Stanley County Wind Energy Systems Ordinance

PURPOSE: The intent of this Ordinance is to ensure that the placement, construction, and modification of a Wind Energy System (WES) is consistent with Stanley County's land use policies, to minimize the impact of WES facilities, to establish a fair and efficient process for review and approval of applications, to assure a comprehensive review of environmental impacts of such facilities, and to protect the health, safety, and welfare of the county's citizens.

WHEREAS, pursuant to SDCL Chapter 11-2, the Stanley County Board of Commissioners has the authority to adopt for the county a Comprehensive Plan and Zoning Ordinance: to protect and guide the physical, social, economic, and environmental development of the county; to protect the tax base; to encourage a distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements; to lessen governmental expenditure; and to conserve and develop natural resources; and

WHEREAS, pursuant to SDCL Chapter 11-2, the Board of County Commissioners has the authority to amend, supplement, change, modify, or repeal the Comprehensive Plan and existing Zoning Ordinances to further the Comprehensive Plan's goals and objectives and in furtherance of the best interests of the county; and

WHEREAS, the traditional and predominant land uses within the unincorporated portions of Stanley County have been agricultural, residential, recreational, and above ground light and general industrial uses; and

WHEREAS, the proposed establishment of a WES facility in Stanley County would constitute a new land use, which has never been a traditional land use within the county, and which will significantly impact future development of the county's land-use planning vision; and

WHEREAS, the purpose of this Ordinance is to implement Article 1 in a manner that (a) is not inconsistent with federal or state law, (b) treats all WES facilities in a similar manner, to the extent they are similarly situated, and (c) utilizes to the greatest extent feasible the land use and zoning regulations and processes already utilized in Stanley County.

NOW THEREFORE, BE IT ORDAINED BY STANLEY COUNTY, SOUTH DAKOTA:

That the following Ordinance is hereby adopted as follows:

Article 1:

Section 101. Definitions

1) AIRFIELD ELEVATIONS/LENGTH – Pierre Regional Airport has an airfield elevation of approximately 1,744 feet above Mean Sea Level (MSL). One runway is 6,880 feet, while the second runway is 6,900 feet. Both are surfaced with asphalt. Hayes Emergency Airstrip is 1,986 feet above MSL, with a runway of 2,100 feet.
2) AIRSPACE IMAGINARY SURFACES – A structure of imaginary control surfaces that exists primarily to enhance the safety and efficiency of aircraft operations by preventing existing or proposed manmade objects, objects of natural growth, or terrain from extending upward into navigable

airspace. These imaginary surfaces either slope out and up from all sides and ends of runways or are a horizontal plane or a sloping plane above airports.

