

## Article 8 Renewable Energy

### Section 801. 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. Utility-scale wind and solar projects regulated under this Article shall have an actual or planned generating capacity of at least one (1) megawatt and shall primarily generate electricity for distribution to off-site customers through the electrical grid. 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 802. 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; 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 wind or solar energy system designed primarily to generate electricity for distribution to off-site customers through the electrical grid and having an actual or planned generating capacity of at least one (1) megawatt. The term does not include small wind or solar systems designed primarily for on-site residential, agricultural, or institutional energy consumption.

**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** — 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** — Natural or built landscape features that contribute to scenic character and are visible from publicly accessible locations such as designated scenic highways, established public parks, recreation areas, historic sites, or recognized viewpoints identified in the Apache County Comprehensive Plan.

## **Section 803. 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 Generation Facilities, Apache County shall consider consistency with the Apache County Comprehensive Plan and encourage siting in areas identified as suitable for energy development. The following preferred criteria are intended to guide project design and site selection in a manner that minimizes land use conflicts and protects the County's natural, cultural, and scenic resources.

These criteria are advisory and are intended to guide planning and mitigation strategies. Compliance with the mandatory development standards of this Article shall remain the basis for permit approval.

1. **Proximity to Transmission Infrastructure** — Sites located close to existing transmission lines, substations, and interconnection points, to reduce the need for construction of new transmission infrastructure.

2. **Lower Habitat and Vegetation Sensitivity** — Areas with limited wildlife habitat or vegetation sensitivity and located away from designated wildlife management areas.
3. **Distance from Population Centers** — Locations sited away from towns, communities, and concentrations of residential development in order to minimize potential noise, shadow flicker, glare, and other quality-of-life impacts.
4. **Compatible With Existing 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~~ disturbance.
6. **Consistency With Preferred Energy Generation Areas Identified in the Apache County Comprehensive Plan**  
Projects located within areas identified in the Apache County Comprehensive Plan as suitable for energy generation may demonstrate improved compatibility with long-term County planning objectives.

## Section 804. General Development Standards

### Pre-Application Meeting

The applicant shall participate in a mandatory pre-application meeting with Apache County Community Development staff prior to submission of a Conditional Use Permit (CUP) application. The purpose of the meeting is to review the CUP process, review the Pre-Submittal Checklist, identify potential issues early in the process, and clarify the information required for a complete application.

Apache County may invite representatives from relevant agencies, including but not limited to local fire districts, the Arizona Game and Fish Department, the Arizona Department of Transportation, the Apache Natural Resource Conservation District (ANRCD), and other applicable agencies.

### Roads and Access

The applicant shall construct only the minimum number of on-site access roads necessary for construction, operation, and maintenance of the renewable energy facility. Temporary access roads and excess roadway widths used during construction shall be reclaimed and re-vegetated with native species, to the extent reasonably feasible, following completion of construction.

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. A preliminary fire prevention and emergency response plan shall be submitted with the CUP application. Final fire protection plans shall be approved by the applicable fire district or authority having jurisdiction prior to issuance of building permits. Detailed fire protection and emergency response plans shall be submitted and approved as required during the building permit review process.

## **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, 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.

## **Design and Appearance**

, 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**

Turbines 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.

The applicant shall consult with the Arizona Game and Fish Department and other applicable agencies regarding potential wildlife impacts. Written comments from these agencies may be requested by Apache County prior to scheduling the CUP application for a hearing before the Planning and Zoning Commission.

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**

All required federal, state, and local permits applicable to the project shall be obtained prior to construction as required by the issuing agencies. 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. All renewable energy equipment installed at the facility shall be commercially manufactured and certified for utility-scale use under applicable industry standards and building codes. For construction and permitting purposes, all wind turbines 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~~ **consultation** with the Apache Natural Resources Conservation District (ANRCD) as **determined by Apache County**.
- 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~~ **consultation** with the (ANRCD), and/or the local fire district/department, is **required as determined by Apache County**.
- 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~~ **consultation** with the ANRCD, and/or the local fire district ~~department, is required~~ **as determined by Apache County**. Noxious-invasive plant species shall be promptly disposed of according to the Noxious-Invasive Weed Prevention and Control Plan developed in ~~coordination~~ **consultation** 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~~ **consultation** with the ANRCD and **as determined by Apache County shall** 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 811 of this Article.

