

ATTACHMENT 1

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AUG 04 2025



**APACHE COUNTY**  
P O Box 428  
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(928) 337-7503, (928) 337-2003 fax

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Apache County, AZ  
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### PUBLIC RECORDS REPRODUCTION REQUEST

This document represents the declaration of the undersigned submitted to the office of the Clerk of the Board of Supervisors for the reproduction of certain public record(s) specified below.

Please print the following information:

Date 08/04/2025

Name \_\_\_\_\_  
Company \_\_\_\_\_  
Address \_\_\_\_\_  
City Springerville  
Fax \_\_\_\_\_ Email \_\_\_\_\_

Records Requested (please be specific) Please see attached list -  
(1 pg.) - This is a NEW Request.

#### Records Use:

Commercial purposes. See definition of 'commercial purposes,' A.R.S. 639-121.03(D). If the records(s) are to be used for commercial purposes, specifically state those purposes:

Non-commercial purposes. Please give brief explanation. To see input from energy companies into Ordinance Revision process of County in general.

Signature of Requestor \_\_\_\_\_

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Vpd.

ATTACHMENT to APACHE COUNTY RECORDS REPRODUCTION REQUEST

DATE: August 4, 2025 NEW REQUEST

TO: Ms. Diana Morgan - Apache Co. Administrative Coordinator,  
and Matthew Fish - County Community Development Director

From: [REDACTED], County Resident, Landowner-Taxpayer, Voter  
[REDACTED]

COUNTY RECORDS REQUESTED –

Either Preliminary or Final documents. This includes written letters, FAXs, Text, Maps, Photographs, Diagrams, Charts-Tables, and Email correspondence:

- 1.) All records of County correspondence with prospective applicant for Lava Run Wind energy project, and their consulting firm/s since 11/27/2024 regarding *either/both* their project, *and also* correspondence regarding County Planning & Zoning's proposed revisions of Ordinance Article 4 and/or the County Comprehensive Plan proposed revision/amendment.
- 2.) All records of County correspondence, regardless of date, with ALL OTHER prospective applicants for alternative-renewable energy projects, and their consulting firm/s regarding either/both their projects, and/or regarding County Planning & Zoning's proposed revision of Ordinance Article 4 and/or the County Comprehensive Plan proposed revision/amendment.
- 3.) Any and all records of correspondence between the prospective applicant for Lava Run Wind energy and the Apache Natural Resources Conservation District, including draft agreements or ANRCD recommendations for the project.  
*No information available*
- 4.) All records of correspondence (of any date/s) between Ms. Julie Lienhart Fernatt, and/or any other representative of Rural Arizona Engagement ("RAZE"), and any-all documents submitted to the County by this person or organization, and County replies or actions taken in response.  
*No information available.*

\*For any records or documents not provided, please provide a written explanation for why that certain record was not provided.

Please provide the requested copies printed on paper, in readable format, by Sept. 22, 2025 or sooner if possible. If filling this request will take beyond 9/22/25, please notify me of your expected completion date.

You may notify me by phone ([REDACTED] voicemail is OK), or by Email at – [REDACTED] when the copies are ready. I will then come to your office to pick them up and pay for them personally. Thank you very much!

ATTACHMENT 2

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From: Matthew Fish <[mfish@apachecountyaz.gov](mailto:mfish@apachecountyaz.gov)>  
Sent: Tuesday, April 29, 2025 1:56 PM  
To: KECHKIAN, TRINIDAD <[trinidad.kechkian@repsol.com](mailto:trinidad.kechkian@repsol.com)>  
Subject: RE: Proposed Rewrite of ordinance

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Monthly tip: Be careful with gifts, prizes and raffles, cheap things are expensive

Trini,

Attached is the "Preferred Energy Generation Areas" for the County Comprehensive Plan, and the proposed rewrite of the portion of Article Four pertaining to renewable energy.

Unfortunately I will be out of the office most of this afternoon for a site inspection in Alpine. You can call my cell after four for a discussion.

*Matthew Fish*  
Apache County Community Development Director  
O: 928 337 7547  
C: [REDACTED]  
[mfish@apachecountyaz.gov](mailto:mfish@apachecountyaz.gov)  
Mailing: PO Box 238 St Johns AZ 85936  
Physical: 75 W. Cleveland St Johns AZ  
Office Hours: Monday – Thursday 6:30am to 5:30pm

From: KECHKIAN, TRINIDAD <[trinidad.kechkian@repsol.com](mailto:trinidad.kechkian@repsol.com)>  
Sent: Tuesday, April 29, 2025 7:39 AM  
To: Matthew Fish <[mfish@apachecountyaz.gov](mailto:mfish@apachecountyaz.gov)>  
Subject: RE: Proposed Rewrite of ordinance

Appreciate it, Matt!

Trinidad Kechkian  
Manager, Development  
Renewables North America  
Cell: [REDACTED]  
[trinidad.kechkian@repsol.com](mailto:trinidad.kechkian@repsol.com)



From: Matthew Fish <[mfish@apachecountyaz.gov](mailto:mfish@apachecountyaz.gov)>  
Sent: Tuesday, April 29, 2025 9:23 AM  
To: KECHKIAN, TRINIDAD <[trinidad.kechkian@repsol.com](mailto:trinidad.kechkian@repsol.com)>  
Subject: Proposed Rewrite of ordinance

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Trinidad,

We are quickly trying to get a complete first draft ready for our planning and zoning commissioners this morning to email out to them before our planning and zoning meeting on Thursday. I'll email you a copy when it is complete.

*Matthew Fish*

Apache County Community Development Director

O: 928 337 7547

C: [REDACTED]

[mfish@apachecountyaz.gov](mailto:mfish@apachecountyaz.gov)

Mailing: PO Box 238 St Johns AZ 85936

Physical: 75 W. Cleveland St Johns AZ

Office Hours: Monday – Thursday 6:30am to 5:30pm

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## ATTACHMENT 3

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## Matthew Fish

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**From:** WOLTAG, HENRY <henry.woltag@repsol.com>  
**Sent:** Thursday, May 1, 2025 8:11 AM  
**To:** Matthew Fish  
**Cc:** KECHKIAN, TRINIDAD  
**Subject:** RE: Proposed Rewrite of ordinance

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Hi Matt,

Trini is out today so I will be filling in for her at the P&Z. See below for our initial thoughts on the current draft of the ordinance. I will be sharing these and hitting these themes during the meeting later today.

- Coconino and Navajo counties have reaped the benefits from hosting wind farms for quite some time now. They have also gone through the ordinance update process which resulted in a number of common-sense changes, not outright restrictions on the entire industry.
- As the County faces an uncertain economic future, why should they take any option off the table via restrictive zoning regulations? Especially options that are real and near-term opportunities.
- The County and P&Z should be focused on policies that responsibly encourage new industries to come and establish themselves, not discouraging them.
- Wind mapping resources show that the target areas, while they may be more suitable for visual impacts, do not have a viable wind resource to support a project being developed and built.
- If these changes were to go through, they would effectively be making the CUP process moot because there would now be an effective ban, which would take away the ability of future P&Z members and the Board of Supervisors to evaluate projects and come to their own decisions
- If more detailed review is needed, the existing CUP process already allows for that. Broad restrictions risk undermining our ability to evaluate projects on a case by case basis.

Best,  
Henry

Henry Woltag  
Director, Development  
Renewables North America

Cell:   
[henry.woltag@repsol.com](mailto:henry.woltag@repsol.com)

  
**REPSOL**

## ATTACHMENT 4

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## Matthew Fish

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**From:** Matthew Fish  
**Sent:** Thursday, May 1, 2025 9:36 AM  
**To:** Jen Bradford  
**Subject:** RE: RE Ordinance Comments

No need, I actually just found it online from NAU. Thanks for your willingness to help.

**From:** Jen Bradford <Jen@tripleoakpower.com>  
**Sent:** Thursday, May 1, 2025 9:32 AM  
**To:** Matthew Fish <mfish@apachecountyaz.gov>  
**Subject:** Re: RE Ordinance Comments

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I'll see if I can find them or dig up something similar!