3) AIRSTRIP – A strip of ground set aside for the takeoff and landing of aircraft.
4) AMERICAN LAND TITLE ASSOCIATION (ALTA) – ALTA is the national trade association and voice of the abstract, the person who prepares a summary (or abstract) of public records relating to title to a specific parcel of land, and the title insurance industry. ALTA members search, review, and insure land titles to protect home buyers and mortgage lenders who invest in real estate.
5) AMERICAN WIND ENERGY ASSOCIATION (AWEA) – The national trade association that represents the interests of America's wind energy industry.
6) BOARD OF ADJUSTMENT- The appointed board within Stanley County entrusted to hear and make determinations on land use matters as defined by SDCL § 11-2-49 through 11-2-60 inclusive.
7) COLLECTOR LINE – A single or group of transmission lines that links one generator or a group of generators to the bulk power grid.
8) CONSTRUCTION – Any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions.
9) dB(A) – A frequency weighting that relates to the response of the human ear to sound.
10) DECIBEL (dB) – A unit for expressing the relative intensity of sounds on a scale from zero to greater than 130, with 85 possibly being harmful to humans.
11) EASEMENT – A right whether or not stated in the form of a restriction, option to obtain an easement, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of any owner of land or air space.
12) ESTABLISHED DWELLING – Any structure or part thereof that is used as a home or place of abode by one or more persons.
13) FEDERAL AVIATION ADMINISTRATION (FAA) – The FAA is the national aviation authority of the United States, with powers to regulate all aspects of American Civil Aviation.
14) FEDERAL COMMUNICATIONS COMMISSION (FCC) – The FCC is an independent agency of the United States government that regulates communications by radio, television, wire, satellite, and cable across the country.
15) FEEDER LINE – A primary or main distribution power line that distributes or "feeds" power from a substation to the surrounding area. Feeder lines typically have many smaller "taps" or "pull-off" lines that lead to transformers and service lines serving homes and businesses.
16) FENCE – A manmade, unroofed structure, barrier, railing, or other upright structure, typically of wood or wire, enclosing an area of ground to mark a boundary, control access, or prevent escape.
17) FLICKER – Occurs when rotating wind turbine blades pass between the sun and an individual's home, casting a periodic shadow that may result in a flickering phenomenon.
18) GRID – An interconnected network for delivering electricity from suppliers to consumers.
19) HIGH VOLTAGE TRANSMISSION LINE – A conductor of electric energy and associated facilities.
20) ICE THROW – Accumulated ice buildup on the blades of a wind turbine that is, or may be, thrown during normal spinning or rotation.
21) INTERCONNECTION AGREEMENT – To set forth the terms and conditions to allow consumers to install an independent power generation system and connect to a local utility.
22) KILOWATT (kW) – A standard unit of electrical power equal to 1,000 watts.

23) KILOWATT-HOUR (kWh) – 1,000 watts acting over a period of 1 hour. The kWh is a unit of energy.
24) MEGAWATT (MW) – 1,000 kilowatts, or 1 million watts; standard measure of electric power plant generating capacity.
25) MEGAWATT-HOUR – 1,000 kilowatt-hours or 1 million watt-hours.
26) METEOROLOGICAL TOWER – A MET tower is erected primarily to measure wind speed and direction, plus other data relevant to siting of a WES facility. Other meteorological towers, such as those used by airports, municipalities, weather services, or research facilities, are not affected by this definition or this section of the Ordinance.
27) NATIONAL ELECTRICAL CODE (NEC) – NEC sets standards and best practices for wiring and electrical systems, which contains guidelines for all types of electrical installations. The current version of the NEC shall be followed.
28) NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA) – Their mission is to understand and predict our changing environment, from the deep sea to outer space, and to manage and conserve America's coastal and marine resources.
29) OBSTRUCTION EVALUATION/AIRPORT AIRSPACE ANALYSIS (OE/AAA) – An Obstruction Evaluation is required for all systems 200 feet or above in total height from ground level. An object typically is considered an obstruction when it exceeds (penetrates) Airspace Imaginary Surfaces and/or Class D Airspace, whichever is lowest, but the FAA may have additional restrictions in any airspace. The OE/AAA is a process for aeronautical studies of obstructions to air navigation or navigational facilities to determine the effect on the safe and efficient use of navigable airspace, air navigation facilities, or equipment; and the process to petition the FAA for discretionary review of determinations, revisions, and extensions of determinations.
30) OCCUPIED RESIDENCE – A dwelling, mobile home, or manufactured home which has been occupied as a residence for thirty (30) consecutive days and nights during any portion of the two (2) years immediately preceding an application for a WES Conditional Use Permit.
31) OVERHANG DISTANCE – The maximum horizontal extension of the WES, including rotor radius, measured from the centerline of the tower.
32) PARKS – National parks, national monuments, national grasslands, wilderness areas, state and local parks.
33) PARTICIPATING PARTY – Any landowner, person, or entity receiving direct or indirect compensation for allowing a WES to utilize their/its property.
34) PERSON – An individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, consumer power district, or any other entity, public or private, however organized.
35) RECREATION AREAS – Formally designated recreation areas, picnic areas, common lots, hiking trails, public beaches and lakeshores.
36) ROUTE – The location of a High Voltage Transmission Line between two end points. The route may have a variable width of up to 1.25 miles.
37) STRUCTURE – Any material or combination of materials, completely or partially constructed, or erected in or upon the ground, including, but not by way of limitation, buildings; mobile homes; radio towers; sheds; signs; and storage bins, but excluding sidewalks and paving on streets, driveways, parking areas, fences, earthworks, windbreaks, and nonbusiness signs related to farming or ranching operations. An object, including a mobile object, constructed or installed by

