

ORDINANCE #67-19

AN ORDINANCE OF TURNER COUNTY SD, AMENDING THE 2008 REVISED ZONING ORDINANCE FOR TURNER COUNTY, SD, BY AMENDING SECTION 3.00, A-1 AGRICULTURAL DISTRICT; SECTION 9.00, I-2 GENERAL INDUSTRIAL DISTRICT; SECTION 13.13, ADDITIONAL USE REGULATIONS, WIND ENERGY CONVERSION SYSTEMS (WECS); SECTION 20.08, CONDITIONAL USE PERMITS, EXPIRATION; SECTION 22.09, ZONING BOARD OF ADJUSTMENT, LIMITATIONS; AND SECTION 27.02, DEFINITIONS, DEFINITIONS.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF TURNER COUNTY, SD:

Section 1. That Section 3.02 of the 2008 Revised Zoning Ordinance of Turner County, SD, is hereby amended to remove the following:

I. Wind energy conversion system.

Section 2. That Section 3.03 of the 2008 Revised Zoning Ordinance of Turner County, SD, is hereby amended to include the following:

CC. Wind energy conversion system.

Section 3. That Section 9.02 of the 2008 Revised Zoning Ordinance of Turner County, SD, is hereby amended to remove the following:

C. Wind energy conversion system.

Section 4. That Section 9.03 of the 2008 Revised Zoning Ordinance of Turner County, SD, is hereby amended to include the following:

N. Wind energy conversion system.

Section 5. That Article 13 of the 2008 Revised Zoning Ordinance of Turner County, SD, is hereby amended to include the following:

13.13 Wind Energy Conversion Systems (WECS).

A. Purpose. The purpose of this Ordinance is to provide for the regulation of owners/developers engaged in the construction, erection, placement, location, operation, and maintenance of WECS in Turner County; and to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of these systems and associated structures.

- B. Applicability. The requirements of these regulations shall apply to all WECS except private facilities with a single tower height of less than seventy-five (75) feet and used primarily for on-site generation and consumption of power.
- C. Federal and State Requirements. All WECS shall meet or exceed standards and regulations of the Federal Aviation Administration and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WECS.
- D. Conditional Use Permit Required. WECS shall be allowed only as Conditional Uses on parcels or lots zoned A-1 Agricultural, RR Rural Residential, C Commercial, I-1 Light Industrial, and I-2 General Industrial.
- E. Conditional Use Permit Application/Review.
1. Application Contents. In addition to the requirements of Chapter 20.02, every conditional use permit application for a WECS shall include the following information:
 - a. A generalized plan for connecting the proposed project into the utility grid. This shall include evidence that an interconnection request for the project has been filed; or if an interconnection request has not been filed, all other utility interconnection data requested by the Board of Adjustment.
 - b. Generalized information regarding the type, maximum height, rated power output, safety features, and noise characteristics of representative wind turbine models that will potentially be used for the project.
 - c. At least one (1) photograph or scaled drawing of representative wind turbine models that will potentially be used on the project. Each document provided shall be detailed enough to show the potential maximum height and dimensions of the turbine, as well as a general indication of the foundation design.
 - d. A location map drawn to scale of all buildings located within one thousand five hundred (1,500) feet of the proposed project boundary.
 - e. A location map drawn to scale of all microwave communications links within two (2) miles of the proposed project boundary.
 - f. A generalized plan regarding the handling, processing, treatment, storage, and disposal of any wastes, fluids, or pollutants that will be emitted or discharged during the lifetime of the project.
 - g. A generalized project completion schedule.

- h. The results of a flicker analysis, including the duration and location of flicker potential for all residences, businesses, and public buildings located within a one (1) mile radius of each potential turbine within a project. The applicant shall provide a site map identifying the locations of shadow flicker that may be caused by the project and the expected durations of the flicker at these locations from sun-rise to sun-set over the course of a year. The analysis shall account for topography, but not for obstacles such as accessory structures and trees. Flicker at any receptor shall not exceed thirty (30) hours per year within the analysis area.

