

Jule Bryson
Cumberland County Clerk

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STATE OF TENNESSEE, CUMBERLAND COUNTY

I, Jule Bryson, County Clerk of Cumberland County, Tennessee, do hereby certify that the foregoing copy of Resolution 10-2019-14, to approve adoption regulations governing wind energy facilities, is a full, true, and perfect copy of same as appears in Quarterly Minutes Book Number 58, now on file in my office.

Witness my hand and official seal at office in Crossville, Tennessee, this 21st day of October 2019.



Jule Bryson
Cumberland County Clerk



RESOLUTION NO. 10-2019-14
ADOPTING REGULATIONS GOVERNING WIND ENERGY FACILITIES

WHEREAS, the Tennessee General Assembly enacted Public Chapter 825, effective April 24, 2018, which authorizes local governments to adopt regulations establishing conditions and criteria for the construction, operation, redevelopment or decommissioning of wind energy facilities and for wind energy facility expansion; and

WHEREAS, while Cumberland County recognizes a national interest in the development of clean energy, it also recognizes its responsibility to implement and promote energy production practices which protect the county's natural, agricultural, and built environment and the health and safety of its business entities, residents and visitors;

NOW, THEREFORE, BE IT RESOLVED by the Cumberland County Board of Commissioners meeting in regular session on this the 21st day of October, 2019, in Cumberland County, Tennessee that this body, pursuant to the authority granted in T.C.A. § 65-17-101 *et seq.*, hereby adopts the following regulations governing the development, maintenance, decommissioning and removal of wind energy facilities within Cumberland County.

SECTION 1. DEFINITIONS. The terms used in these regulations shall have the same meanings as set forth in T.C.A. § 65-17-101.

SECTION 2. PERMIT REQUIRED. Applicants must obtain a permit prior to engaging in the construction, operation, or redevelopment of wind energy facilities or wind energy facility expansion within the county.

SECTION 3. PERMIT PROCEDURES. Resolution 10-2019-14 designates the County Mayor to process Wind Energy Facility Permit applications for construction, operation or redevelopment of wind energy facilities or wind energy facility expansion within Cumberland County. Upon confirmation of a completed permit application and receipt of the application fee and required documents, Cumberland County or its designee will conduct a public hearing within sixty (60) days and will provide public notice in accordance with T.C.A. §65-17-105(d)(3)(B) & (C).

- a. Public comment may be submitted to the County prior to any hearing on the matter, at the time of the hearing or within fifteen (15) days after the hearing.
- b. The following costs shall be borne entirely by the applicant, as specified in Section 4 of Resolution 10-2019-14: the costs of notice, conduct of the hearing(s), the process whereby the County receives, reviews, and conducts the hearing(s), the management of the application process and the reception and dissemination of public comments.
- c. The applicant must respond with written communication to all questions and comments submitted by the public to the County Mayor within thirty (30) days after the hearing.
- d. All agreements relating to the construction and or operation of the wind energy facilities between the wind energy facilities owner/operator and relevant landowners including leases, easements, or waivers must be in writing and must describe at a minimum the location, ownership of the relevant property, the exact nature and scope of the allowed impacts on the land, and the duration of same.

Said written instrument must be fully executed before a notary and filed with the Office of the Cumberland County Recorder.

SECTION 4. APPLICATION FEE. The applicant for a wind energy facility permit will pay an application fee to cover the costs of (a) processing and reviewing the permit application; (b) conducting public hearings; and (c) the performance of duties under T.C.A § 65-17-101 et seq.

Administration Costs – Initial Application and Ongoing

- For each wind energy facility, the applicant/owner/operator shall deposit into an escrow account the amount of \$25,000. The purpose of this joint escrow account is:
 - To reimburse Cumberland County for its costs incurred to hire consultants and experts as the County, at its sole discretion, deems desirable to examine, evaluate and verify the data and statements presented by the applicant/owner/operator
 - For the life of each wind energy facility, to cover the administrative and legal costs incurred by Cumberland County in monitoring and enforcing the owner/operator's ongoing compliance with Resolution 10-2019-14 and permit requirements, conditions and criteria.
- The account shall be managed as follows:
 - Funds can be withdrawn from this account only by the signature of a Cumberland County designee.
 - If at any time the balance of this account shall fall below \$15,000, the applicant/owner/operator shall deposit an additional \$10,000 into the account.
 - If at any time the balance of this fund shall fall below \$15,000 for a continuous period of thirty days, the application shall be considered to have been withdrawn, or the Permit for the wind energy facility may be terminated.
 - The administrator or designee shall be charged with monitoring the account and giving quarterly reports to the Budget Committee.