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**From:** Matthew Fish <mfish@apachecountyaz.gov>  
**Sent:** Thursday, May 1, 2025 9:29:52 AM  
**To:** Jen Bradford <Jen@tripleoakpower.com>  
**Subject:** RE: RE Ordinance Comments

Thanks Jen

Hey, in a discussion with John some months back. He had some visual maps of the wind resource that I believe he helped map while a student at NAU. It doesn't have to be today, but could you get me access to those wind resource maps?

Matthew

**From:** Jen Bradford <Jen@tripleoakpower.com>  
**Sent:** Thursday, May 1, 2025 9:09 AM  
**To:** Matthew Fish <mfish@apachecountyaz.gov>  
**Subject:** RE Ordinance Comments

Matt,

Thank you for sharing initial proposed concepts for an updated *Renewable Energy Zoning Ordinance*. As we've had time for only an initial review, we've summarized, below, key points for discussion with the understanding that Apache County aims to accommodate renewable energy investment, respect landowner property rights, and assure appropriate human and environmental health and safety measures are in place. We will continue to provide detailed comments, background information, and sample code language to support this process. Please don't hesitate to let us know if you have questions or if there's additional support we can provide in the meantime.

#### **436.B.2. Zones**

The draft proposal opts to restrict Utility Scale Renewable Energy Systems ("USRES") to industrial zones. Apache County has very limited industrially zoned areas, and those areas would not be suitable in size or location for renewable energy, particularly a wind farm. Wind farms are most often sited in rural agricultural zones and are permitted by conditional use to ensure compatibility with existing 'by-right' activities (including ranching, farming, hunting and recreation). This physical and economic compatibility has historically driven the co-location between renewable energy and rangeland, with wind farms providing steady income to ranchers and farmers that help keep farms intact and operational.

#### **437. Preferred Facility and Location Criteria**

The proposed concept aims to encourage renewable energy in "primary" and "secondary" "preferred" areas and to discourage USRES in "disfavored" areas, as defined. We have concerns with the concept of preferred/disfavored areas that we ask the County to consider:

- Do these "preferred" areas have sufficient resources (wind, solar, transmission, constructability) to make all types of USRES commercially feasible?
- Have the "primary" and "secondary" "preferred" areas been fully screened for airspace issues (military training routes, airports, DOD airspace)?
- How will future decisionmakers consider proposals in areas that may simultaneously be defined as "favored" and "disfavored"?
- How is the county considering factors that have led developers of USRES to select areas outside of these "preferred" locations?
- How are landowner property rights being balanced when considering "preferred" and "disfavored" areas?

#### **439.7.A.1 Setbacks, Height and Performance Standards**

The proposed language introduces new and much broader setbacks in comparison with Apache County's current ordinance (approved 10/05/21).

- **Residential (and related) Setbacks**
  - The new draft language proposes a setback of one mile from (non-participating) property lines. In our experience this is not standard for county regulations and would prevent some landowners and adjacent landowners from having full economic use of their property.
  - We support, and have aimed to incorporate, a planned setback of ½ mile from non-participating (legal, occupied) residential structures, in keeping with Apache County's current (10/05/21) ordinance.
  - The county's current noise standard, as outlined in Apache County's 10/05/21 ordinance (55 dBA LAeq..) provides a secondary building setback and is a common standard for many wind ordinances. (50 dBA is also a common distinction made between daytime and nighttime hours).
- **Setbacks from Highways.**
  - The proposed language includes a three-mile setback from highways. We're unable to confirm the intent of this highway setback. County ordinances typically require a setback of 1.1 times tip height from roads, railroads and other linear facilities as a general safety measure, a standard also memorialized in Apache County's current 10/05/21 ordinance (Section 441.A).

#### **449. B and C. Removal and Decommissioning**

The proposed language would require removal of the entire facility at decommissioning. In keeping with industry standards and requirements of many county, state and federal entities, we recommend removal of sub-grade

facilities down to three feet to provide for continued agricultural uses to the land, and to not complicate future undergrounded utilities.

Thanks,

**Jen Bradford**

Senior Director, Project Development

971.323.0349

[jen@tripleoakpower.com](mailto:jen@tripleoakpower.com)

[tripleoakpower.com](http://tripleoakpower.com)



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## ATTACHMENT 5

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## Matthew Fish

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**From:** Dylan Ikkala <dylan.ikkala@apexcleanenergy.com>  
**Sent:** Thursday, May 1, 2025 8:52 AM  
**To:** Matthew Fish  
**Subject:** Apache County Proposed Ordinance Changes  
**Attachments:** Apache County Planning Commission Letter\_Final 050125.pdf; Final 1st Draft 5v4 Renewable Ordinance PDF\_Apex.docx

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Matt,

Please see attached for Apex's letter to Apache County and our comments to the renewable energy ordinance.

Let me know if you have any questions before the meeting at noon.

Thanks,  
Dylan

DYLAN IKKALA  
Director of Development

Apex Clean Energy  
120 Garrett Street, Suite 700, Charlottesville, VA 22902  
cell:  | fax: 434-220-3712  
[dylan.ikkala@apexcleanenergy.com](mailto:dylan.ikkala@apexcleanenergy.com) | [www.apexcleanenergy.com](http://www.apexcleanenergy.com)



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May 1, 2025

Apache County Planning Commission  
P.O. Box 238  
St. Johns, AZ 85936

Members of the Apache County Planning Commission:

On behalf of Apex Clean Energy, I am reaching out in response to the Apache County Planning Commission's consideration of updates to the current Renewable Energy Ordinance.

Apex is a leading developer of utility-scale wind and solar energy projects across the U.S. Since our founding in 2009, we have worked closely with communities to deliver projects providing significant economic benefits while supporting American energy independence. We have a deep commitment to responsible development practices, community engagement, and long-term partnership with the regions where we work.

Apex is excited about the opportunities for renewable energy in Apache County. With significant solar and wind resources, the region is well positioned to play a key role in Arizona's and the nation's energy future. As stated in the current ordinance, Apache County seeks to promote reliable clean energy sources that adhere to clear standards and provide clear benefits to the region. We encourage this responsible approach to energy development to remain a guiding principle throughout the review process.

As you review your ordinance language, we hope you consider utilizing our experience as a resource. Apex is proud of our reputation for working collaboratively with counties across the country on regulations that support both community interests and responsible development opportunities.

We commend your efforts and understand significant work and input from many stakeholder groups will be required over time. As Apache County enters the early stages of this process, our team identified three initial topics to consider as opportunities for collaboration:

- **Setbacks:** Rather than setting arbitrary, uniform setbacks, Apache County could start by understanding what exactly they are trying to protect. Tailoring setback regulations in response to individual components like sound, shadow flicker, or wildlife has proven successful without being overly restrictive. This


concept allows for development while also protecting non-participating landowners.

- Understanding the resource: Apache County possesses strong wind and solar resources, but a developed project can only harness these resources to create energy in certain areas. We encourage a discussion based on science and data to understand how to appropriately balance the opportunity for energy while protecting the natural assets of the region.
- Maximizing economic benefits: With the presence of private and ASLD land across Apache County, economic benefits can vary when it comes to direct local impact. Apex is willing to work with Apache County on a payment in lieu of taxes agreement (PILOT Agreement) to ensure fair tax distribution from facilities sited on state land.

Apex understands the importance of thoughtful, community-focused planning. Our team welcomes the opportunity to participate in discussions and offer our insight as an industry partner throughout the ordinance review process.

Thank you for your leadership in supporting a balanced approach to energy development. We look forward to the opportunity to work together and to contribute to Apache County's bright future.

Sincerely,



Dylan Ikkala  
Director of Development  
Apex Clean Energy

Phone: (484) 364-9298

Email: [dylan.ikkala@apexcleanenergy.com](mailto:dylan.ikkala@apexcleanenergy.com)

Revised Utility Scale Renewable Energy Ordinance - Draft 5v4

Draft presented to the Planning and Zoning Commission for review and comment May 1, 2025

436 Utility Scale Renewable Energy Systems

Section 436. Purpose

A. The purpose of this Section is to establish a process, rules, and standards for the construction, siting and operation of Utility-Scale Renewable Energy Systems in order to:

1. Give County residents, leaders, staff, and developers clear direction on the appropriate siting of Utility-Scale Renewable Energy Projects while considering unique permitting conditions for each site and type of utility, and
2. Promote reliable, clean energy sources by providing clear standards to encourage Utility Scale Renewable Energy Systems that:
  - a. Preserve the County's highly valued, intact natural landscapes and private lands from fragmentation,
  - b. Offer private landholders options for economic diversity and stability,
  - c. Mitigate climate change impacts, and
  - d. Maintain and protect wildlife populations and corridors, viewsheds, vegetative communities, dark skies, air quality, historic, cultural, and archaeological resources, natural quiet, and
3. Support projects that provide clear benefits to the County, such as revenue generation, job creation, economic, and environmental benefits.