Exception: The Board of Adjustment may allow for a greater amount of flicker than identified above if the participating landowner(s) agree to said amount of flicker. If approved, such agreement is to be recorded and filed with the Turner County Register of Deeds. This agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

- i. A location map drawn to scale or other documentation identifying all state, county, or township "haul roads" that will be used for the WECS project. Where practical, existing roadways shall be used for all activities associated with the WECS. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assemble nacelles, and all other heavy components to and from the turbine sites. Additionally, the applicant shall, prior to the conditional use permit public hearing, enter into negotiated written road haul/maintenance agreements with the appropriate state, county, or township having jurisdiction over the identified haul roads used to transport equipment and WECS components. For County and Township roads, the owner/developer of the project shall accept responsibility for all additional costs resulting from its use of said roads. For purposes of this section, additional costs shall include all work and material costs incurred over and above the average cost of maintaining that specific type of road. Failure to correct or supplement this information within thirty (30) days of making any change shall constitute grounds for review of the conditional use permit in conformance with Chapter 20.12.
- j. Copies of recorded versions of all agreements entered into by the owners/developers of the WECS project and participating landowners, including private road agreements. Sensitive information such as monetary lease terms, and other information protected by law may be redacted prior to submission of these agreements. Any subsequent material agreements or failure to supplement this information within thirty (30) days may constitute grounds for review of the conditional use permit in conformance with Chapter 20.12.
- k. Generalized information regarding how the developer intends to protect livestock, protect and segregate topsoil from subsoil in cultivated lands,

protect tile drainage, protect drainage ditches, control dust, and minimize the impacts of soil compaction. This information shall be provided as part of individual agreements with participating landowners.

1. A Preliminary Decommission Plan for the WECS project in conformance with the standards of Chapter 13.13(H). As part of the conditional use permit, the Board of Adjustment shall include conditions that ensure financial resources will be available for decommissioning. This may include, but is not limited to, establishing an escrow account into which the permittee will deposit funds on a regular basis over the life of the project. The Board of County Commissioners shall have access to the financial resources for the explicit purpose of decommissioning unless such financial resources are required to be available to the South Dakota Public Utilities Commission for distribution. Finalization of the Decommissioning Plan shall occur after the submission deadline outlined in Chapter 13.13(H)(1). Given the probability that the amount and type of financial resources required for decommissioning may change over time, the exact terms of this agreement may be adjusted by agreement of the Board of County Commissioners and the owner/developer of the WECS project. The amount of financial resources shall be based on a written estimate of decommissioning costs minus salvage value from a reputable construction company. Failure to submit the Final Decommissioning Plan as required by Section 13.13(H)(1) shall constitute grounds for review of the conditional use permit in conformance with Chapter 20.12. It shall be left up to the discretion of the Board of County Commissioners whether they choose to alter the terms of the financial resources agreement with the owner/developer of the WECS project by mutual agreement based on any new information received.

2. Conditional Use Permit Public Hearing. In addition to the requirements of Chapter 20.05, the applicant shall give notice by certified mail to all property owners within one thousand five hundred (1,500) feet of the proposed project boundary. The notice shall include at a minimum the name of the proposed project, a contact person for the project, a statement that the recipient(s) own property within one thousand five hundred (1,500) feet of the proposed project, a general geographic description of the project area, the time and place of the public hearing, and a statement that all materials submitted by the applicant are available for public inspection prior to the public hearing at the office of the Turner County Zoning Administrator. Notices shall be postmarked not less than ten (10) days prior to the date of the public hearing. The applicant is responsible for meeting all of these requirements and shall provide documentation to the Zoning Administrator that these public notice requirements have been satisfied at least four (4) days prior to the date of the public hearing. Failure to provide all required public notices shall result in the postponement or cancellation of the public hearing. Failure of the recipient of the certified letter to accept delivery does not invalidate service.

F. Building Permit Application/Review.

1. Application Contents. In addition to the requirements of Chapter 24.02, every building permit application for a WECS shall include the following information:
 - a. A finalized plan for connecting the project into the utility grid, including evidence that an interconnection request has been filed and approved.
 - b. Finalized information regarding the type, maximum height, rated power output, safety features, and noise characteristics of each wind turbine model that will potentially be used on the project.
 - c. At least one (1) photograph or scaled drawing of each wind turbine model that will be used on the project. Each document provided shall be detailed enough to show the maximum height and dimensions of the turbine, as well as the characteristics of its foundation.
 - d. A finalized plan regarding the handling, processing, treatment, storage, and disposal of any wastes, fluids, or pollutants that will be emitted or discharged during the lifetime of the project.
 - e. A finalized project completion schedule. It shall only be necessary to update the completion schedule if substantial changes occur, or if the beginning or completion times of specific events or dates are delayed by a period of one (1) year or more. Failure to correct or supplement shall constitute grounds for review of the conditional use permit in conformance with Chapter 20.12.
 - f. A Soil Erosion and Sediment Control Plan detailing the erosion control measures for each project phase. It shall, at a minimum, identify plans for grading, construction, and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material, and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated materials.
 - g. Finalized information regarding how the developer intends to protect livestock, protect and segregate topsoil from subsoil in cultivated lands, protect tile drainage, protect drainage ditches, control dust, and minimize the impacts of soil compaction. This information shall be provided as part of individual agreements with participating landowners.

