

Section 436. Introduction and Purpose

A. Purpose

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 and utility-scale solar energy projects. Utility-scale wind and solar projects must have an 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.
3. Further the County's goals of protecting public health, safety, convenience, and general welfare, and its natural, cultural, and scenic resources through clear and enforceable siting standards.

B. Applicability

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 and 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.

Major Highway --- Any public roadway classified as a principal arterial or minor arterial under the most current functional classification system adopted by the State Department of Transportation or the County, including U.S. Highways, State Routes, and Interstate Highways, and any other roadway designated by the County as carrying regional or statewide traffic volumes of significance.

Non-participating Parcel --- Any parcel of real property that is not subject to a recorded lease, easement, option, or other written agreement granting permission for the placement, construction, operation, or maintenance of a renewable energy facility and that is not under common ownership or control with the applicant or facility operator. A Non-Participating Parcel

includes property owned by individuals, entities, or public agencies that have not executed a participation agreement with the renewable energy facility applicant at the time a complete application is submitted to the County.

Occupied Residence --- A dwelling unit that is lawfully established and designed for human habitation, and that is either currently inhabited or reasonably capable of being inhabited on a permanent or seasonal basis at the time a complete renewable energy facility application is submitted to the County. An Occupied Residence includes single-family homes, manufactured homes, modular homes, duplexes, and other residential structures used for living purposes, whether owner-occupied or tenant-occupied.

Participating Parcel --- Any parcel of real property that is subject to a legally binding, written, and recorded lease, easement, option, or other agreement granting the renewable energy facility applicant or operator the right to construct, install, operate, maintain, or decommission renewable energy equipment or related infrastructure on the parcel, and that is in effect at the time a complete application is submitted to the County. A Participating Parcel also includes any parcel under common ownership or control with the renewable energy facility applicant or operator that is designated as part of the renewable energy project site.

Photovoltaic Cells / Solar Panels — An electrical system or device that converts 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 as follows: (i) For wind turbines, from the center of the turbine foundation; and (ii) for solar facilities, from the nearest outer edge of the solar equipment footprint or the nearest project perimeter fence, whichever is closest to the setback boundary; ~~from the center of a wind turbine electrical generator tower foundation, or from one or two edges of a solar photovoltaic system,~~ to the nearest applicable 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.

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 do 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 the 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-site residential, institutional, or

agricultural use which do not feed residual power into the electrical grid as defined by the Arizona Corporation Commission.

Utility-Scale Wind Energy Project — 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 do not feed residual power into the electrical grid as defined by the Arizona Corporation Commission.

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.

Visual Resource — The natural and built features of the landscape that contribute to scenic quality, visual character, and aesthetic experience. These include landforms, vegetation, water bodies, open spaces, viewsheds, and culturally or historically significant sites visible to the public. ~~Areas visible from major state highways, scenic corridors, byways, historic roads, trails, gateway communities, national, state, or county parks and monuments, ridgelines, and other prominent features are examples of visual resources.~~

Section 438. Zones in Which Allowed / CUP Required

Renewable Energy Generation facilities are allowed only in the Agricultural-General and Industrial Zones, subject to securing a Conditional Use Permit (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.

Preferred Criteria

When reviewing applications for renewable energy facilities, Apache County will encourage ~~siting~~ **setting** in areas consistent with the following preferred criteria and the Apache County Comprehensive Plan. These criteria are intended to further the goals of preserving the County's resources and protecting the public health, safety, convenience, and general welfare. ~~These preferred criteria are advisory and are intended to guide design and mitigation; compliance with all mandatory standards in this Article remains the basis for basis for permit approval:~~

1. **Proximity to Transmission Infrastructure** — Sites located close to existing transmission lines, substations, and interconnection points, to minimize the need for construction of new high-voltage infrastructure.
2. **Lower Habitat and Vegetation Sensitivity** — Areas with limited wildlife habitat and vegetation value, and distant from state and federally designated wildlife areas, in order to minimize habitat loss, degradation, and fragmentation.

3. **Distance from Population Centers** — Locations sited away from towns, communities, and residential concentrations, to minimize potential noise, shadow flicker, glare, and quality-of-life impacts.
4. **Compatible Land Uses** — Areas already used for grazing, agriculture, or other compatible low-density uses that present fewer conflicts with renewable energy development.
5. **Topographic Suitability** — Locations with terrain conducive to construction and maintenance, minimizing the need for extensive grading or vegetation removal.