man, including but without limitation; buildings; towers; cranes; smokestacks; earth formations; and overhead transmission lines.

38) SUBSTANTIAL COMPLETION – A certification issued by the project owner or engineer indicating that project construction is sufficiently completed for the owner to begin use for the intended project purpose. Completion of punch list items and construction warranties may still be addressed by contractors following issuance of certification.
39) SUBSTATIONS – Any electrical facility designed to convert electricity to a voltage for interconnection with transmission lines.
40) SYSTEM – A set of connected things or devices that operate together.
41) SYSTEM HEIGHT – The height above grade of the tallest point of the WES, including the rotor radius. System Height is measured from grade to the max vertical height of the extended blade tip.
42) TOWER HEIGHT – The height above grade of the fixed portion of the tower, excluding the wind turbine itself.
43) TURBINE – The parts of the WES including the blades, generator, and tail.
44) UTILITY – Any person engaged in the generation, transmission, or distribution of electric energy in this state including, but not limited to, a private investor-owned utility, a cooperatively-owned utility, a consumer power district, and a public or municipal utility.
45) WATT – The rate of energy transfer equivalent to one ampere under an electrical pressure of one volt.
46) WIND ENERGY SYSTEM (WES) – A system of components which converts the kinetic energy of the wind into electricity or mechanical power, and which comprises all necessary components, including energy storage, turbines, power conditioning, control systems, and transmission systems, where appropriate, to provide electricity or mechanical power for individual, residential, agricultural, commercial, industrial, utility, or governmental use.
    a. All of the following are encompassed in this definition of system:
        i. Tower or multiple towers, including foundations;
        ii. Generator(s);
        iii. Blades;
        iv. Power collection systems, including padmount transformers;
        v. Access roads, meteorological towers, on-site electric substation, control building, and other ancillary equipment and facilities; and
        vi. Electric interconnection systems or portions thereof dedicated to the WES.
47) WIND GENERATOR – A mechanical device designed and operated so as to generate electricity.

Section 102. Applicability.

A) The requirements of these regulations shall apply to all WES facilities except private, non-commercial facilities with a single-tower height of less than seventy-five (75) feet and used primarily for on-site consumption of power.
B) The South Dakota Public Utilities Commission (PUC) has permitting and regulatory authority for WES energy production facilities within South Dakota. Energy projects producing less than 100 megawatts are not subject to PUC siting authority.
C) SDCL 49-41B-25.1 requires that small wind energy projects with a combined capacity that exceeds 5 megawatts to file a notice with the PUC four months prior to construction.

Section 103. Federal and State Requirements.

A) All WES facilities shall meet or exceed standards and regulations of the FAA, FCC, US Fish & Wildlife Service, South Dakota Game Fish & Parks, South Dakota Department of Transportation, South Dakota PUC, South Dakota Historic Preservation Office, South Dakota state statutes, and any other agency of federal or state government with the authority to regulate WES facilities.

Section 104. Technical Issues and Expert Review.

A) WES and their attendant support facilities may involve complex technical issues that require review and input that is beyond the expertise of county staff. The Planning Director may require the applicant to pay reasonable costs for a third-party technical study of a proposed facility. The county will seek mutual agreement with the developer regarding selection of expert(s) to review the proposal and projected costs for the review. However, final determination shall be at the sole discretion of the county.

Section 105 – Requirements for Siting Wind Energy Systems (WES).