B. Applicability. Utility-Scale Renewable Energy Systems located in any zoning district require the granting of a Conditional Use permit by the Board of Supervisors.

1. Utility-Scale Renewable Energy Systems ~~include Solar Energy Installations, Wind Energy Installations, Battery Storage Facilities and Biomass Energy Installations~~ intended to generate ~~or store~~ electricity for off-site customers tied into the electrical grid.

Commented [D11]: Maintain existing language of "include but are not limited to"

2. Zones in which allowed / CUP required – Renewable Energy Generation facilities are allowed only in the ~~A-General and Industrial Zones~~ subject to securing a CUP and to the applicable site development standards set forth herein. The CUP application shall comply with Article 11 of the Apache County Zoning Ordinance with modifications as specified in this Ordinance, and to the policies of the Apache County Comprehensive Plan and applicable adopted Community Plans.

Commented [D12]: Leave A-General in ordinance. Does the county want thousands of acres rezoned to industrial where future industrial uses will be permitted once the renewable energy project is decommissioned or if the CUP expires without construction of a renewable energy project?

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

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

Revised Utility Scale Renewable Energy Ordinance - Draft 5v4

2. **Utility-Scale Solar Energy Project** – An energy generation facility using solar energy from the sun to generate electricity by photovoltaic effect using photoelectric cells, also known as solar panels, to generate electricity for off-site customers tied into the local electrical grid, with the actual or planned ability to generate at least one megawatt. The term does not include stand-alone solar electricity generating systems primarily for on-site residential, institutional, or agricultural use which does not feed residual power into the electrical grid as defined by the Arizona Corporation Commission.
3. **Utility Scale Wind Energy Projects** - An energy generation facility using wind technology and consisting of one or more wind turbines and accessory structures and buildings, including substations, ~~meteorological test towers, anemometers and associated electrical infrastructure,~~ with an actual or planned generating capacity of at least one megawatt. The term does not include stand-alone wind electricity generating systems primarily for on-site residential, institutional, or agricultural use which does not feed residual power into the electrical grid as defined by the Arizona Corporation Commission.
4. **Photovoltaic Cells/Solar Panel** - An electrical system or device that converts the energy from the sun directly into electricity by the photovoltaic effect using photoelectric cells, also known as solar panels.
5. **Project boundary** - The boundary of a Renewable Energy Generation project as set forth in the project site plan and incorporated into the CUP.
6. **Setback distance** - The distance from the edge of a wind turbine, electrical generator tower foundation or from the edge of a solar photovoltaic system component to the nearest property line, edge of a public road right-of-way or railroad right-of-way, third-party transmission line, above-ground pipeline, communication tower, other structure or other boundary established by Apache County.
7. **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.
8. **Total Turbine Tower Height** - As used herein, "total turbine tower height" means the height as measured from the finished foundation to the top of the structure, including the uppermost extension of any blade (i.e., "straight up").
9. **Preferred Energy Generation Areas** – Primary and secondary areas identified in the Apache County Comprehensive Plan as preferred locations for alternative energy generation uses.
10. **Visual Resource** – The natural and built features of the landscape that contribute to the scenic quality, visual character, and overall aesthetic experience of an area. These can include landforms, vegetation, water bodies, open spaces, viewsheds, and culturally or historically significant sites that are visible to the public. Areas visible from a major state highway, designated ~~Scenic Highway, Scenic Byway, Scenic Corridor, Scenic Road,~~ Historic Road, National All-American Road, gateway community, National Scenic, historic, or other trails, National, State or County parks and monuments, and ridgelines and other prominent geographic features, are examples of visual resources, or as identified during the application process.

Commented [D13]: If the county does not want to require a CUP for meteorological test towers, please clarify that this is for permanent met towers during operations.

Commented [D14]: This is very broad and should either be removed or narrowed.

Revised Utility Scale Renewable Energy Ordinance - Draft 5v4

- 11. ~~Gen-tie Line~~ ~~(Power Generation Tie-in Line)~~ A high voltage powerline, usually overhead, which connects the proposed project's electrical substations to points of power grid interconnection.
- 12. ~~Participating Property~~ - A property located adjacent to a proposed Utility-Scale Renewable Energy Facility whose owner has entered into a formal agreement with the project owner or developer. This agreement may involve granting a lease, easement, or providing written consent for the siting, development, or operation of the facility, typically in exchange for financial compensation.
- 13. ~~Non-Participating Property~~ - A property located adjacent to a proposed Utility-Scale Renewable Energy Facility whose owner has not entered into any agreement with the project owner or developer to provide a lease, easement, or consent for the siting, development, or operation of the facility, and has not received financial compensation.

Section 437. Preferred Facility and Location Criteria for Utility Scale Renewable Energy Systems.

A. Preferred Installations. New installations shall use the preferred facility type and location criteria where feasible. Site location and development of installations shall minimize negative impacts to the existing character of the surrounding landscape and / or community. Preferred criteria are intended to guide decisions about the location and siting of Utility Scale Renewable Energy Installations and are not intended to exclude sites that may simultaneously meet disfavored facility criteria.

Commented [D15]: What is the county defining as a negative impact? This is too broad and far too much discretion.

1. Preferred criteria for all Installations:

Commented [D16]: Does applicant have to satisfy ALL to be considered preferred? Or the more you satisfy the greater probability of approval?

- a. A project located within the Preferred Energy Generation Area as designated and delineated in the Apache County Comprehensive Plan.
- b. A project site that has minimal visual impact on a Visual Resource, or that is more than 10 miles from a Visual Resource.
- c. A project site that uses or is near to existing substations, transmission lines, or points of interconnection, thereby minimizing length of new gen-tie lines required.
- d. Project sites that are on previously disturbed land such as brownfield sites, mining sites, sites with low wildlife habitat and vegetation value, or with few cultural resources.
- e. Project sites that retain current and traditional land uses, including ceremonial uses for Native Americans, and allow multiple uses of the land such as ranching, agricultural, and recreational uses, are preferred over single-use projects.
- f. Projects using water conservation methods or reclaimed water are preferred over water-intensive systems.

Commented [D17]: Tribes

Commented [D18]: Such as?

2. Additional preferred criteria for Biomass Energy Installations:

- a. Sites that use an existing Utility Facility, or adaptively reuse existing industrial sites.

Commented [D19]: Can this be defined? What is considered an industrial site? Zoned as industrial OR a re-development? How will the county consider the existing conditions, re ESA

Revised Utility Scale Renewable Energy Ordinance - Draft 5v4

- b. Sites that are located near major highway, transportation routes, or railway lines, without impacting Visual Resources.
- c. Projects that directly support local forest management by utilizing locally produced or harvested forest feedstock or by-product from the Four Forest Restoration Initiative footprint or similar projects, or forest feedstock harvested from waste streams within 150 miles of the facility.

Commented [D110]: Screening for solar is possible but not for wind. What's the scope of this impact? No shadow flicker on the road, but seeing a turbine on the horizon, pretty much eliminates the possibility of ever meeting this for wind.

Commented [D111]: Measured from where?

**B. Disfavored Facilities.** Disfavored facility sites may be permitted only if the applicant presents detailed evidence documenting that the facility will have minimal impact on the environment or that the site is more technically necessary than other locations. Disfavored siting criteria for new Utility Scale Renewable Energy Installations are intended to guide decisions about the location and siting of Utility Scale Renewable Energy Installations. The existence of preferred and disfavored criteria at a single potential facility site are not mutually exclusive. In instances where such co-occurrences exist, the County shall review the application narrative and weigh the presence of favored and disfavored elements to determine overall compliance with the objectives of this ordinance.