2. Unless otherwise specified herein, failure to provide material corrective or supplemental information regarding any of the items listed in Chapter 13.13(F)(1) above within thirty (30) days of making any such change shall constitute grounds for review of the conditional use permit in conformance with Chapter 20.12.

G. Wind Energy Conversion System Requirements.

1. Equipment Design.

- a. Tower. The tower(s) shall be a tubular monopole design constructed from either steel or another industry-standard material determined to be appropriate for the area by the Board.
- b. Color. The color of the turbines and equipment buildings shall be unobtrusive and non-reflective with a galvanized or matte finish. Black blades are acceptable for mitigation of icing.
- c. Height. The lowest portion of the blade shall be at least thirty (30) feet above the ground or thirty (30) feet above the highest structure associated with the WECS within a radius of two hundred fifty (250) feet, whichever is greater.

Wind turbines are exempt from the maximum height requirements of the zoning ordinance.

- d. Footprint Minimization. The permittees shall design and construct the WECS so as to minimize the amount of land that is impacted. Associated facilities in the vicinity of wind turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.
- e. Electromagnetic Interference. The permittees shall not operate the WECS in a manner that results in microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference results from operations of the WECS, the permittees shall take all measures necessary to correct the problem.
- f. Collector Lines. Collector lines are the conductors of electric energy from the wind turbine(s) to the feeder lines. All collector lines rated 34.5kV and below associated with the project shall be installed underground, subject to site conditions (such as wetland or terrain obstacles).
- g. Feeder Lines. Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal, and may be located either above or below ground. Feeder lines may be placed on private property or on

public rights-of-way. Changes in routes in public rights-of-way may be made as long as approval has been obtained from the governmental unit responsible for the affected right-of-way. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner.

2. Setbacks.

- a. Setbacks from Public Roads, Public Right-of-Ways, and Overhead Utility Lines. WECS shall be located at least 1.25 times its total height from any public road, public right-of-way, or overhead utility line. The measurement of distance between the public road, public right-of-way, and/or overhead utility line and the WECS is to be taken from the center of the base of the WECS and the closest point of the public road, public right-of-way, and/or overhead utility line.
- b. Setbacks from Existing Occupied Residences. WECS shall be located at least one thousand five hundred (1,500) feet from any existing occupied residence; however, this separation distance may be reduced by agreement of the owner/operator of the WECS project and a participating landowner to be no less than one thousand (1,000) feet from any existing occupied residence located on a participating property. Any such agreement lowering such separation distance on a participating property shall be filed with the Turner County Register of Deeds. The agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land. The measurement of distance between the residence and the WECS is to be taken from the nearest point of the residence's exterior wall to the center of the WECS's base. For purposes of this Chapter, the term "existing occupied residence" shall mean a residence that (1) is either currently in habitable condition or one in which a building permit has commenced; and (2) is actually occupied by a person or persons for more than one hundred eighty three (183) days per calendar year. If a person or person wishes to contest whether a particular residence meets these requirements, he or she bears the burden of proving that it either meets or does not meet these requirements, whichever is applicable.
- c. Setbacks from Property Lines. WECS shall be located at least five hundred (500) feet or 1.25 times its total height from any property line, whichever distance is greater. This setback/separation distance may be waived or reduced by agreement if the affected adjoining or adjacent landowner is a participating landowner sharing a common property line with another participating landowner. Any such agreement waiving or lowering such separation distance shall be filed with the Turner County Register of Deeds. The agreement or waiver shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land. The measurement of distance between the property line and the WECS is to be taken from the

center of the base of the WECS and the closest point along the adjacent property line.