Section 439. General Development Standards for Renewable Energy Generation Facilities

Pre-Application Meeting

CUP holders ~~will shall~~ participate in a mandatory pre-application meeting with County staff prior to CUP submittal. The purpose of the meeting is to review the ~~conditional use permit process, review the~~ Pre-Submittal Checklist, ~~identify~~ potential issues early in the process, and clarify information required for a complete application. Apache County may invite representatives from ~~local~~ fire districts, Arizona Game and Fish Department, Arizona Department of Transportation, Apache Natural Resource Conservation District (ANRCD), or other relevant agencies to participate in the pre-application meeting.

~~Because additional information may be required for an effective review, conceptual and pre-application meetings shall include representatives from Apache County Community Development, Engineering, and the Assessor's Office. Representatives from relevant state and local jurisdictions, such as, but not limited to, Arizona Game and Fish, the Apache Natural Resources Conservation District (NRCD), and local fire and EMS services, may also be invited to participate.~~

Roads and Access

A minimum of on-site roadways shall be constructed. Temporary access roads and excess roadway widths for initial equipment and 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 by the Apache County Engineering Department and approval with the CUP application. All permanent roads shall be built to the minimum County requirements.

Electrical Infrastructure

Electrical collector lines, which connect electricity generation devices to any substations, shall be placed underground, ~~except where above-ground placement is approved by the County due to engineering, safety, or environmental constraints.~~

Fire Protection and Emergency Response

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 Marshal.

~~The applicant agrees to implement fire protection measures for the construction and operation of the energy project that are acceptable to the local fire district and other land management agencies adjacent to the proposed energy project, if any.~~

For power generation projects, the applicant shall have an approved fire prevention and protection plan in place with the local fire protection district before construction on the facility begins. A copy of the approval shall be included in the CUP application.

FAA and FCC Compliance

Renewable Energy Generation projects shall comply with applicable Federal Aviation Administration (FAA) lighting, navigation, and other requirements. ~~Lighting shall be the minimum Aircraft Detection Lighting System (ADLS) required by FAA regulations or other public safety considerations. The use of low-intensity, red pulsating or blinking lighting with ADLS is required and preferred, so long as consistent with FAA regulations. The use of constant strobe or strobe-type lighting for nighttime use is prohibited unless specifically required by the FAA.~~

Communications Interference; Compliance; Investigation; Remediation; Waivers. The Applicant/Operator shall design, construct, operate, and maintain the Renewable Energy Facility in compliance with all applicable Federal Communications Commission (FCC) rules and regulations (including prohibitions on harmful interference, as defined by the FCC) and any other applicable federal or state authorizations, licenses, or permits governing RF, microwave, broadcast, public safety, and telecommunications systems. Prior to construction, the Applicant shall submit a pre-construction RF/microwave interference study prepared and sealed/signed by a qualified communications engineer and shall provide and maintain a local point-of-contact (name, 24/7 phone, and email) authorized to receive and act on interference complaints. Upon receipt of a written complaint, the CUP holder shall initiate an investigation within ten (10) business days and provide the complainant and the County a written status update. If interference is verified, the CUP holder shall, at its sole cost, implement corrective action sufficient to eliminate the verified interference and restore service to pre-project conditions, including as necessary operational curtailment or cessation, repair or replacement of affected equipment, filtering/shielding, and re-aiming or relocation of antennas or communications equipment, within thirty (30) calendar days of verification unless the Community Development Director grants a written extension for good cause. The County may require independent testing and/or engineering analysis by a qualified third party to confirm the presence, source, and resolution of interference; all reasonable costs shall be paid by the Applicant/Operator. Any person or entity may waive application of this subsection as to a specific receiver, facility, or parcel by executing a written waiver identifying the affected location and scope of waiver and recording the waiver with the County Recorder to provide notice to successors.

Operation of the energy project shall not create conditions that unduly reduce or interfere with public or private television, radio, telemetry, cell phone, radar, or other electromagnetic communication signals. If interference occurs, the CUP holder shall restore reception to pre-project levels.

Design and Appearance

Towers, generator housings, hubs, blades, and solar panel stands shall be painted a non-reflective, unobtrusive color that complements the surrounding landscape, including but not limited to white, off-white, beige, or tan.

The design of other buildings and structures shall, to the extent reasonably feasible and consistent with public safety, use materials, colors, textures, screening, and landscaping that blend the facility into the existing environment.

Wildlife Protection

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 and U.S. Fish and Wildlife Service wind guidelines that have been developed to aid project proponents in reducing impacts to wildlife.