1. For all Installations:

- a. Sites located outside the Preferred Energy Generation Areas as designated and delineated in the Apache County Comprehensive Plan.
- b. Sites that conflict with or have potential negative impacts on Special Status Species and their habitats, other special wildlife designations such as Critical Habitat and important Bird Areas, Wildlife Linkages, Riparian Areas, and significant topographic features such as ridges.
- c. Any site that impacts eligible archaeological, cultural, and historic resources or sites, heritage areas, or cultural landscapes as formally identified by a designated tribal entity or government.
- d. Any site that requires significant ground disturbance and grading, such as new road construction that does not provide long term benefits to the property owner or community.
- e. Any site that would negatively impact or impair airport operations, such as the release into the air any substance such as steam, dust and smoke, or that produces light emissions, glare or distracting lights that impact dark skies, or increased air turbulence.

Commented [D112]: Ridges might be in the project area, but that doesn't mean they will be impacted...this applies to b&c specifically. If avoidance can be achieved, then just b/c these areas are in the totality of the AOI, shouldn't count negatively.

Commented [D113]: This is almost all aolar development. Decommissioning standards address amendments and restoration, and long term maintenance of hydrology pre-during-post construction and post-decom.

2. Additional disfavored criteria for Wind Energy Installations:

- a. Any site that includes a planned turbine location that is within one mile of Nonparticipating residential properties.
- b. Sites that may be a hazard to air navigation, as determined by the FAA.
- c. Sites that cause interference with telephone, radio, or radar signals.

Commented [D114]: Should be revised to Nonparticipating residentially zoned properties containing one or more dwelling units with valid certificates of occupancy at the time the Wind Energy Project's site plan is approved.

3. Additional disfavored criteria for Biomass Energy Installations:

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~~a. Sites located upwind of communities that could be impacted by exhaust gasses or particulates.~~

**Section 438. Preliminary Site Investigations for Utility Scale Renewable Energy Systems**

A. Preliminary site investigations and inventories of the following resources shall be conducted to guide the project applicant and the County in determining the appropriate siting and design of an installation. Additional pre-construction and post-construction surveys may be required as a condition of the permit. The project applicant shall provide the following to the County during the PreApplication review:

Commented [D115]: There needs to be flexibility as to how complete these evaluations need to be. This is at the preliminary stage/pre-app stage, recommend changing "shall" to "recommends applicant" or similar.

1. Preliminary habitat and wildlife evaluations. Preliminary desk top investigations shall identify potential wildlife issues by determining whether Special Status Species or their habitats may be present, and any other site-specific wildlife concerns. Preliminary site investigations will be of appropriate scope to effectively evaluate potential adverse issues. Appropriate state and federal wildlife-management agencies shall be consulted when conducting preliminary site investigations.

2. Preliminary desk top vegetation evaluations shall include identification of the presence of noxious ~~and/or invasive~~ weeds and Special-status Plant Species.

3. Archaeological, cultural, and historic resource desk top evaluations and preliminary inventories. A site evaluation and preliminary desk-top inventory of on-site archaeological, cultural, and historic resources prepared by a qualified professional shall be conducted. A summary of communication and collaboration efforts, such as a pre-project cultural onsite survey with affected / potentially affected Native American tribes to evaluate cultural and historic resources or sites, heritage areas, or cultural landscapes shall be submitted with the application.

Commented [D116]: Application or pre-app?

4. Preliminary Visual Resource site Identification. Visual Resource, tribal land, and residential ~~or subdivided~~ property located within 10 miles from the project boundary, or a distance as determined by the Community Development Director, shall be identified on a map showing the resource's relationship to and distance from the facility. This information will be used by County staff and the applicant to select the site locations and the number of viewpoints from which the visual impact analysis will be prepared.

5. ~~Preliminary desktop soils/geotechnical survey providing evidence of subsurface stability to withstand blasting or heavy excavation and bedrock's ability to support heavy facility foundations.~~

Commented [D117]: Geotech survey typically requires soil sampling in order to speak to soil stability. If you're looking to identify historical/existing soils via a desktop exercise fine, but you can't certify subsurface stability w/o samples or on-site survey.

6. Water resources. A survey of known water resources both on site and adjacent to the site shall be prepared, and a statement as to impacts or use of those resources for the project shall be provided, including recommendations to protect aquifers from contamination due to project construction and operation.

Commented [D118]: How far is adjacent to site? 250 feet, 500 feet?? Clarify here, a desktop hydrology study.

7. Lighting Plan. A preliminary exterior lighting plan is required per Article 7 of the Zoning Ordinance.

B. Preliminary Emissions Analysis for Biomass Energy Installations. The preliminary analysis shall identify the project location, technologies intended, and potential

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emissions/particulate components, and be of an appropriate scope to effectively evaluate potential adverse impacts to aviation and the community.

9. A description of the current and traditional uses of the project site.

Commented [D119]: Historical use? We wouldn't necessarily know historical use beyond the current owners. Or do they mean the primary-existing/current use of the property

10. Electronic files of the draft site plan, including the location of all equipment, fencing, transmission lines, substations, construction staging, and temporary and permanent roads, compatible with Geographic Information System (GIS) software.

Section 439. Performance Standards for Utility Scale Renewable Energy Systems

In addition to the evaluation criteria and general standards for conditional use permits contained in Section 1107 B, the following shall apply:

A. Due to the size, scale and complexity of Utility Scale Renewable Energy Installations, the following performance standards are in addition to applicable Performance Standards required throughout this Ordinance, unless otherwise noted.

Commented [D120]: This should be further defined.

1. Sensitive Area Avoidance. The site plan shall be designed to avoid sensitive areas and to reduce the likelihood of significant adverse effects on current and traditional uses and resources that are identified by the preliminary site evaluations and Pre-Application discussion. A sensitive area map shall be prepared to identify sensitive areas and features such as archaeological, cultural and historic resources or sites, heritage areas, or cultural landscapes, Visual Resource, designated trails, plant and wildlife resources and habitats. Additional siting adjustments may be required as a condition of the permit.

2. Vegetative Cover, Weeds, and Landscaping Requirements. The project shall be planned and developed in a way that maintains the local ecosystem by minimizing grading and site disturbance and to maximize retention of native vegetation, topsoil, and landforms. Areas cleared during construction that are not needed for site operations, shall be revegetated with native vegetative cover. For solar operations locating on undisturbed sites, native vegetation shall either be retained or, disturbed areas under the panels shall be stabilized and / or revegetated with native vegetation to the extent practical, as determined by the Community Development Director. A plan to control noxious and / or invasive weeds shall be required for the duration of the permit. Landscaping requirements do not apply to Utility Scale Renewable Energy Installations, unless specifically required for visual impact mitigation.

Commented [D121]: This is an issue on solar sites b/c its really hard to veg in Az, AND bc a lot of the native veg needs direct sun...AND cannot establish or withstand the velocity and volume of water coming off of panels.

3. Wildlife Management. Arizona Game and Fish Department's (AGFD) "Guidelines for Reducing Impacts to Wildlife from Wind Energy Development in Arizona" (2012) and "Guidelines for Solar Development in Arizona" (2010), US Fish and Wildlife Service's (USFWS) "Landbased Wind Energy Guidelines" (2012), or current editions, shall be consulted and design recommendations from these documents incorporated into applicable projects. Compliance with these guidelines shall be determined by USFWS, AGFD, and the County.

Commented [D122]: These are guidance documents vs. recommendations. The Feds and State can make recommendations but they can't determine compliance as it isn't regulated. The County can. This line implies authority not present for the USFWS and AGFD.

a. If the project is located within a Wildlife Linkages area (as identified by the Arizona's Wildlife Linkages Assessment, or by Arizona Game and Fish Department), passage for those species that use the Wildlife Linkages shall be maintained.

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4. Stormwater Management. The project shall be planned with low impact development stormwater management techniques, to capture and infiltrate stormwater and rainwater. Biomass Energy installations shall obtain a stormwater control permit for the facility, including materials stockpiles, from the Arizona Department of Environmental Quality. Additional stormwater controls may be required.

Commented [D123]: Above (in the prelim) we have to make a statement that we won't impact or pollute groundwater, which implies that even infiltration will require pretreatment for water quality. Flag to make sure this aligns w/ the stormwater requirements of ADEQ.