A) Standards.
    a. A Wind Energy System is prohibited in Platted Townsite, Commercial, Planned Unit Development and all rural Residential Zoning Districts.
    b. A WES shall require a Conditional Use Permit in an Agricultural District subject to the following requirements:
        i. Conditional Use Permit fee for a WES facility shall be $5,000.00.
        ii. The Planning Department shall inspect the project annually for compliance with this section of the Ordinance, unless the Conditions of Approval within the Conditional Use Permit note otherwise. The Planning Department shall charge an annual permit review fee of $1,000.00.
        iii. That prior to a Building Permit being issued after an approved Conditional Use Permit, a FAA determination of “Does Not Exceed” or “Determination of No Hazard” in response to submission of Form 7460-1 through the OE/AAA Process be obtained; and, Aeronautical Hazard Permit issued by the South Dakota Aeronautics Commission.
        iv. Site Clearance.
            1. The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation, and maintenance of the WES facility.
        v. Topsoil Protection.
            1. The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.
        vi. Compaction.
            1. The permittees shall implement measures to minimize compaction of all lands during all phases of the project’s life and shall confine compaction to as small an area as practicable.
        vii. Livestock Protection.

1. The permittees shall take precautions to protect livestock on the WES site from project operations during all phases of the project's life.

viii. Fences.

1. The permittees shall promptly replace or repair all fences and gates removed or damaged by project operations during all phases of the project's life unless otherwise negotiated with the fence owner.

ix. Roads.

1. Public Roads.
    a. Prior to commencement of construction, the permittees shall identify all state, county, or township "haul roads" that will be used for the WES project, and shall notify the state, county, or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Haul road agreements must be in place before the Conditional Use Permit is granted. As part of any such inspection of county roads, the county may require the permittee to hire a third-party engineer, approved by the county and at the permittee's sole expense, to inspect the haul roads, document the current condition of the haul roads, and prepare a written report for the county regarding the adequacy of the haul roads for the activities associated with the WES. The permittee shall meet with the Stanley County Highway Superintendent to discuss traffic, signs, repair, and maintenance responsibilities on county roads to be used as haul routes.
    b. Where practicable, existing roadways shall be used for all activities associated with the WES facility. Where practicable, all-weather roads shall be used to deliver concrete, turbines, MET and wind towers, assemble nacelles and all other heavy components to and from the turbine sites.
2. Turbine Access Roads.
    a. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. Access roads shall avoid crossing streams and drainage ways wherever possible. If access roads must be constructed across streams and drainage ways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.
3. Private Roads.
    a. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

x. Control of Dust.
    1. The permittees shall utilize all reasonable measures and practices of construction to control dust during construction.

xi. Soil Erosion and Sediment Control Plan.
    1. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the Stanley County Zoning Office. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and 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 re-vegetation plan that uses native plant species 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 bathers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

xii. Setbacks.
    1. WES and MET towers shall meet the following minimum spacing requirements:
        a. Distance from extraterritorial jurisdiction of an incorporated municipality shall be at least fifteen thousand eight hundred and forty (15,840) feet.
        b. The setback from any established dwellings shall be fifteen thousand eight hundred and forty (15,840) feet. The setback from any business or public building shall be five thousand two hundred and eighty (5,280) feet or four point nine (4.9) times tower height, whichever is greater. Exceptions may be granted in the event that an adjoining property owner signs an opt out from the setback requirement for established dwellings and business buildings. The opt out shall be in written form that is acceptable for recording with the Stanley County Register of Deeds or other county offices. The opt out may result in a setback of no less than one thousand four hundred (1,400) feet minimum or one point one (1.1) times the system height; whichever is greater. For this section, business does not include agricultural uses.
        c. The setback from any county gravel roads, highways, and minimum maintenance roads shall be not less than two thousand six hundred and forty (2,640) feet or two point five (2.5) times the tower height, whichever is greater.
        d. The setback from property lines shall be seven thousand two hundred and ninety (7,920) feet. Overhead electrical lines, electrical substations, and communication facilities shall be two

thousand six hundred and forty (2,640) feet or two point five (2.5) times the system height, whichever is greater. This requirement may be waived for property lines only.

e. The setback distance from the nearest point of the U.S. Army Corps of Engineers take line along the Missouri River and its impoundments shall be twenty-six thousand and four hundred feet (26,400). In areas where a USACOE take line is not present, the setback is measured from the high-water level/mark location.

xiii. Electromagnetic Interference.