A letter from the Arizona Game and Fish Department, ~~Apache NRC~~, and other applicable state and local agencies, ~~including but not limited to local fire and EMS departments,~~ shall ~~may~~ be required prior to scheduling the CUP application for a hearing before the Planning and Zoning Commission, detailing each agency's comments and or recommendations for the project.

Pre-construction and post-construction wildlife studies, if required, shall be developed and performed in accordance with Arizona Game and Fish Department or U.S. Fish and Wildlife Service guidelines.

Permits and Agency Coordination

A building and grading permit shall not be issued until all federal, state, and local agency recommendations have been addressed to the satisfaction of Apache County Community Development, Apache County Planning and Zoning Commission and the Apache County Board of Supervisors. The CUP holder is required to coordinate with federal, state, and local agencies, including but not limited to Apache NRC and local fire and EMS departments, for review of operations for the life of the CUP.

All Renewable Energy Systems shall be designed and constructed, to the greatest extent feasible, to prevent interior and exterior access by the public and shall include interior ladders and locking doors. Experimental or prototype wind towers or solar panels are prohibited. All equipment shall be standard production models commercially available from the manufacturer. Wind turbine designs with blades downwind of the tower are prohibited. For construction and permitting

purposes, all wind towers and solar panels shall conform to the regulations for the applicable seismic zone of the adopted building code.

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. All necessary building, grading, and other permits shall be obtained from the Apache County Community Development Department prior to any site preparation or construction. No building or structure may be constructed or occupied prior to full compliance with all applicable Community Development Department requirements, including grading, drainage plans, flood control requirements, and issuance of building and other permits. Floodplain Use Permits, where required, for development in a floodplain shall be obtained through the Flood Control District prior to development.

Signs

Signs associated with the project are limited to one project identification, information, interpretive, and address sign not exceeding 24 square feet at each point of ingress and egress. No other signs shall be installed except required warning and directional signs. Limited logos or manufacturer names are permitted on generator housings or hubs. No other advertisements or prominent logos or messages are allowed. All sign requirements are found in Apache County Ordinance Article 7. All sign permits shall be included in CUP approval and shall not require a separate sign permit under Article 7.

Noxious Weeds, Materials, and Site Management

Prevention-Minimization of Unnecessary Site Damage Prior To, During, After Construction

- A. Prior to geotechnical test hole drilling the Applicant's geologist and engineer shall consult all available existing site-specific geological surveys and soil survey information already available. All forms of destructive sampling shall be kept to a minimum and restored promptly.**
- B. All test holes dug/drilled for soils and/or geotechnical studies or for construction, which are abandoned as non-suitable sites, shall be promptly filled (within 15 calendar days) with the same native materials that were extracted, placing rock below with soil on top.**
- C. State-Protected native vegetation removed for construction shall be salvaged or relocated according to Arizona Native Plant Law, in coordination with the Apache Natural Resources Conservation District (ANRCD).**
- D. Non-State-Protected trees/shrubs removed for construction shall be disposed of at the discretion of the landowner. On State- or County-owned lands, they shall be responsibly disposed of or lopped and scattered across barren soil where needed for topsoil retention or offered to community civic-charitable organizations as donated**

firewood. In all cases, coordination with the (ANRCD), and/or the local fire district/department, is required.

- E. Non-State-Protected, non-noxious herbaceous vegetation removed for construction shall be offered to nearby landowners or ranchers, or spread across barren soil, or burned in a responsible manner. Coordination with the ANRCD, and/or the local fire district/ department, is required. Noxious-invasive plant species shall be promptly disposed of according to the Noxious-Invasive Weed Prevention and Control Plan developed in coordination with the ANRCD
- F. A site-appropriate Noxious-Invasive Weed Prevention and Control Plan for project construction, operations, and decommissioning-restoration shall be prepared in coordination with the ANRCD and be included with the CUP Application.
- G. Non-vegetative native materials (rock, cinders, soils) removed or displaced by pre- or post-construction excavation shall not be stockpiled on-site for more than 6 months, unless included in CUP approval. The following options will be permitted - They may be:
 - Used to reshape certain portions of the project site terrain, if needed and approved;
 - Donated to the County or local municipalities or businesses that can use them;
 - Stored or used on private lands by written agreement;
 - Crushed and used for new road surfacing or for concrete foundation mixtures.

Operations and Cleanup

Operations

Cleanup. If project components or materials must be replaced during construction or operations due to manufacturing flaws, maintenance issues, weather extremes, accidents, or unforeseen events, including but not limited to turbine blade throw, tower collapse, cracked solar panels, battery leaks, oil spills, or similar incidents, such materials shall be completely removed and disposed of in accordance with decommissioning and site restoration requirements in **Section 446** of this Article.