5. Fencing. Proposed fencing shall be designed to minimize visual impacts from and be complementary with scenic corridors and adjacent properties, and to minimize impacts to wildlife and Wildlife Linkages. Security fencing shall be permeable to small animals by leaving a six-inch gap between the bottom of the fence and the ground, exclusive of substation facilities. When feasible, fencing shall be designed around groups or clusters of equipment, as opposed to fencing the entire site. New fencing shall not impact or impede existing easements or legal access to private, State, or public lands.

Commented [D124]: Need a waiver here for the POI for safety reasons and to meet fire/bldg/safety code

Commented [D125R24]: Provide flexibility by allowing fencing that is approved by the director or staff. For example: "The Community Development Director may approve any such alternate provided he finds that the proposed design, material or method:  
A. provides approximate equivalence to those specific requirements of the Ordinance, or;  
B. is otherwise satisfactory and complies with the intent of the Ordinance."

6. Audible Noise Limits. Audible noise impacts due to project operations shall not exceed the following standards, as measured from each wind turbine and other noise generating activity or infrastructure such as substations, inverters, and biomass facilities, to the property line of each adjacent non-participating property, and to recreational facilities:

a. Operational noise impacts shall not exceed 40 dBA. Compliance with this standard shall be demonstrated by a noise analysis prepared by a qualified expert as follows:

Commented [D126]: Sound from occupied dwelling should be 50dBA. Sound from parcel of nonparticipating landowner should be 55dBA. This is industry standard.

i. Background Noise and Noise Forecasts. Sound levels shall be measured and analyzed to determine the baseline for forecasting operational project impacts. A forecast of the post-construction noise impacts shall be conducted to assess compliance with the maximum audible noise limit. The noise analysis shall consider facility aging and future modifications or technology changes.

ii. Compliance Testing. Operational compliance testing shall be conducted to ensure that the facility meets the required or approved audible noise limit. Testing results shall be reported prior to permit to operate.

iii. Exceptions to noise impacts may be approved by the Board of Supervisors when the applicant demonstrates a significant or substantive need to exceed the noise standards.

Commented [D127]: Is this another permit on top of a building permit required?

Commented [D128]: Or Director

7. Setbacks, Height and Performance Standards Between Specific Zones.

A. For Renewable Energy Systems Installations.

1. Turbines located within Wind Energy installations shall be set back from adjacent Non-participating properties by the following distances. All other non-turbine structures and buildings shall conform to the setback requirements for the zoning district in which the use or structure is located.

(a) Turbine shall be at least 1 mile to non-participating property boundary

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(b) Turbine shall be at least 1 mile to residential, subdivided or open space parcel.

(c) Turbine shall be at least ¼ mile to any other district.

(d) Turbine shall be at least ¼ mile to State Land, or public land.

(e) Turbine shall be at least 150% +10% of total height to overhead utilities for protection from blade throw or ice throw.

(f) Turbine shall be at least 150% +10% of total height to public roads, trails for protection from blade throw or ice throw.

(g) Turbine shall be at least 3 miles from major highway or Visual Resource.

(h) Solar panels shall be at least 100 feet from property line.

(i) Biomass facility shall be at least 100 feet from property line.

2. Height limits are not established for wind turbines, however, with the Conditional Use Permit the County may place reasonable limitations on turbine height if necessary to mitigate impacts to existing adjacent uses or if necessary to address impacts to public safety.

3. Exceptions to setbacks may be approved by the Board of Supervisors if the County determines a modified setback is necessary to address impacts to existing adjacent uses, as allowed in Section 1107 (B) 11.

B. Setback areas may be used for access within the development but are otherwise to remain in their current vegetative state.

C. The Board of Supervisors may approve a reduction in the setback requirements set forth above in accordance with any or a combination of the following circumstances:

1. The project shares a common property line with another approved Renewable Energy Generation facility.

2. An irrevocable written consent from an affected property owner has been obtained, stating that the owner is aware of the proposed facility and the setback requirements imposed by this section, that consent is granted to allow lesser setbacks than those specified herein, and that such consent will be memorialized in a notice recorded with the Apache County Recorder to notify future owners of the subject property that setbacks are less than those specified herein.

3. The current use of an adjacent property generates sound more than that permissible for the Renewable Energy Generation facility under the terms of this section.

8. Visual Impact. Projects shall be designed to minimize visual impact by:

Commented [D129]: What is the county trying to protect with this arbitrary setback? To ensure a turbine does not land on a neighboring nonparticipating parcel and establishing sound limit at parcel line will protect future occupied dwellings and nonparticipating landowners.

Setting a min setback of 1.1xTH covers the tower falling on neighboring parcel, and a parcel line 55dBa sound limit will generate and additional setback. This is in-line with industry standard.

Commented [D130]: What is the county trying to protect with this arbitrary setback? To ensure a turbine does not land on a neighboring nonparticipating parcel and establishing sound limit at parcel line will protect future occupied dwellings and nonparticipating landowners.

Setting a min setback of 1.1xTH covers the tower falling on neighboring parcel, and a parcel line 55dBa sound limit will generate and additional setback. This is in-line with industry standard.

Commented [D131]: Usually we see 1.1-1.3 x TH from roads and highways. What is the reasoning behind the additional setback?

Commented [D132]: 50' from nonparticipating parcel lines is more appropriate. Solar panels do not emit noise and are much lower to the ground.

Commented [D133]: What about other facilities? Overhead transmission, underground collection, Stormwater controls, etc.

we would need to clear for site access visibility and sometimes for fire prevention-remove dead trees/woody debris, etc.

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a. Placing all collection lines within the installation underground, including connections to a substation, to the greatest extent practical. Exceptions may be approved by the Board of Supervisors when the applicant demonstrates a significant or substantive need for above ground connections.

Commented [D134]: NOT to include those under panels?

b. Mitigating visual impacts from transmission lines connecting substations to the utility grid to the greatest extent practical.

c. Designing and locating Utility Scale Renewable Energy Systems in a manner to minimize adverse visual impacts. To the greatest extent feasible the system shall:

i. Use wind turbine towers of uniform design and color. The turbine color shall be a neutral color that blends with the environment and complies with FAA standards. Non-reflective gray, beige and white are recommended (unless future research identifies FAA-approved alternative colors to reduce bird impacts).

ii. Be screened by natural vegetation, topography, or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.

Commented [D135]: What technologies does this apply to? What are you screening from? There needs to be clarification on this point. Open to discussion with Board of Supervisors for project specifics.

d. Utilizing exterior light fixtures that comply with Apache County Ordinance Article 7, Lighting. Projects shall use the motion activated lighting where feasible, and minimum lighting necessary for legally required building safety and security purposes.

e. Utilizing an FAA-approved radar-activation system for aviation-warning lights when aviation-warning lights are required on wind turbines and Meteorological towers by federal or state law.

f. Using existing substations, or if new substations are needed, minimizing the number.

9. Signs. Signs associated with the project are limited to one project identification, information, interpretive and address sign of not more than 24 square feet located on the project site at each point of ingress and egress. No other signs shall be installed except for required warning and directional signs. Limited logos and/or manufacturer names shall be permitted on the generator housing or hub. Signage shall not be used for advertising. No other advertisements, prominent logos, or other prominent messages are allowed on any tower, blade, generator housing, hub or any other part of any structure. Prior to installation of any signs, the CUP holder shall obtain sign permits from the Community Development Department for all signs for which permits are required. All sign requirements are found in Apache County Ordinance Article 7.

10. Roads and access. Traffic generated by the proposed use and its construction shall be mitigated so as to not burden the traffic circulation system in the vicinity. Existing roads shall be used to provide access to and throughout the site, or if new roads are constructed, the amount of land disturbance shall be minimized. Roads constructed to provide vehicle access for site and equipment maintenance shall be designed and constructed to standards approved by the Apache County Engineering Supervisor and the local or nearest fire district or fire department, in coordination with the public safety, fire protection and emergency management plan.

a. Grading and road construction permits are required prior to site prep or vegetation removal.