All such cleanup and removal activities shall be promptly reported to **Apache County with notice provided to ANRCD for informational purposes. Cleanup will commence** within thirty (30) calendar days. **The CUP holder may ask for a longer time period in writing** as necessary to accommodate site conditions and reasonable scheduling needs, at the CUP holder's expense.

## Section 805. Noise Requirements and Mitigation Measures

### A. Pre-Construction Sound Study

Prior to issuance of a Conditional Use Permit (CUP), the applicant shall submit a sound study prepared by an independent qualified acoustical consultant.

The study shall:

- determine existing background sound levels at representative receptor locations, including nearby residences, schools, libraries, or hospitals;

- identify the major noise-producing components of the proposed facility, including wind turbines, solar inverters, transformers, substations, cooling equipment, and other mechanical equipment; and
- demonstrate that the proposed renewable energy facility will comply with the sound limits established in this section.

Background sound levels shall be determined using generally accepted acoustical measurement standards and practices.

## **B. Operational Noise Limits**

Noise from wind turbines, solar equipment, substations, transformers, cooling systems, and other mechanical equipment associated with a Renewable Energy Generation Facility shall not exceed the following limits at the exterior of any structure existing at the time of CUP approval.

### **1. Non-Participating Parcels**

Noise shall not exceed 50 dBA LAeq (10-minute average) or five (5) dB above the measured background sound level (LA90), whichever is greater, at any non-participating occupied residence, school, library, or hospital.

### **2. Participating Parcels**

Noise shall not exceed **55** dBA LAeq (10-minute average) at any participating occupied residence.

## **C. Measurement Standards and Verification**

Noise measurements used to demonstrate compliance with this section shall be conducted using calibrated sound measurement equipment and in accordance with generally accepted acoustical measurement standards.

Apache County may require post-construction sound measurements if noise complaints are received or if the County determines that verification of compliance is necessary.

## **D. Waivers**

The Board of Supervisors may approve a waiver of the sound limits established in this section where affected property owners provide written consent acknowledging the anticipated sound levels.

Any waiver shall be recorded with the Apache County Recorder to provide notice to future property owners. Any such waiver shall be provided to Apache County Community Development prior to issuance of any building permit.

## **E. Construction Noise**

Construction activities associated with Renewable Energy Generation Facilities shall be limited to the hours of 7:00 a.m. to 7:00 p.m., Activities generating significant noise shall not occur on Sundays or federal holidays unless necessary for safety, emergency repairs, or continuous construction operations approved by the County. The Community Development Director may approve limited deviations from these hours when necessary for safety, weather conditions, or continuous construction operations.

## **Section 806. Setbacks**

### **Wind Projects Setbacks**

The minimum safety setback distance, location, and spacing requirements for Wind Energy Generation facilities shall be as follows. As used herein, “total turbine 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 energy facilities shall comply with the setback and spacing requirements set forth below. Where multiple setback standards apply, the greatest required setback distance shall control.

#### **~~A. Non-Participating Parcels with Occupied Residence Setbacks~~**

~~Wind turbines shall be located a minimum distance of one half (1/2) mile (2,640 feet) from the property boundary of any non-participating parcel containing an occupied residence. The setback distance shall be measured from the center of the turbine foundation to the nearest boundary line of the non-participating parcel.~~

~~To qualify for this setback protection, the residence on the parcel must have received either:~~

- ~~• a Certificate of Occupancy issued by the Apache County Building Department, or~~
- ~~• a valid building permit issued by Apache County Building Department.~~

~~prior to submission of a complete Conditional Use Permit (CUP) application.~~

#### **~~B. Participating Parcels and Vacant Private Parcels~~**

~~Where the project boundary adjoins a participating parcel or a privately owned parcel that does not contain an occupied residence, wind turbines shall be located a minimum distance of one and one-half (1.5) times the total turbine height from the project boundary.~~

#### **~~C. Non-Private Lands~~**

~~Where the project boundary adjoins non-private lands, including but not limited to Tribal lands, Arizona State Trust Land, Bureau of Land Management lands, or National Forest lands, wind~~

~~turbines shall be located a minimum distance of one and one-half (1.5) times the total turbine height from the project boundary.~~

~~The setback distance shall be measured from the center of the turbine foundation to the nearest boundary line.~~

## **D. Project Boundary Setbacks**

~~Individual wind turbines shall be placed at least **one and one-half (1.5) times (150%)** the total turbine height from the center of the turbine foundation to the project boundary.~~

Individual wind turbines shall be located a minimum distance of one-half (½) mile (2,640 feet) from the project boundary. The setback distance shall be measured from the center of the turbine foundation to the nearest project boundary line.