All such cleanup and removal activities shall be promptly reported to the County and to the Apache NRC and completed within thirty (30) calendar days, or longer as necessary to accommodate site conditions and reasonable scheduling needs, at the CUP holder's expense.

Section 440. Noise Requirements and Mitigation Measures

A. Audible Sound Limits

“Industrial noise from the renewable energy facility shall not exceed 50 dBA LAeq (10 min) or 5 dB above the measured background LA90 (10 min), whichever is greater, at any non-participating occupied residence, school, or hospital existing at the time of CUP issuance.

Background (LA90) and ambient sound shall be determined by measurements over a representative quiet period (e.g. turbine off or low-wind conditions), using a calibrated Type 1 sound meter at the receptor location. All measurements shall be done at normal microphone height (1.5 m) and under meteorological conditions (wind <5 m/s at 10 m height, no precipitation). The applicant shall provide pre-construction baseline measurements and report, and shall install post-construction monitoring if noise complaints arise. Compliance is determined by validated measurement records and/or engineering analysis; violation of the limits or falsification of data shall be grounds for enforcement action.”

~~Audible noise due to project operations shall not exceed the greater of:~~

- ~~1. 55 dBA LAeq,10, or~~
- ~~2. The measured background sound level, LA90,10 plus five (5) dB, as measured at the exterior of any legal residence, school, library, or hospital in existence at the time of approval of the CUP.~~

Measurements shall be conducted in accordance with generally accepted acoustical measurement standards and practices.

B. Sound Studies

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. **The sound evaluation shall identify all noise-producing components of the project and shall demonstrate compliance with the audible sound limits set forth in this section.**

C. Waivers

If sound levels resulting from a proposed facility exceed the criteria specified above, a waiver may be granted by the Board of Supervisors. Waivers may also be granted by affected property owners who provide written consent acknowledging anticipated noise levels and accepting them as a condition of approval. **Any such waiver shall be recorded with the Apache County Recorder to provide notice to future property owners.**

Section 441. Setbacks

Wind Projects

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 measured from the finished foundation to the top of the structure, including the uppermost extension of any blade (that is, “straight up”). Wind towers shall be placed in accordance with the greater of the applicable setback and location requirements set forth below.

A. Noise-Based Setbacks

1. Setbacks shall be such that the sound standards established in Section 440(A) will not be exceeded.

The proposed wind energy project shall comply with the noise regulations set forth in Section 440(A), and Apache County reserves the right to require the applicant to submit a qualified third-party expert's analysis and written report addressing audible noise generated during project construction and operations.

B. Residential Setbacks

Individual wind towers shall be placed within the project boundary at least **one and one-half (1.5) times** the total tower height **or one-half (½) mile (2,640 feet), whichever distance is greater** from an existing residence located outside of the project boundary.

C. Project Boundary Setbacks

Individual wind towers shall be placed at least ~~1.1 times (110%)~~ **one and one-half (1.5) times (150%)** the total tower height from the project boundary.

D. Non-Generating Structures

The minimum setbacks from the project boundary for all non-electrical generating uses and structures, including administrative buildings, meteorological or anemometer towers, maintenance buildings, operations buildings, and transformers, shall conform to the setback requirements of the zoning district in which the use or structure is located.

E. Roadway Setbacks

- i. Individual wind towers ~~or solar panels~~ shall be set back from any **non-paved** public or publicly maintained roadway, at least ~~1.1 times (110%)~~ **one and one-half (1.5) times (150%)** the total tower height measured to the nearest edge of the right-of-way **to the center of the tower foundation.**
- ii. Individual wind towers shall be setback from any major highway at least one (1) mile of the total tower height, measured to the nearest edge of the right of way to the center of the tower foundation.

F. Railways, Utilities, and Structures

Individual wind towers shall be set back from any railway, measured to the nearest edge of the right-of-way, or from any utility line, whether above or below ground and 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%)~~ **one and one-half (1.5) times (150%)** the total tower height.

G. Airports

All wind energy systems proposed to be located within four (4) miles of the nearest runway of the nearest airport shall comply with all requirements imposed by the Federal Aviation Administration (FAA). The applicant shall provide a written statement from the FAA setting forth the FAA's comments, prohibitions, and requirements, if any, for the proposed project.

Solar Project Setbacks

A minimum setback of fifty (50) feet, as determined by local EMS and the local fire district, shall be required for all commercial solar projects where project boundaries are contiguous with state or federal land, and ~~one hundred fifty (150)~~ two hundred (200) feet where contiguous with Agricultural-General zoned land. A minimum setback of five hundred (500) feet from major highways is ~~and scenic highways shall~~ required, unless reduced through visual screening measures approved by Apache County.

