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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. *The permitting process requires thorough review to help ensure that potential adverse impacts are carefully identified, addressed and mitigated. Due to the scale and complexity of these projects, they require more information and more time to process compared to typical applications. Therefore, the requirements in this Article 8 are in addition to the basic requirements in Article 1106-1107, unless otherwise specified herein.*
2. Establish *reasonable* 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, *protecting the County's* natural, cultural, and *visual resources*, and minimize adverse impacts through clear and enforceable siting and performance standards, and *through applying appropriate conditions of approval.*
4. Approve only Utility-Scale Renewable Energy projects that:
 1. Provide significant long-term local public benefit
 2. Demonstrate proposed project design, siting, and construction, operation and decommissioning plans comply with County standards
 3. Clearly identify all potential adverse project and cumulative impacts, and propose measures to avoid, minimize and fully mitigate all identified potential adverse project impacts.
 4. Satisfy CUP evaluation criteria and standards in Article 11, and do not shift project related costs or risks to neighbors, County residents, local or state agencies, or onto the taxpayers, and
 5. Submit a complete application with reports and studies subject to 3rd party review prior to P&Z public hearings to consider the CUP.

B. Applicability

This *Article* does not apply to personal or institutional renewable energy generation equipment that is intended to generate electricity to serve on-site residential, agricultural, *or* institutional uses ~~for use~~ *that are* 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.

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Section 802. Definitions

A. The following terms are defined as follows for purposes of this [Article](#). 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.

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 [contiguous](#) parcel, and that is in effect at the time a complete application is submitted to the County.

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.

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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

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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.

A. 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.

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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.~~

Utility-scale renewable energy facilities should be located in the most remote and sparsely populated areas of Apache County where they minimize conflicts with existing and planned residential development, incorporated municipalities, established unincorporated communities, airports, schools, parks, and other areas of concentrated public activity. Preference shall be given to locations that maximize separation from areas of existing and anticipated population growth while protecting public health and safety, preserving community character and maintaining compatibility with the Apache County Comprehensive Plan.

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.~~

Preference should be given to locations where utility-scale renewable energy development supports continued agricultural and grazing operations, provides opportunities for supplemental agricultural income, and minimizes conflicts with neighboring ranches, private property owners, and other established rural land uses.

5. **Topographic Suitability** — Locations with terrain conducive to construction and maintenance, minimizing the need for extensive grading or vegetation removal disturbance.

(I personally think we should remove “**Topographic Suitability**” this definition altogether, this is primarily an engineering constraint or an opinion not a land use qualification.)

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.~~

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Preferred Energy Generation Areas identified in the Apache County Comprehensive Plan represent locations generally considered most suitable for utility-scale renewable energy development based on compatibility with surrounding land uses, available infrastructure, and the County's long-term planning objectives. These areas provide planning guidance and shall not be construed as guaranteeing or prohibiting project approval.

Section 804. General Development Standards

A. 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.

B. 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.

C. 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.

D. 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

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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.

E. 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.

- 1. 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.

F. Design and Appearance

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

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

G. 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.

H. 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

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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.

I. 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.

J. 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 **as determined by Apache County**.

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- 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.

K. 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.