## **E. 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.

## **F. Roadway Setbacks**

- i. Individual wind turbines shall be set back from any non-paved public or publicly maintained roadway, at least **one and one-half (1.5) times (150%)** the total turbines height measured to the nearest edge of the right-of-way to the center of the turbines foundation.
- ii. Individual wind turbines shall be setback from any major highway or **significant Scenic Travel Corridors as listed in the Apache County Comprehensive Plan a minimum distance of one (1)** mile of the total turbines height, measured to the nearest edge of the right of way to the center of the turbines foundation.

## **G. Railways, Utilities, and Structures**

Individual wind turbines 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 **one and one-half (1.5) times (150%)** the total turbines height.

## **H. 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**

Solar energy facilities shall comply with the following setback requirements. Setback distances shall be measured from the nearest outer edge of the solar equipment footprint or from the project perimeter fence, whichever is closest to the setback boundary, consistent with the definition of Setback Distance in Section 437.

### **A. Standard Solar Setback**

A minimum setback of fifty (50) feet shall be maintained for all solar energy facilities unless a greater distance is required by the applicable fire district or emergency services provider for safety, emergency access, or fire protection.

### **B. Private Parcels**

Solar facilities shall maintain a setback of:

- fifty (50) feet from the boundary of any participating private parcel, or from any vacant private parcel without an occupied residence.
- two hundred (200) feet from the boundary of any non-participating parcel containing an occupied residence.

For purposes of this subsection, a residence shall qualify for the two-hundred-foot setback only if it has received either:

- a Certificate of Occupancy issued by the Apache County Building Department, or
- a valid building permit issued prior to submission of a complete Conditional Use Permit (CUP) application.

### **C. Public Lands**

Where a solar project boundary adjoins non-private lands, including but not limited to Tribal lands, Arizona State Trust Land, Bureau of Land Management lands, National Forest lands, or other publicly managed lands, solar facilities shall maintain a minimum setback of fifty (50) feet from the project boundary.

### **D. Roads and Highways**

Solar facilities shall maintain the following setbacks from public road rights-of-way:

- five hundred (500) feet from the right-of-way of any Major Highway, including U.S. and State highways.
- one hundred (100) feet from the right-of-way of any county road, whether paved or unpaved.
- fifty (50) feet from the right-of-way of any other road not maintained by Apache County.

The Board of Supervisors may approve a reduction in roadway setbacks where terrain, vegetation, visual screening, or other mitigation measures adequately reduce visual impacts and protect public safety.

### **E. Non-Generating Structures**

All non-generating structures associated with a solar energy facility, including substations, maintenance buildings, transformers, administrative buildings, and other support facilities, shall comply with the setback requirements of the zoning district in which the project is located.

## **Setback Reductions**

The Board of Supervisors may approve a reduction in the setback requirements in this entire section both for wind or solar projects under any of the following circumstances:

1. An affected property owner provides written consent allowing renewable energy facilities to encroach into otherwise required setback areas. The consent shall identify the approved setback reduction and be recorded with the Apache County Recorder prior to issuance of the Conditional Use Permit. The recorded consent shall run with the land to provide notice to future property owners, and a copy shall be provided to the Apache County Community Development Department prior to issuance of any building permit.
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 submits a letter of consent for the proposed setback reduction to the Community Development Department.
4. The parcel on which the project is located and an adjacent parcel are under common ownership.
5. The existing use of an adjacent property generates sound levels greater than those permitted for the Renewable Energy Generation Facility under this section.

## **Section 807. Use of CUP, Terms, and Conditions**

Any Renewable Energy Generation Facility approved through a Conditional Use Permit (CUP) shall be developed, constructed, and operated in accordance with the development schedule and conditions of approval contained in the CUP.

Approved Renewable Energy Generation Facilities shall be subject to an administrative compliance review every sixty (60) months to verify continued compliance with the approved

CUP and all applicable provisions of this Article. Additional administrative reviews may be conducted at the discretion of the Community Development Director.

A CUP shall be issued in the name of the applicant and may be transferred or assigned to another entity upon written notification to the Apache County Community Development Department. Any successor permit holder shall assume all obligations and conditions of the approved CUP and shall maintain the required financial assurance as provided in Section 446 (Decommissioning and Financial Assurance).