A. Setback Reductions

The Board of Supervisors may approve a reduction in the setback requirements set forth in this section under any or a combination of the following circumstances:

1. Affected property owners provide irrevocable written consent allowing renewable energy facilities to encroach into otherwise required setback areas. Such consent shall:
 - o Acknowledge the specific setback reduction being approved.
 - o Be memorialized in a notice recorded with the Apache County Recorder to notify future owners that setbacks are less than those otherwise required.
2. The project shares a common property line with another approved Renewable Energy Generation facility.
3. An adjacent property owner pursuing development of a Renewable Energy Generation facility or similar use files 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 levels greater than those permissible for the Renewable Energy Generation facility under this section.~~

~~J. Use of Setback Areas~~

~~Setback areas may be used for access within the development but shall otherwise remain in their existing vegetative state.~~

Section 442. Use of CUP, Terms, and Conditions

Any Renewable Energy Generation facility granted a Conditional Use Permit (CUP) shall be developed in accordance with the schedule for development and stipulations set forth in the approved CUP. ~~A CUP for a Renewable Energy Generation facility shall be subject to an administrative review every sixty (60) months. Additional administrative reviews may be conducted at the discretion of the Community Development Director. The review fee may be waived provided the previously issued CUP has not expired and the facility remains in compliance with all applicable conditions.~~

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 upon notification to the Community Development Department. ~~Any new CUP holder shall be obligated to comply with all existing conditions of approval and shall provide adequate bonding, as outlined in Section 446, to demonstrate the financial ability to fulfill all obligations specified in the CUP.~~

Pre-Submittal Checklist

CUP applications shall include a completed Pre-Submittal Checklist found in Appendix A at the end of this Article signed by the applicant. The checklist shall confirm that all required studies, public outreach efforts, and preliminary agency consultations have been initiated or completed prior to application submittal.

Section 443. CUP Suspension and Revocation

A. General Authority

Any Conditional Use Permit (CUP) issued pursuant to this section may be suspended or revoked, in whole or in part, by the Board of Supervisors for material non-compliance with the requirements of this Article or the conditions and stipulations set forth in the CUP. ~~A CUP may be suspended or revoked only after a duly noticed public hearing and upon a finding that the CUP holder has failed to cure the material non-compliance after no fewer than thirty (30) days, or as otherwise reasonably necessary with written notice from the Community Development Director.~~

B. Unsafe or Inoperable Facilities

If a Renewable Energy Generation facility becomes unsafe or inoperable, the CUP shall be subject to suspension or revocation by the Board of Supervisors as follows:

1. Inoperable Renewable Energy Generation Facility

An “Inoperable Renewable Energy Generation Facility” is a facility that does not generate ~~at least one (1) megawatt~~ of electricity for a continuous period of three hundred sixty (360) days, unless such non-generation is the result of:

- An act of nature,
- A declared emergency, or
- Another cause beyond the reasonable control of the CUP holder.

A facility shall not be considered inoperable if the CUP holder demonstrates that modernization, rebuilding, or repairs are actively underway or planned and will be diligently completed.

2. **Unsafe Renewable Energy Generation Facility**

An “Unsafe Renewable Energy Generation Facility” is one that has been found by a state or federal administrative agency or by a court of competent jurisdiction to have materially violated applicable health or safety laws.

A facility shall not be deemed unsafe if the CUP holder demonstrates that corrective measures are in progress or planned and will be diligently completed.

3. **Public Nuisance Declaration**

Every unsafe or inoperable Renewable Energy Generation facility is hereby declared to be a public nuisance per se and shall be subject to abatement by all available legal and equitable remedies.

C. Complaint and Hearing Process

Upon receipt of a complaint by the Community Development Department alleging that a Renewable Energy Generation facility is unsafe or inoperable, the Board of Supervisors shall convene a public hearing as soon as reasonably practicable after providing written notice to the CUP holder.

Pending a final determination, the Board may:

- Suspend the CUP in whole or in part, or
- Impose interim conditions necessary to protect public health, safety, and welfare.

Upon a final determination that the facility is unsafe or inoperable, the Board may:

- Suspend the CUP,
- Revoke the CUP, or
- Impose additional conditions deemed necessary to protect the public health, safety, and welfare.