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- b. Measures to control and mitigate dust, including from use of roads, shall be outlined in a dust control and mitigation plan.
11. Solar panels and wind turbines shall be constructed to minimize concentrated reflections and glare at occupied structures, recreation areas, roads, highways or airport flight landing or takeoff areas.
12. Interference with Communications the operation of the energy project shall not create conditions that unduly reduce or interfere with public or private television, radio, telemetry, or other electromagnetic communication signals. If undue reduction or interference occurs, the applicant must restore reception to the level present before operation of the energy project
13. Additional Performance Standards for Wind Energy Installations:
- a. Turbine towers, pad-mounted transformers and other structures shall be designed to reduce horizontal surfaces in order to limit perching or nesting activities by birds, and to avoid the creation of artificial habitat or shelter for raptor prey.
  - b. Guy wires for meteorological test towers shall only be used if necessary and shall contain bird diverters as recommended by Arizona Game and Fish Department or other appropriate state and federal natural resource management agencies.
  - c. Above-ground power lines shall comply with the Avian Power Line Interaction Committee standards to prevent avian fatality.
  - d. Safety and Shadow Flicker Nuisance. Turbine blades shall be designed so that the closest point of the sweep of the blade is at least 30 feet above finished grade. Shadow Flicker from turbines shall not impact adjacent Non-participating properties or public rights of way by more than 30 hours per year, as shown by a Shadow Flicker evaluation prepared by a qualified expert. Exceptions to Shadow Flicker impact may be approved by the Board of Supervisors when the applicant demonstrates a significant or substantive need to create impacts.
14. Air Quality Impacts for Biomass Energy Installations. Biomass Energy Installations shall obtain an air quality permit from the Arizona Department of Environmental Quality and adhere to all applicable Federal and State rules and regulations.

### Section 440. Permits and Administration for Utility Scale Renewable Energy Systems Projects

- A. The CUP application shall comply with Article 11 of the Apache County Zoning Ordinance, and as modified in this Ordinance.
- B. Application Process and Requirements. In addition to the requirements of Section 1107, the following are required:
- 1. Prior to the submittal of a Conditional Use permit application the applicant shall schedule a Pre-Application Review with staff of the Community Development Department, and additional experts if such assistance is determined necessary by the Community Development Director.

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2. In addition to Section 1106 Citizen Review Process the notification area shall be a minimum of ~~five (5) miles~~, or a distance determined by staff at the Pre-Application meeting, from the project boundary, and shall include notification to Cities, Towns and homeowner's associations that are ~~nearby~~ but may be beyond the notification distance, shall include a media release sent to local news and radio outlets, and an opportunity for an on-site tour by the public, shall be provided by the applicant, in consultation with the Community Development Director.

Commented [D136]: The community will know about the project. Limit the notification requirement to 1/2 mile.

Commented [D137]: This is very broad and undefined.

Commented [D138]: This may not be feasible. Sometimes the site has access issues prior to project development. There may only be site access from public ROWs and participating landowners. Also, the liability of inviting public onto the site, also needs to be contemplated.

a. All materials provided during the Pre-Application Review shall be displayed during the Neighborhood and Public Meetings, including all visual simulations.

b. In addition to the requirements of Section 1106, provide the following:

i. A list of all property owners of record within ~~five miles~~ of the project boundary, with current contact mailing address information.

Commented [D139]: 1/2 mile

ii. A list of all property owners of record within a minimum of 300 feet of each access route to the project from a public roadway, as well as within 300 feet of each public roadway that requires any improvements in connection with the project, with current contact mailing address information.

Commented [D140]: From edge of ROW, from edge of road, center of road?

iii. Notice by first class mail to all property owners listed under subparagraphs (i) and (ii) above, such notice to include a narrative description of the project, identification of transportation routes, vicinity map showing surrounding properties, and a layout of the proposed facility and accessory buildings indicating setback distances to property lines.

iv. Notice by first class mail to all incorporated and unincorporated community officials within ~~five miles~~ of the project boundary. Officials may include, mayors, city councils, community development, board of supervisors, planning and zoning commissions, and local fire officials.

Commented [D141]: 1/2 mile

v. Schedule, publicize and conduct at least two public meetings (in collaboration with the Community Development Director, neighborhood groups and property owner associations, where available) in the project area at least 30 days before the Planning and Zoning Commission hearing as outlined in Apache County Ordinance Article 11.

vi. Establish a web site, linked to the Apache County web site if possible, giving a summary of the project (site plan, context plan and summary description) and applicant contact information before holding the first public meeting as required above.

vii. Provide a mechanism on this site for the submission of public comments. Provide a contact name and telephone hotline, the details of which are printed on a prominent sign at each project entrance and maintained on record with the Community Development Department, by which citizens can leave comments suggestions and complaints 24 hours a day for the life of the project. The CUP holder shall take all reasonable efforts to review and address (including returning the call when

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appropriate) all non-urgent messages within 72 hours and all urgent messages within 24 hours. Provide the County with a monthly summary of complaints and the way they were addressed.

Commented [D142]: Strict time requirements for responses could be problematic. It makes the hotline a potential for harassment by opponents. Also, the distinction between urgent and non-urgent is not defined. Suggest a more qualitative approach, such as reasonableness.

3. In addition to requirements of Section 1107, Conditional Use Permits, the following shall be provided:

a. Written narrative. The narrative submitted with the application shall include the following:

- i. Why the proposed site has been chosen based on the preferred/disfavored criteria
- ii. How the facility provides clear economic and environmental benefits to the County
- iii. How the facility's design and operational procedures apply current best practices and technologies
- iv. A detailed description of the how project meets each of the required Performance Standards in Section 439 and 1107
- v. Detailed results of the Preliminary Site Evaluations required in Section 438. For archaeological, cultural, and historic resource desk top evaluations and preliminary inventories, the narrative shall document how the site was inspected for culturally and historically significant resources and include the name and details of the professional(s) conducting the study
- vi. Additional information requested at the Pre-Application review.

C. Electronic files of the site plan, including the location of all equipment, fencing, transmission lines, substations, construction staging, and temporary and permanent roads, compatible with Geographic Information System (GIS) software.

D. Architectural drawings shall include elevations of all proposed structures, connection lines, electric energy storage units, equipment, and storage yards.

E. Facility Specifications for Wind Projects to include at a minimum:

1. Turbine information -- size, type, height, rotor material, rated power input, performance safety, noise characteristics, tower and electrical transmission equipment
2. Scaled drawings of each turbine model, including tower and foundation
3. Computer simulation or drawing showing the site fully developed with all proposed wind turbines and accessory structures
4. Ice throw calculations
5. Blade failure analysis
6. Catastrophic tower failure analysis
7. Foundation design for all proposed structures

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B. Projected useful life of facility

F. Visual Impact Analysis. A visual impact analysis of impacts to Visual Resource, cultural resources, tribal land, and residential or subdivided property located within 10 miles from the project boundary shall be provided, or at the distance determined by the Community Development Director at the Pre-Application meeting. The visual impact analysis shall demonstrate with photo simulations the true visual and cumulative impacts of the facility on the surrounding environment and include a written description of the impacts and proposed mitigations. The visual impact analysis shall utilize key observation point photographs taken from Visual Resources, cultural resources, and residential properties identified during the Pre-Application meeting to the proposed site location to create scatted photo simulations of the proposed facility from visually impacted locations. Scenic simulations shall illustrate the proposed facility including wind turbines, solar arrays, combustion and conversion units, structures, substations, overhead transmission lines, and equipment facilities. The photos' locations shall be identified and labeled on a map demonstrating the visual line of sight from the resource to the facility.

Commented [D143]: This is a big lift, and sometimes we will have site access issues to do the initial site visit/survey. We only have site access from public ROWs and participating landowners. I do not think this is feasible at all.

G. A traffic impact study or analysis:

1. Demonstrating how vehicles will access the site and describing the impacts of the proposed project on the local and regional road system, traffic conditions and safety on all public roads from which there is access to or from the project, within 5 miles, during construction and operation.
2. A traffic inventory and repair plan to inventory existing road conditions before construction begins and to repair any damage caused during the course of construction, to be prepared by a registered engineer independent of the project.

Commented [D144]: Again, we can only do this from public ROWs and participating parcels

Commented [D145]: 2-3 miles

Commented [D146R45]: Traffic engineers have industry standards they typically use. 5 miles seems unnecessary; suggest consultation with professional traffic engineers to determine industry standards.

