division, and compliance with the zoning development application process of that Division.

Section 21. Repeal: This Ordinance expressly repeals, in its entirety, San Miguel County Ordinance No. SMC-10-14-03-ORD, filed for record in the office of the San Miguel County Clerk on October 16, 2003, in Book 240, Page 4482, as Instrument No. 9483.

Section 22. Effective Date of Ordinance: This Ordinance shall become effective thirty (30) days after it is filed in the office of the San Miguel County Clerk, as by law provided.

MOVED, SECONDED, ADOPTED AND ORDAINED this _____ day of _____, 20____, by the BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, NEW MEXICO.

David R. Salazar, Chairman

Nicolas T. Leger, Vice-Chair

Marcellino A. Ortiz, Member

Arthur J. Padilla, Member

Ron R. Ortega, Member

Les Montoya, County Manager

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Melanie Y. Rivera
San Miguel County Clerk

Jesus L. Lopez
San Miguel County Attorney