D. Decommissioning Following Revocation or Expiration

No later than thirty (30) days after revocation or expiration of the CUP, the decommissioning plan approved as part of the CUP shall be implemented, and decommissioning shall proceed diligently to completion. The timeframe for decommissioning shall be determined by a Professional Engineer registered in the State of Arizona. If decommissioning has not

commenced within thirty (30) days of CUP revocation or expiration, Apache County may seek recovery under the financial assurance or bond.

Section 444. Joint Agency Approvals

If the applicant is also applying to the State of Arizona, the United States Bureau of Land Management (BLM), the United States Forest Service (USFS), or any other federal agency for a right-of-way grant, lease, or other authorization or approval for a renewable energy project in Apache County, and the project is located in whole or in part on land managed by the State, BLM, USFS, or other federal agency, or if the applicant is also applying to the Western Area Power Administration or another federal power marketing agency (PMA) for an interconnection or transmission agreement, then the applications may be jointly considered.

Joint consideration may include, but is not limited to, coordinated application review, joint hearings, shared mitigation requirements, and reliance on studies, findings, reports, assessments, or analyses prepared for state or federal review. Any findings, reports, studies, statements, assessments, analyses, or mitigation measures issued, approved, or adopted by the State, BLM, USFS, other federal agency, or PMA may be considered and adopted by the Apache County Planning and Zoning Commission and the Board of Supervisors in connection with the CUP application. Joint review does not wave county standards.

County Jurisdiction

~~Article 4 does not purport to regulate renewable energy generation projects on state or federal land except to the extent that state or federal agencies require compliance with Apache County zoning requirements as part of their own permitting or authorization processes.~~

Conflict of Laws

~~In the event of any inconsistency between the requirements of this section and any requirement of state or federal law, now or in the future, the applicable state or federal requirement shall control. This section shall be interpreted and applied in a manner consistent with controlling state or federal law.~~

Section 445. Public Outreach

As part of the Conditional Use Permit (CUP) review and approval process, and to ensure adequate public outreach, the applicant shall complete the following requirements:

A. Property Owner Notification

1. A list of all property owners of record within one (1) mile of the project boundary, including current mailing address information.

2. A list of all property owners of record within a minimum of three hundred (300) feet of each access route to the project from a public roadway, as well as within three hundred (300) feet of each public roadway requiring improvements in connection with the project, including current mailing address information.
3. Notice by first-class mail to all property owners listed under subsections (1) and (2), which shall include:
 - o A narrative description of the proposed project;
 - o Identification of transportation and access routes;
 - o A vicinity map showing surrounding properties; and
 - o A layout of the proposed facility and accessory buildings, including setback distances to property lines.

B. Community and Agency Notification

Notice by first-class mail to all incorporated and unincorporated community officials within three (3) miles of the project boundary. Community officials may include, but are not limited to, mayors, city councils, community development departments, boards of supervisors, planning and zoning commissions, and local fire officials.

C. Public Meetings

Schedule, publicize, and conduct at least **two (2)** public meetings in the project area, in collaboration with neighborhood groups or property owner associations where available. **The public meetings shall be held at least thirty (30) days prior to the Planning and Zoning Commission hearing and shall comply with the requirements of Article 11 of the Apache County Zoning Ordinance.**

D. Project Information Website

Establish a project website or file transfer protocol (FTP) site, linked to the Apache County website if feasible, prior to the first required public meeting. The website shall include a project summary, site plan, context plan, and applicant contact information, and provide a mechanism for submission of public comments.

E. Complaint Response and Hotline

Provide a contact name and telephone hotline by which citizens may leave comments or complaints twenty-four (24) hours per day for the life of the project. Hotline information shall be printed on a prominent sign at each project entrance and maintained on file with the Community Development Department. The CUP holder shall make reasonable efforts to review and address non-urgent messages within seventy-two (72) hours and urgent messages within twenty-four (24) hours. The CUP holder shall provide the County with a monthly summary of complaints received and actions taken to address those complaints.

F. Outreach Summary Submittal

A Public Outreach Summary shall be submitted with the CUP application. The summary shall include copies of mailed notices, documentation of public meeting dates and attendance, a summary of comments received, and responses provided by the applicant.

Section 446. Termination and Decommissioning

1. Decommissioning Plan

As part of the CUP submittal, the applicant shall submit a decommissioning plan that ensures the project site will be restored to a useful, non-hazardous, near-original condition without significant delay, including, but not limited to, the following standards:

A. The plan shall provide for the protection of public health and safety and for the protection of the environment and natural resources during site decommissioning, removal, and restoration.