H. A cultural resources management plan, based on the archaeological and historic resource studies, prepared by a qualified professional to protect and mitigate impacts to any known or discovered archaeological, historical or cultural sites or artifacts found on the site.

I. A public safety, fire protection and emergency management plan for construction and post construction operation of the facility, including plans for ongoing management of forest and fire fuels, wildfire prevention and response, and Battery Storage System fire prevention and response. The plan shall include provision for (a) traffic control during construction, (b) fire protection during construction and upon completion of the facility, (c) blasting and explosion, (d) in the event of lightning strikes to the facility, and (e) proper signage during the life of the facility to warn of electrical shock or high voltage. The plan shall be reviewed and approved by the local fire management agencies, districts, and fire departments. Additional mitigation may be required if requested by the local or nearest fire district or fire department to support response capabilities.

Commented [D147]: This conflicts with the above "must maintain current vegetation in buffers/setbacks" that's not always in line w/ fire prevention.

J. A wildlife protection plan, based on the results of the Preliminary Site Evaluations and formal site surveys as recommended by AGFD, USFWS, and the County, detailing how direct and Cumulative Impacts to wildlife, birds, bats, and Wildlife Linkages will be avoided to the extent practical through project design, and evaluation, monitoring, and mitigation strategies.

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K. A list of proposed permit conditions related to wildlife, such as timing restrictions and survey requirements, and instructions notifying operators how to proceed in the event cultural resources are encountered during construction or grading, shall be included on construction documents.

Commented [D148]: Define construction documents.

L. Preliminary erosion control, conceptual grading plan demonstrating areas of cut, fill, grading disturbance, and construction staging, site maintenance, noxious weed control and management, and native plant revegetation plans shall be submitted with the application. Prior to issuance of construction or grading permits final plans shall be submitted based on the permit requirements. The native plant revegetation plan shall address road shoulders and any areas disturbed by construction, operation, or decommissioning of the project. The revegetation plan shall describe preconstruction conditions, including any invasive weed populations present, describe methods to be used to restore disturbed areas, describe monitoring and treatment which will occur throughout the life of the project and during decommissioning, and shall list success standards. The noxious weed plan shall include provisions for controlling and preventing the spread of noxious weeds during construction, throughout project operation and post operation restoration.

Commented [D149]: Site control issue, developers cant typically make commitments to/on property we don't have control over

M. Compliance confirmation, lease agreements and Participating Property Owner documentation. Prior to issuance of construction or grading permits, the following approvals shall be confirmed: Decision document from a representative agency of the Federal Government if applicable, approval of the Arizona Corporation Commission for the transmission line and the interconnect with the high voltage line, operating permits by the Arizona Department of Environmental Quality, if applicable, right of way and/or lease granted by the Arizona State Land Department for roads and turbine locations, if applicable, other lease agreements required to demonstrate legal authority for the facility, and confirmation of consent and agreement to siting impacts by Participating Property Owners.

Commented [D150]: These are confidential, so we'd want to be able to submit a memo/affidavit instead

N. Decommissioning Plan and Financial Securities.

Any utility scale renewable energy system or component that has reached the end of its useful life or has been abandoned shall be removed. A utility scale renewable energy system or component shall be considered abandoned when it fails to operate for 12 consecutive months. A decommissioning plan shall be submitted to include but not be limited to the following:

1. Details for removal of all aboveground and underground equipment, structures, fencing, and foundations as specified by the Board of Supervisors.

Commented [D151]: Remove foundations to 3' below the surface.

2. Details for removal, restoration, and revegetation of disturbed and graded areas and access roads other than those identified by the property owner as being retained. Restoration shall include regrading and placement of like kind topsoil and revegetation with native seed mixes and plant species, and yearly noxious weed monitoring and removal for three years after restoration is completed. The site shall be restored to its original condition within five years of decommissioning and removal of the project.

Commented [D152]: If it's pre-con use is farming, we need the flexibility to return to previous use if owner requests

3. Remediation and disposal of any hazardous or toxic materials used, generated by or left on site by the Utility Scale Renewable Energy System.

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Section 441. Financial Securities. Prior to the issuance of building permits for the project, the project owner/operator shall provide an estimate of the salvage value of equipment, and a separate estimate of the cost to decommission, remove all equipment and restore the site, as estimated by a licensed Professional Engineer registered in the State of Arizona that is independent of the project owner/operator. The estimate of the cost to decommission shall be used as a basis for the project owner/operator to provide a financial security that provides sufficient financial ability for the County to contract an expert to oversee salvage and decommissioning operations that will restore the land to its original condition. At all times over any project's operable life, financial securities provided under this Section shall be structured to survive the bankruptcy, dissolution, insolvency, or other termination of the project owner/operator as a legal entity.

1) A second financial security shall be submitted no later than the 5th anniversary of commercial operations to provide the County sufficient financial security to cover the cost of decommissioning the project and restoring the land to its original condition. The financial security shall be based on the total cost of decommissioning and restoring the site to its original condition, less the salvage value of the equipment, as estimated by a licensed Professional Engineer registered in the State of Arizona that is independent of the project owner/operator. The financial security shall be re-evaluated every five years to ensure that the estimate reflects current decommissioning costs and salvage value, and to include the cost of inflation to the end of project, as estimated by a licensed Professional Engineer registered in the State of Arizona that is independent of the project owner/operator. A financial security shall be a bond or other security approved by the County Attorney's Office to ensure removal of all equipment and restoration of the land to its original condition.

Commented [D153]: This should read "A financial security"

2) The applicant shall bear all responsibility for assuring that the assurance bond is sufficient to cover the cost of decommissioning. The instrument shall be transferable to cover the activities of any other entity which may have acquired the project prior to its decommissioning. Return of the financial assurance shall be subject to County verification that the site has been restored to its original condition within five years of decommissioning.

Section 442. Modifications to Performance Standards. The Board of Supervisors may approve waivers to the performance standards in this Section for Audible Noise, underground placement of collection lines, and Shadow Flicker, in addition to the property development and performance standard waivers allowed Section 1107 (B) 11. In addition to addressing how the requested waiver meets the required findings, the applicant shall demonstrate a significant or substantive need for the waiver and provide detailed rationale for why the standards must be modified, the specific type and extent of the modification, and why the design cannot accommodate the affected standard.

Commented [D154]: Suggest removing specific limitations on standards for which the waiver can apply. The waivers are discretionary, so no need to limit their application up front.

Section 443. Request for Agency Review and Comment

A. For each agency review required, the Community Development Director shall submit a request for review to the agency or County Department on such form as is prescribed by the County Community Development Department.

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B. Due to the complexity of the methodology or analysis required to review an application for a Utility Scale Renewable Energy System Conditional Use permit, the Director may require a technical review by a third-party expert. If a technical review is determined necessary the costs of this review shall be borne by the applicant, and payable prior to scheduling the CUP for any public hearing. Ongoing or post-construction third-party technical review payments shall be paid by project owner within 30 days of receipt of notice of billing sent from the County. The expert review may include, but is not limited to, the following:

1. The accuracy and completeness of the submissions;
2. The applicability of analysis techniques and methodologies;
3. The validity of conclusions reached;
4. Whether the proposed Utility Scale Renewable Energy System complies with the applicable criteria set forth in these regulations; and
5. Monitoring of Conditions of Approval, and Other matters deemed by the Community Development Director to be relevant in determining whether a proposed Utility Scale Renewable Energy System complies with the provisions of these regulations.

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

1. State Historic Preservation Office of the Arizona State Parks Department, to determine if the project site will affect or impact cultural properties, national registered historic districts, archaeological sites and unmarked burials.
2. Soil Conservation District located within Apache County, to determine whether the applicant can furnish terrain management sufficient to protect against flooding, inadequate drainage and erosion.
3. The Arizona Game and Fish Department, to determine whether the project will affect adversely any endangered or threatened species, species of special conservation concern, and species of economic importance, or the habitat of such species.
4. The Arizona 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 3 miles of the project site.
5. Various Apache County Departments, including Engineering for the same determination as noted in the immediately preceding Subparagraph, as concerns any State or county roads.
6. Any affected Indian Tribes as determined by the Community Development Director or the State Historic Preservation Officer.
7. The Federal Aviation Administration, to determine if the proposed project site is within a FAA-designated civilian airport clear zone or runway protection zone, based upon information from the local or regional airport manager.