- d. Setbacks from City Limits. WECS shall be located at least one (1) mile from the city limits of all incorporated municipalities within Turner County.
- e. Turbine Spacing. Wind turbines shall be spaced no closer than three (3) rotor diameters (measurement of blades tip to tip) within a straight line. If required during final micro siting of the turbines to account for topographic conditions, up to ten (10) percent of the towers may be sited closer than the above spacing, but the permittees shall minimize the need to site the turbines closer.

3. Illumination and Security.

- a. Wind turbines shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. The County's preferred manner of lighting is by means of an Aircraft Detection Lighting System (ADLS) that meets the requirements set forth by the FAA for obstruction marking and lighting in Chapter 14 of FAA Advisory Circular (AC) 70/7460-1L, "Obstruction Marking and Lighting," dated December 4, 2015. Subject to FAA approval, permittees will install an ADLS within one (1) year of approval by FAA for the specified project or completion of construction of all towers, whichever is later. In the event FAA does not approve an ADLS system, the applicant will comply with all lighting and markings otherwise required by FAA.
- b. Each turbine shall be equipped with a braking system and blade pitch control.
- c. All guy wires shall be distinctly marked.
- d. Signs warning of the electrical and other hazards associated with the WECS shall be posted at the base of each tower.
- e. Anti-climbing devices shall be installed on each tower. In most cases, a locked door at the base of the tower shall meet this requirement; however, additional devices may be required at the discretion of the Board of Adjustment.

4. Noise. The noise level of the WECS shall not exceed fifty (50) dBA, average A-weighted sound pressure level effects at existing occupied residences, businesses, and public buildings, in each case other than outbuildings. This limit may be waived or reduced by agreement with landowners participating in the WECS project. No

building permit shall be issued until the waiver(s) and/or agreement(s) are filed with the Turner County Register of Deeds. The waiver(s) and/or agreement(s) shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

In the event a noise complaint is filed with the County by the owner of such building, noise level measurements shall be made with a sound level meter using the A-weighting scale, in accordance with standards promulgated by the American National Standards Institute. An L90 measurement shall be used and have a measurement period no less than ten (10) minutes unless otherwise specified by the Board of Adjustment. Noise level measurements shall not be repeated in a representative area during any five (5) year period unless operational or maintenance changes result in a reasonable assumption of higher turbine noise levels. It shall be the responsibility of the owner/operator of the WECS project to pay all costs associated with measuring noise levels as required herein.

5. Signage. Other than the signs required by Chapter 13.13(G)(3), one (1) additional sign not exceeding twenty-five (25) square feet shall be allowed. Notwithstanding the aforementioned, the Board may require additional signs when they determine that such are necessary to protect the health, safety, and welfare of the public.

H. Decommissioning/Restoration/Abandonment.

1. Final Decommission Plan. Within one hundred-twenty (120) days of completion of construction, the permittees shall submit a Final Decommissioning Plan to the Turner County Zoning Administrator for approval by the Board of County Commissioners. Until it is approved, the Preliminary Decommissioning Plan and the terms of any subsequent agreements thereto, shall control. The Final Decommission Plan shall describe in detail the manner in which the permittees will decommissioning the project in accordance with the requirements of Chapter 13.13(H)(2) below. Failure to submit a Final Decommissioning Plan within the timeline stated above or failing to maintain adequate financial assurances as governed by Chapter 13.13(E)(1)(1) shall result in the Board of Adjustment reviewing the conditional use permit in conformance with Chapter 20.12.
2. Site Restoration. Upon expiration of the conditional use permit, or upon earlier termination of operation of the WECS, the permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings, and ancillary equipment to a depth of at least four (4) feet. To the extent possible, the permittees shall restore and reclaim the site to its pre-project topography, including restoration of topsoil, revegetation and seeding, and a two-year monitoring and remediation period. All access roads and concrete foundational pads shall be removed unless the landowner is granted a separate conditional use permit allowing him or her to keep and maintain them. The site shall be restored in accordance with the requirements of

this Section within eighteen (18) months after expiration or termination of operation of the WECS.