B. ~~Complete~~ **Removal down to three feet (36 inches) below the surface is required of all man-made, above-ground and below-ground project materials, structures, roads, and equipment, regardless of depth below the surface, including but not limited to turbines, turbine parts, towers, solar panels, solar stands and parts, foundations, concrete, rebar, poles, pilings, cables, wires or conduit, substations, transmission lines, collector lines, roadway surfacing, and any other non-native materials.**

C. No dismantling or extraction of project materials by explosive methods shall be permitted. No non-native materials shall be buried on-site at any time.

D. No stockpiling or long-term storage of used wind turbine blades, towers, solar panels, batteries, transformers, or other project materials shall be permitted within the County beyond six (6) months after the start of decommissioning. This period is intended solely for orderly removal and disposal off-site. All materials temporarily stored on-site shall be placed on a non-permeable barrier and secured to prevent migration by wind, soil movement, or precipitation.

E. Prompt and complete removal of all contaminated vegetation, soil, or rock, including but not limited to petroleum-stained soils, fiberglass fragments, epoxy dust, heavy metals, or liquid chemicals, shall be required regardless of depth. Replacement of non-contaminated native soils and vegetation suitable to the site shall be coordinated with the ANRCD.

F. During accident cleanup, and/or site reclamation, the disposal, incineration or burial of any project materials on-site, or any land within the County is prohibited, unless it is done off-site in an ADEQ permitted toxic waste disposal facility. Removal of all project materials and contaminated soil/vegetation shall be transported by approved, inspected and licensed vehicles to ensure no leakage along the transportation route, and shall be taken to an ADEQ or US-EPA licensed toxic waste disposal facility.

G. All required removal and restoration work is to be coordinated, inspected and approved in writing by the ANRCD before being accepted by Apache County as complete. At least 90% of all holes/trenches resulting from materials or contaminants removed shall be randomly inspected on-site by the ANRCD prior to backfilling with native rock and soil to be obtained from very similar local sources to the original site.

H. All costs associated with project accident cleanup, infrastructure repair, road repair, personal property damage, and injury or death compensation caused by any aspect of the project shall be the sole responsibility of the project owner, operator, or company. The CUP holder shall indemnify and hold Apache County harmless from all related liability and claims.

I. For any portion of the project located on leased property, the plan may incorporate written agreements with the landowner regarding retention of access roads, gates, or buildings, or restoration of agricultural or forest resources.

J. The plan shall include a time schedule and cost estimate for completion of site decommissioning, removal, and restoration activities.

~~K. Any future upgrades to replace the project with larger or more powerful wind turbines, solar panels, or transmission lines, or any time extensions beyond the original CUP term, may require approval of a new CUP and additional conditions as determined by Apache County.~~

K. Modifications and Upgrades. Routine maintenance and like-for-like replacement of equipment that does not expand the project boundary and does not increase the maximum approved turbine height, lighting, generating capacity, or materially change visual/noise/shadow-flicker impacts may be conducted with written notice to the Community Development Department. Any material modification, including but not limited to repowering with taller turbines, expansion of the project boundary, new or expanded transmission infrastructure, or extension of the CUP term, shall require County approval through a CUP amendment or new CUP, as determined by the Community Development Director.

2. Financial Assurance

Before beginning construction of the renewable energy project, the applicant shall submit a financial assurance in the form of a bond or other security acceptable to Apache County to cover operational cleanup, removal, and site restoration.

A. The bond shall be issued in the name of the applicant, the landowner (if different), and Apache County, and shall ensure the availability of sufficient funds to restore the site if the operator fails or is otherwise unable to comply with decommissioning requirements.

B. The decommissioning bond amount shall be re-evaluated every five (5) years during the CUP review process to ensure adequacy, considering inflation and updated cost estimates. The bond amount shall be adjusted annually for inflation using the U.S. Gross Domestic Product Implicit Price Deflator or a comparable index selected by Apache County if the index is no longer published. The applicant shall increase the bond amount by the percentage change in the index

and appropriate the amount to the date of project retirement. The bond holder shall submit an annual report to the Apache County Community Development Department describing the status and adequacy of the financial assurance. The bond shall not be subject to revocation or reduction prior to retirement of the energy project site and completion of decommissioning in accordance with this section.

Section 447. Fees

Fees for Conditional Use Permits for Renewable Energy Generation Facilities shall be \$500 plus \$50.00 per acre, with a fee cap at \$25,000.