1. The permittees shall not operate the WES facility so as to cause microwave, television, radio, or navigation interference contrary to FCC regulations or other law. If the Planning Department receives a complaint about electromagnetic interference from existing telecommunication or navigation facilities in the area and, if the FCC or FAA or any other state or federal regulatory agency determines such interference is caused by the WES or its operation, the permittee must take measures necessary to correct the problem.

xiv. Access

1. All ground mounted electrical and control equipment will be labeled and secured to prevent unauthorized access. All towers must be unclimbable by design or protected by anti-climbing devices such as:
    a. Site appropriate security enclosures with locking portals at least seven (7) feet high, or
    b. Anti-climbing devices that extend twelve (12) feet vertically from the base of the tower.

xv. Lighting.

1. With the exception of lighting to illuminate doorway to turbine hub, there shall be no lights on the towers other than what is required by the FAA, and in full compliance with FAA regulations; exceptions may be approved for ground maintenance lighting that shall not violate FAA rules and shall not exceed twenty (20) feet from ground level.
2. During construction, any temporary or permanent structure, including all appurtenances, which exceed an overall height of two hundred (200) feet above ground level shall be lighted. The preferred manner of lighting is by means of an Aircraft Detection Lighting System (ADLS). Subject to FAA approval, the permittee shall install the ADLS within twelve (12) months of the approval for the specified project. Lighting must be equipped by the start of commercial operation and for the life of the structure, subject to normal maintenance and forced outages.
3. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment.
4. Security lighting on the site shall not exceed twenty (20) feet in height and shall be directed toward the ground to reduce light pollution, prevent off-site light spillage, and avoid illuminating the tower.

xvi. Turbine Spacing.
    1. The turbines shall be spaced no closer than is allowed by turbine manufacturer in its approval of the turbine array for warranty purposes.

xvii. Footprint Minimization.
    1. The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers, and monitoring systems shall to the extent practicable be mounted on the foundations used for turbine towers or inside the towers unless otherwise allowed by the landowner on whose property the WES is constructed.

xviii. Electrical Cables.
    1. The permittees shall place electrical lines, known as collectors, transmitting no more than forty (40) kilovolts, and communication cables underground to a depth of at least six (6) feet, when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. This paragraph does not apply to feeder lines.

xix. Feeder Lines.
    1. The permittees shall place overhead electrical lines, known as feeders, on public rights-of-way if a public right-of-way exists or immediately adjacent to the public right-of-way on private property. Changes in routes may be made as long as feeders remain on public rights-of-way immediately adjacent to the public right-of-way on private property and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement(s) negotiated. The permittees shall submit the site plan and engineering drawings for the feeder lines to the Board of Adjustment before commencing construction.
    2. Feeder line support structures (power poles) shall be placed on private property where concrete or other similar materials are used as an exposed or above-ground permanent foundation.

xx. Height from Ground Surface.
    1. The minimum height of blade tips at their lowest possible point shall be twenty-five (25) feet above grade.

xxi. Towers.
    1. Color and Finish.
        a. The finish of the exterior surface shall be non-reflective or matte.
        b. All towers shall be singular tubular design, unless approved by the Board of Adjustment.
        c. Black blades are acceptable for mitigation of icing.

xxii. Noise.