3. Abandoned Turbines. The permittee shall advise the Zoning Administrator of any turbines that it no longer plans to operate, within two (2) months of termination of its operations. After having done so, the Board of Adjustment will establish a timeline for the permittee to decommission the abandoned turbine.
4. Cost Responsibility. The owner or operator of a WECS is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.
5. Financial Assurance. As part of the conditional use permit, the Board of Adjustment shall include conditions that ensure that financial resources will be available for decommissioning. The exact terms of the required financial resources shall be governed by Chapter 13.13(E)(1)(1).
6. Failure to Decommission. If the WECS facility owner or operator does not complete decommissioning, the Board of County Commissioners may take any such action as may be necessary to complete decommissioning, including requiring forfeiture of the financial assurances outlined in Chapter 13.13(E)(1)(1). The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board may take any such action as may be necessary to decommission a WECS facility.

Section 6. That Section 20.08 of the 2008 Revised Zoning Ordinance of Turner County, SD is hereby amended to read as follows:

20.08 Expiration. A conditional use permit which has been approved shall expire by limitation and become null and void if the building, work or use authorized by such conditional use permit is not commenced within one (1) year from the date of approval. Upon written request to the Planning Director and prior to the conditional use permit expiration date, a one (1) year time extension for the conditional use permit may be granted by the Planning Director, subject to the following conditions:

- A. There was no public objection presented during the public hearing process for the original conditional use permit;
- B. The land uses for the surrounding properties have not significantly been altered since the original approval date for the conditional use permit.

This provision shall not apply to a conditional use permit approved for a residential use in the A-1 or F zoning districts.

For a Wind Energy Conversion System, a conditional use permit shall expire by limitation and become null and void if the building, work, or use authorized by such conditional use permit is not commenced within three (3) years from the date of approval.

Section 7. That Section 22.09 of the 2008 Revised Zoning Ordinance of Turner County, SD is hereby amended to read as follows:

22.09 Limitations. Any order of the Board of Adjustment granting a variance may be declared invalid by the Board of Adjustment unless substantially completed within two (2) years from the date of such order. The Planning Director shall notify the property owner of record upon invalidation of a variance.

Exception: For Wind Energy Conversion System, the decision of the Board of Adjustment granting the variance may be declared invalid unless the construction or work that is the subject of the variance has commenced within three (3) years from the date the variance was issued.

Section 8. That the following definitions located in Article 27.02 of the 2008 Revised Zoning Ordinance of Turner County, SD are hereby amended to read as follows:

COMMENCED. Work is deemed to have commenced when the designated percentage of the value of the building permit has been expended into actual physical construction of the building, structure, or project as follows:

<u>Total Valuation</u>	<u>Required Expenditure</u>
Less Than or Equal To \$100,000	25% of value
Greater than \$100,000	10% of value

The required expenditures must be verified by written receipts, including labor costs and/or equipment hours.

TOWER FACILITY(IES). Structures thirty-five (35) feet or more in height and that may include a tower, antenna(s), blades, equipment building(s), anchor points, and other related equipment used by broadcast services, wireless telecommunications services, and wind energy conversion systems.

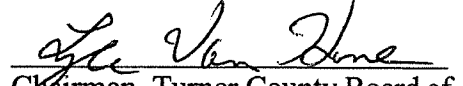
TOWER, HEIGHT. The height of the tower is the vertical distance from the point of contact with the ground to the highest point of the tower including all antenna, blades, and other attachments.

WIND ENERGY CONVERSION SYSTEM (WECS). Any mechanism or device designed for the purpose of converting wind energy into electrical or mechanical power including, but not limited to, any electrical generating facility comprised of one (1) or more wind turbines that operate by converting the kinetic energy of wind into electrical energy, and any accessory facilities such as power and communication lines, meteorological towers, transformers, substations, switchyards, battery energy storage, and facilities for interconnection with the electrical grid. For purposes of

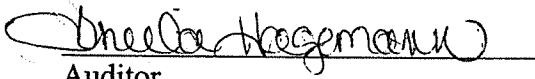
Article 24.00, a building permit shall be required for each wind turbine and its associated facilities, or changes thereto.

Section 9. That all numbers preceding definitions located in Article 27.02 of the 2008 Revised Zoning Ordinance of Turner County, SD are hereby alphabetically renumbered to include any changes resulted from Section 8.

Dated this 17th day of December, 2019.


Chairman, Turner County Board of
Commissioners

ATTEST:


Auditor

(SEAL)

First Reading:	12-03-19
Second Reading and Adoption:	12-17-19
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