Section 448. Development Agreements

The County may enter into a Development Agreement pursuant to A.R.S. §9-500.05 or applicable county authority, allowing negotiation of infrastructure improvements, road upgrades, public safety contributions, emergency services support, visual mitigation, and community benefit provisions. Such agreements shall not waive mandatory health and safety standards of this Article

Appendix A

Renewable Energy Generation Facility

Conditional Use Permit (CUP) Pre-Submittal Checklist

Purpose and Applicability

This Appendix establishes the required Pre-Submittal Checklist for Conditional Use Permit (CUP) applications for Utility-Scale Renewable Energy Generation Facilities pursuant to **Article 4** and **Article 11** of the Apache County Zoning Ordinance.

Completion of this checklist is required prior to acceptance of a CUP application for processing. Submission of a completed checklist does not guarantee approval but confirms that required materials, studies, coordination, and outreach efforts have been initiated or completed to allow for meaningful review by Apache County staff, the Planning and Zoning Commission, and applicable reviewing agencies.

A. Applicant Information

(Article 11 – CUP Application Requirements)

- Applicant name
- Project name
- Authorized representative
- Mailing address
- Phone number and email address

- Property owner name (if different from applicant)
- Written authorization from property owner

B. Project Description

(Article 11; Article 4, Sections 436, 437)

- Written narrative describing the proposed project
- Project type (solar, wind, or hybrid)
- Total generating capacity (MW)
- Total project acreage
- Description of major project components
- Construction phasing schedule, if applicable

C. Zoning and Site Information

(Article 4, Section 438; Article 11)

- Zoning designation(s) of subject parcel(s)
- Confirmation that the project is located within an eligible zoning district
- Parcel numbers and legal description
- Project boundary clearly delineated

- Vicinity map showing surrounding land uses and zoning
- Scaled site plan showing:
 - Project boundary
 - Setbacks
 - Roads and access points
 - Structures and equipment
 - Transmission and collector lines

D. Comprehensive Plan Consistency

(Article 11 – Findings; Article 4, Section 438)

Narrative addressing consistency with the Apache County Comprehensive Plan, including:

- Applicable land use designation
- Natural and visual resource policies
- Economic development goals
- Infrastructure compatibility

Identification of any Comprehensive Plan policies supporting or constraining the project

E. Preferred Siting Criteria

(Article 4, Section 438)

Narrative addressing:

- Proximity to transmission infrastructure
- Habitat and vegetation sensitivity
- Distance from population centers
- Compatibility with surrounding land uses
- Topographic suitability

Supporting maps or documentation

F. Noise and Setbacks

(Article 4, Sections 440 and 441)

Preliminary setback analysis demonstrating compliance

Identification of any requested setback reductions

Preliminary noise analysis or consultant scope of work

Identification of sensitive receptors

Disclosure of any anticipated waiver requests

G. Agency Coordination and Consultation

(Article 4, Section 439; Section 444)

Arizona Game and Fish Department consultation initiated

U.S. Fish and Wildlife Service consultation initiated (if applicable)

Apache Natural Resources Conservation District consultation initiated

- Local Fire District consultation initiated
- EMS provider consultation initiated
- FAA determination initiated or obtained (if applicable)
- FCC compliance confirmed

- Agency comment letters received or requested

H. Environmental, Wildlife, and Visual Resources

(Article 4, Sections 437, 439)

- Wildlife impact analysis (if required)
- Pre-construction study plan (if required)
- Post-construction monitoring plan (if required)
- Visual resource analysis or mitigation narrative

I. Fire Prevention and Emergency Response

(Article 4, Section 439)

- Fire Prevention and Protection Plan prepared
- Plan submitted to or reviewed by local fire district
- Emergency access and response description
- Identification of hazardous materials

J. Infrastructure and Engineering

(Article 4, Section 439; Article 11)

- Road and access plan submitted to County Engineering
- Grading and drainage concept
- Floodplain determination and permit status
- Utility and collector line plan
- Interconnection agreement or power purchase agreement status

RF/Microwave Study & local Contact

K. Operations, Maintenance, and Cleanup

(Article 4, Section 439)

- Operations and maintenance plan
- Incident and accident response procedures
- Cleanup and removal procedures
- Communication interference mitigation plan

L. Decommissioning and Financial Assurance

(Article 4, Section 446)

- Decommissioning plan prepared
- Cost estimate for decommissioning
- Site restoration and reclamation plan
- Proposed financial assurance or bond

M. Public Outreach

(Article 4, Section 445; Article 11)

- Property owner lists prepared
- Draft notification materials
- Public meeting schedule
- Project website or public comment mechanism
- Complaint response and hotline procedure

- Public Outreach Summary prepared

N. Applicant Certification

I certify that the above information has been prepared or initiated and is accurate to the best of my knowledge.

Applicant Signature: _____

Date: _____