1. Noise level produced by the WES facility shall not exceed forty-five (45) decibels of sound at the perimeter of occupied residences existing at the time the permit application is filed, unless a signed waiver or easement is obtained from the owner of the residence. The level, however, may be exceeded during short-term events such as utility outages or windstorms.

xxiii. Permit Expiration.
1. The permit shall be void if no substantial construction has been completed within two (2) years of issuance.

xxiv. Flicker Analysis.
1. A Flicker Analysis is required and shall include the duration and location of flicker potential for all receptors and roadways within a one (1) mile radius of each 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 duration of the flicker at these locations from sunrise to sunset 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 an established dwelling, and forty (40) hours per year within an occupied residence.
    a. Exception: The Board of Adjustment may allow for a greater amount of flicker than identified above if the participating or non-participating property owners agree to said amount of flicker. If approved, such agreement shall be filed and recorded with the Stanley County Register of Deeds. Said agreement shall be binding upon the heirs, successors, and assigns of the title holder and shall pass with the land.

xxv. The developer must submit written documentation from Pierre Regional Airport and Hayes Emergency Airstrip acknowledging the location and size of the proposed WES.
1. Meteorological Towers and WES facilities are prohibited within Pierre Regional Airport Imaginary Airspace.

Section 106 – Required Information for Permit Application for a WES

A) A Conditional Use Permit is required for a WES. A building permit is also required and may be issued only after the Conditional Use Permit is approved by the Planning Commission. An application for a Conditional Use Permit shall, at a minimum, include the following additional information:
    a. A letter from the property owner(s), if other than the applicant, authorizing the building permit application(s).
    b. Furnish proof that necessary easement agreements with landowners have been obtained.
    c. Designate a Registered Agent for Service of Process.
    d. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other maps as appropriate.
    e. Map of easements for the WES.

f. Map of GPS locations of all buried or above ground installed project improvements to include turbine bases, towers, feeder line, transmission lines, or any other project appurtenances. All GPS located project improvement maps must also be provided to participating landowners where improvements are constructed or buried.
g. Map of occupied residential structures, businesses, and public buildings within three (3) miles of the proposed WES site boundaries.
h. Preliminary map of sites for WES, access roads, and utility lines. Location of other WES within five (5) miles of the proposed WES site.
i. Project-specific environmental and cultural concerns (e.g. native habitat, rare species, and migratory routes). Evidence of such consultation shall be included in the application. This information shall be obtained by consulting with the following agencies:
    i. South Dakota Department of Game, Fish, and Parks;
    ii. U.S. Fish and Wildlife Service;
    iii. South Dakota Public Utilities Commission;
    iv. South Dakota State Historical Society;
    v. Federal Communications Commission;
    vi. Federal Aviation Administration;
j. Any environmental study or environmental impact statement shall be provided to the Stanley County Planning and Zoning Office as completed.
k. Any approved PUC permits, siting permissions, and historical resource studies furnished for state permits shall be provided to the Stanley County Planning and Zoning Office.
l. Project schedule.
m. Mitigation measures.
n. Proof of right-of-way easement for access to transmission lines and/or utility interconnection.
o. Pre-construction Filing.
    i. At least forty-five (45) days prior to commencement of construction, the applicant/permittee shall submit final maps depicting the approximate location of the proposed wind turbines, access roads, and collector and feeder lines. Upon completion, the applicant shall also supply an “as-built” ALTA survey indicating that the proposed facilities are in compliance with the setbacks in the permit.
p. The owner and/or operator of the WES facility shall maintain a current general liability policy covering bodily injury and property damage, with limits of at least five million dollars ($5,000,000) per occurrence and fifteen million dollars ($15,000,000) in aggregate with a deductible of no more than five thousand dollars ($5,000). Any loss of coverage must be reported within three (3) working days of loss. Failure to maintain coverage shall be considered a cessation of operations.

Section 107 – Decommissioning a WES

A) Cost Responsibility.
    a. The owner or operator of a WES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan shall clearly identify the party responsible.
B) Useful Life.

a. A WES facility shall be presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of nine (9) months, and notice of such shall be made at that time. The presumption may be rebutted by submitting to the Board of Adjustment for approval of a plan outlining the steps and schedule for returning the system to service within three (3) months of the submission.