Commented [D155]: Add "as applicable"

Commented [D156]: And county agencies

Commented [D157]: This supports reducing the 5 mile TIA to 3, it's inline w/ this DOT req

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8. The office of the State Geologist, ADEC, or other applicable agency to determine from the information submitted, whether the project will affect or have any impact on underground aquifers, and recommended measures to protect aquifers.

Section 444. Use of CUP, terms, and conditions.

A. Any Renewable Energy Generation facility that is granted a CUP shall be developed in accordance with the schedule for development and stipulations set forth in the CUP.

Commented [D158]: Remove "schedule for development". Any timing requirement will be set forth in stipulations.

B. A CUP for a Renewable Energy Generating facility will need to be reviewed every 60-months, additional reviews shall be at the Community Development Directors' discretion. The fee may be waived so long as the CUP issued has not expired.

Commented [D159]: This is abnormal during operations. We have seen this only if construction hasn't been completed.

C. A CUP for a Renewable Energy Generation facility shall be granted in the name of the applicant and may be transferred or assigned to a new holder with notification to the Community Development Department. The new holder shall be obligated to agree to all existing conditions and shall provide adequate bond as outlined herein to demonstrate that the new holder assumes the financial obligations and the financial ability to fulfill the obligations as specified in the CUP.

Section 445. CUP Suspension and Revocation

A. Any CUP issued pursuant to this section may be suspended or revoked in whole or part by the Board of Supervisors for material non-compliance with the requirements of this section or the stipulations set forth in the CUP. A CUP shall be subject to suspension or revocation at a duly noticed public hearing only if the CUP holder has failed to cure the material non-compliance after no less than 30 days' written notice of such non-compliance from the Community Development Director.

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

1. An "inoperable Renewable Energy Systems Facility" is one that does not generate at least one megawatt of electricity for 360 consecutive days, unless such non-generation is due to an act of nature, declared emergency or other cause beyond the reasonable control of the CUP holder or unless the CUP holder demonstrates that modernization, rebuilding, or repairs are in progress or are planned and will be diligently completed in a timely manner.

Commented [D160]: Clarify that 360 days only starts to run after completion of construction.

2. An "unsafe Renewable Energy Generation facility" is one that has been found by a state or federal administrative agency or a court of competent jurisdiction to have materially violated applicable health or safety laws, unless the CUP holder demonstrates that measures to cure such violations are in progress or are planned and will be diligently completed in a timely manner.

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

Commented [D161]: Define. Also, this entire subsection 3 may be outside the scope of the Zoning Ordinance.

4. Upon a complaint to the Community Development Department that a Renewable Energy Generation Facility is inoperable or unsafe, the Board of Supervisors shall convene a public hearing as soon as possible after written notice to the CUP holder.

Commented [D162]: This needs to be narrowed to define what type of complaint will trigger a BOS hearing. The veracity of the complaint should be vetted by Director and possibly the City Attorney, to avoid harassment and waste of Board resources.

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Pending a final determination that the facility is inoperable or unsafe, the Board may suspend the CUP in whole or part or impose such conditions as may be appropriate to protect the public health, safety, and welfare. Upon a final determination that the facility is inoperable or unsafe, the Board may suspend or revoke the CUP in whole or part or impose such conditions as may be appropriate to protect the public health, safety, and welfare.

Commented [D163]: Any suspension should be limited to operations and not require removal of structures or other project components.

C. No later than 30 days after the revocation or expiration of the CUP, the decommissioning plan shall be implemented, and decommissioning shall proceed diligently to completion. The time for decommission shall be determined by a Professional Engineer registered in the State of Arizona. If decommissioning has not started within 30 days of revocation or expiration of the CUP Apache County may seek redress of the bond.

Commented [D164]: Unless appealed?

D. Process for Suspension or Revocation for non-compliance with CUP

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.
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 30 days from receipt of said notice, the County may seek suspension or revocation of the conditional use permit, in whole or in part.
3. Written notice to suspend or revoke the conditional use permit, specifying the reasons therefor, shall be delivered to the owner, by registered mail, return receipt requested, and the Board of Supervisors shall hold and conduct a hearing on said notice, and issue a decision of suspension or revocation, after the notice and hearing requirements set forth in Section 1107 of this Ordinance.
4. Any person aggrieved by the decision of suspension or revocation made by the Board of Supervisors may appeal the same to District Court.
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.

Commented [D165]: 30 days may be a very short timeframe for some of the defaults that could trigger these proceedings. Suggest longer. Same comment applies to other instances of 30 day cure period throughout this document.

Section 446. Indemnification

Apache 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 Attorney which shall:

Commented [D166]: Would this need to happen prior to the CUP application? Or after the hearing AND before the final approval?

1. Indemnify and hold harmless Apache 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 attorney fees, liabilities, damages, orders, judgements or decrees sustained by Apache County or any third party, arising out of or by reason of utility renewable energy project, component or equipment failure or collapse or arising from the negligent acts, errors or omissions of any and all project owners, operators, officers, employees or agents; and

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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 447. Liability Insurance

- 1. 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:
- 2. 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.
- 3. Automobile coverage: \$1,000,000 per occurrence, \$2,000,000 aggregate.
- 4. Worker's compensation and disability: statutory amounts.
- 5. Insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least 30 days prior written notice in advance of the cancellation of the insurance.
- 6. Liability insurance shall be maintained throughout the life of the project, including decommissioning.

Section 448. 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 2 years after the conditional use permit is issued, and shall be completed and in operation not later than 3 years after the conditional use 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.

Commented [D167]: Can this be extended to 5 years? Otherwise, three years is fine with a two year extension. Applicant can provide justification for the delay, not to be unreasonably withheld. This should be done through an administrative process.

Section 449. Removal

A. Any project facility that is not in continuous and uninterrupted operation for 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 30 days of receipt of such notice advise the County that such project facility will be removed, and the estimated time for said removal.

Commented [D168]: This entire Section 449 appears to, at least in part, duplicate and/or conflict with provisions further up in the code.

B. 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.

Commented [D169]: Foundations to 3' below the surface

C. 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 this Ordinance.

Section 450. Penalty

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Any person, firm or corporation, whether as principal, agent or employee, who violates or causes a violation of this Ordinance, or any part hereof, or the conditions of approval of the CUP, shall upon conviction by the Board of Supervisors or a court of law, be punished for each violation, by a fine not exceeding \$300.00 or by imprisonment not exceeding 90 days in the county jail, or by both such fine and imprisonment, which penalty is the maximum allowed by [AZ State Law – section]. Each day the violation occurs shall constitute a separate offense and shall be punishable as provided herein.

### Section 451. Notification to County of Change of 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 Community Development Director, by registered mail, return receipt requested forthwith, and not later than 30 days from the effective date of said conveyance, transfer, assignment or other divestiture.

### Section 452. Compliance, Monitoring, and Mitigation Requirements for Utility Scale Renewable Energy Systems

A. Monitoring plans and compliance reporting shall be provided in yearly or other specific increments based on a reporting schedule required by the Conditional Use Permit requirements. Monitoring plans and compliance for post construction and operational impacts shall include but not be limited to wildlife, sensitive plant species, noxious weed control, cultural resource protection, and audible noise limits. Modification of facility maintenance and operations may be required based upon impacts identified by monitoring reports, such as takings of listed species or an unanticipated mortality rate of birds, bats or wildlife. The methodology of monitoring and compliance reporting shall be performed by qualified experts working with the Director.

1. Required modifications to the facility or facility operations shall be determined on a case by case basis and based on existing or new technologies shown to be effective at mitigating impacts. Changes to wind turbine operations shall be limited to the minimum time necessary to mitigate the impact, not to affect more than 0.05 percent of total annual Wind Facility Hours.
2. The County Board of Supervisors may require off-site mitigation of like kind and similar extent for projects creating impacts to wildlife and habitat.
3. Noncompliance with terms of the Conditional Use Permit shall also be addressed as an enforcement matter under Section 13 of the Apache County Zoning Ordinance.