The permit holder shall maintain current ownership information and emergency contact information with the Apache County Community Development Department at all times.

## **Facility Identification and Emergency Contact Signage**

The permit holder shall install and maintain clearly visible identification and emergency contact signage at all primary facility entrances. Such signage shall include:

- the name of the facility owner or operator
- a 24-hour emergency contact telephone number
- the name of the responsible operating company

The emergency contact number shall connect to a knowledgeable company representative or operator capable of responding to emergencies or operational issues at the facility.

## **Pre-Submittal Checklist**

All CUP applications for Renewable Energy Generation Facilities shall include a completed Pre-Submittal Checklist located in Appendix A of this Article and signed by the applicant. The checklist shall verify that required studies, public outreach efforts, and preliminary agency consultations have been initiated or completed prior to submission of the CUP application.

## **Section 808. CUP Suspension and Revocation**

### **A. General Authority**

Any Conditional Use Permit (CUP) issued pursuant to this ~~section~~ Article 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~~ within no fewer than thirty (30) days, following written notice from the Community Development Director or within such additional time as may be reasonably necessary to correct the violation.

### **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 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, repowering, or repairs are actively underway or planned and will be diligently pursued to completed.

**2. Unsafe Renewable Energy Generation Facility**

An “Unsafe Renewable Energy Generation Facility” is ~~one~~ a facility 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.~~ underway or planned and will be **diligently pursued to completion.**

**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~~ through all available legal and equitable remedies.

**C. Complaint and Hearing Process**

The Community Development Director or their designee may conduct inspections of Renewable Energy Generation Facilities at reasonable times and upon reasonable notice to verify compliance with this Article and the conditions of an approved Conditional Use Permit.

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 of Supervisors 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 to complete the decommissioning.

### **Section 809. 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 (WAPA) or another federal Power Marketing Administration (PMA) for an interconnection or transmission agreement, then the applications may be jointly considered Apache County and the applicable agency. .

Joint consideration may include, but is not limited to:

- coordinated application review
- joint hearings
- shared mitigation requirements
- reliance on studies, findings, reports, assessments, or analyses prepared for state or federal review

~~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 of Arizona, 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 or supersede Apache County zoning requirements, standards, or approval authority under this Article.

## Section 810. 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 the current mailing address of each owner.
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:
  - A narrative description of the proposed project;
  - Identification of transportation and access routes;
  - A vicinity map showing surrounding properties; and
  - 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.

- Municipalities and Towns
- County Government Officials
- Community Development or Planning Departments
- Local Fire Districts and Emergency Service Providers
- Tribal Governments
- Other Local Jurisdictions Potentially Affected by the Project

Notice shall be mailed to the appropriate administrative office or designated official for each jurisdiction or agency. Notice may also be provided electronically when an agency has published an official email address for public notice.

### C. Public Meetings

Schedule, publicize, and conduct at least **two (2)** public information meetings in the project area. The meetings shall be held within Apache County at locations reasonably accessible to residents located near the proposed project area. The applicant shall make reasonable efforts to coordinate with local community organizations, neighborhood groups, or property owner associations where available. Public meetings shall comply with the public outreach requirements of Article 11 of the Apache County Zoning Ordinance. The applicant shall provide the Community

Development Department with a summary of the public meetings, including meeting dates, locations, attendance estimates, and a general description of comments or concerns raised by attendees and will be submitted with the applicants completed CUP application. .

#### **D. Project Information and Public Communication**

Prior to the first required public meeting, the applicant shall establish and maintain a publicly accessible project information website or similar digital platform, which may be linked to the Apache County website when feasible. The site shall include a project summary, site plan, context map, project updates, and contact information for the project owner or operator, and shall provide a method for the public to submit comments or inquiries electronically. Contact information shall be displayed on a prominent sign at each project entrance and maintained on file with the Apache County Community Development Department.

### **Section 811. 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. 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, 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. **Apache County reserves the right to determine that such man-made, above-ground and below-ground project materials may need to be removed completely.**
- 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~~ **shall be performed in consultation with the ANRCD as determined by Apache County.**

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 shall be subject to inspection and final approval by Apache County. Apache County may consult with the ANRCD in evaluating site restoration. The County may also utilize third-party qualified professionals, at the expense of the permit holder, to verify compliance with decommissioning requirements.**

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. 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 812. 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 813. 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