C) Abandoned Turbines.

a. The owner or operator of a WES facility shall submit a written report to the Board of Adjustment detailing any turbines that have been abandoned prior to termination of operation of the WES. A turbine is presumed to be at the end of its useful life if the individual turbine generates no electricity for a continuous period of one hundred and eighty (180) days, at which point the Board may require the owner or operator to decommission any abandoned turbine. The owner or operator of a WES facility may file a request for an additional 90 days to bring the turbine into operation with stated justification included in the request. Requests for extension shall be considered by the Board of Adjustment. Owner or operator shall submit on an annual basis, on December 1, a report of activity including disclosure of the number of calendar days of energy generating operation for each turbine located within the permitted project. Annual reports shall be submitted to the Board and kept on file in the office of the Planning and Zoning Administrator for a period of three (3) years.

D) Decommissioning Period.

a. The facility owner or operator shall begin decommissioning a WES facility within nine (9) months after the time the facility or turbine reaches the end of its useful life. Decommissioning must be completed within eighteen (18) months after the facility or turbine reaches the end of its useful life.

E) Decommissioning Requirements.

a. Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings, and ancillary equipment to a depth of six (6) feet; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the WES. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained. Decommissioning shall allow for full use of the property by the landowner.

F) Decommissioning Plan.

a. Prior to commencement of operation of a WES facility, the facility owner or operator shall file with the Board of Adjustment the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility and a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The Board of Adjustment shall review a plan filed under this section and shall approve or disapprove the plan within six (6) months after the decommissioning plan was filed. The Board of

Adjustment may at any time require the owner or operator of a WES facility to file an annual report describing how the WES owner or operator fulfills this obligation.

G) Financial Assurance.
   a. The Board of Adjustment shall require a performance bond, surety bond, letter of credit, corporate guarantee, or other form of financial assurance that is acceptable to the Board of Adjustment to cover the anticipated costs of decommissioning the WES facility within any of the first ten (10) years of the project.
   b. The financial assurance is funded by the WES facility owner, prior to construction, in the form of a required bond, in the amount of the full and complete cost of the project plus additional funds added to the bond annually matching the amount of inflation based on the Consumer Price Index (CPI).
      i. All interest earned by the account remains in the account.
      ii. An account statement shall be provided annually to the Stanley County Board of Commissioners.
      iii. The account shall follow ownership of the WES.
      iv. The account is not subject to foreclosure, lien, judgment, or bankruptcy.
   c. Beginning in year ten (10) following the start of operation, and each fifth year thereafter, the WES owner or operator shall submit to the Board of Adjustment an estimated decommissioning date, if established, and estimated decommissioning costs and salvage values. Based on the verification of the information in this filing, the Board may change the annual escrow funding rate to more closely match the estimated amount needed for decommissioning.

H) Failure to Decommission.
   a. If the WES facility owner or operator does not complete decommissioning, the Board of Adjustment may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. 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 of Adjustment may take such action as may be necessary to decommission a WES facility and seek additional expenditures necessary to do so from the facility owner.

I) Enforcement.
   a. Each violation of the terms of the Wind Energy Systems Ordinance constitutes a separate and distinct criminal offense.

J) Miscellaneous.
   a. Should any Article, Section, Sub-section, or Provision of this Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional. Any portion of this Ordinance stricken by a court of competent jurisdiction shall be immediately regarded as having been modified in accordance with any limitations imposed by the court.
   b. It is unlawful for any person to construct, install, or operate a WES that is not in compliance with this Ordinance or with any condition contained in a building permit issued pursuant to this Ordinance. WES facilities installed prior to adoption of this Ordinance are exempt.

Adopted this _____ day of _____, 2025.

Effective: _____, 2025

Stanley County

By: _____

Chair, Board of County Commissioners