SECTION 5. CERTIFICATE OF PUBLIC CONVENIENCE. Applicants must obtain a certificate of public convenience and necessity from the public utility commission pursuant to Tennessee Code Annotated, chapter 4, part 2 of title 65, prior to undertaking the construction, operation, or redevelopment of a wind energy facility or a wind energy facility expansion in this state. Applicants must submit a copy of the certificate of public convenience and necessity with their county permit application.

SECTION 6. SETBACKS. The minimum setback for any wind turbine of a wind energy facility from any non-participating landowner's property line shall be equal to three and one-half (3.5) times the total height of the turbine structure as measured from the ground at its base to the maximum height of the blade tip; except, that a non-participating landowner may elect to sign a waiver to allow any wind turbine or group of turbines of a wind energy facility to be placed up to one and one-tenth (1.1) times the total height of the turbine structure as measured from the ground at its base to the maximum height of the blade tip from the landowner's property line.

SECTION 7. ENVIRONMENTAL IMPACT ASSESSMENT. An environmental impact assessment shall be conducted by qualified, third party experts approved by the County, paid for by the applicant, of the potential adverse impacts within a maximum of four (4) miles of the perimeter of the facility or expansion; except, that no such assessment shall be conducted if an environmental review of the wind energy facility or any portion of the facility is required pursuant to the National Environmental Policy Act (42 U.S.C. §§ 4321, *et seq.*), which includes public input, a public hearing, an environmental impact statement, and a viewshed analysis. Any environmental impact assessment conducted pursuant to this section shall include, but not be limited to, a study of the following:

- (i) Economic impacts to individuals, property values, tourism, and agriculture;
- (ii) Potential adverse impacts on ecosystems, including domestic animals, and habitat and migratory patterns for wildlife;
- (iii) Viewshed analysis for national or state parks or forests, historic or cultural sites, public parks or recreation areas, or private conservation lands;
- (iv) Hydrogeological assessment, including water bodies, flowing water sources,
- (v) stormwater runoff, wetlands, groundwater, aquifers, and private wells within a minimum of two (2) miles of the perimeter of the facility or expansion;
- (vi) Risk assessment and mitigation recommendations for shadow flicker and incidents, such as wind turbine fires, structural damage or failure, ice and blade throw, and hazardous material spills; and
- (vii) Risk assessment for civil air navigation, military or law enforcement routes or training exercises, emergency medical flights, radar operations, and cell phone services.

SECTION 8. WILDLIFE IMPACT ASSESSMENT. A wildlife impact assessment shall be conducted through a comprehensive social, economic, and environmental study; except, that no such assessment shall be conducted if an environmental review of the wind energy facility or any portion of the facility is required pursuant to the National Environmental Policy Act (42 U.S.C. §§ 4321, *et seq.*), which includes public input, a public hearing, an environmental impact statement, and a viewshed analysis. As a condition of being issued a permit from the county, the Tennessee Wildlife Resources Agency (“TWRA”) shall review the wildlife impact assessment and approve, grant conditional approval of, or deny the permit. Any such wildlife impact assessment shall include, but not be limited to, a study of the potential adverse impacts to wildlife refuges, preserves and management areas, areas that provide habitat for threatened or endangered species, primary nursery areas designated by the fish and wildlife commission and the wildlife resources agency, and critical fisheries habitats identified pursuant to applicable state or federal law. No permit shall become effective until the county has received notification of approval or conditional approval within one hundred twenty (120) days of the permit being received by the TWRA.

SECTION 9. NOISE. Except during the event of inclement weather that prevents the operator of a wind energy facility from controlling the noise level of one (1) or more wind turbines that are part of the wind energy facility, any wind turbine or group of wind turbines of a wind energy facility shall not exceed an emission limit at a non-participating landowner's dwelling of thirty-five A-weighted decibels (35 dBA) and forty-five A-weighted decibels (45 dBA) at a non-participating landowner's property line as determined by a qualified, third-party

acoustics expert according to American National Standard Institute (ANSI) Standard 12.9 and other applicable ANSI standards. Prior to construction of a facility or expansion, a qualified, third-party acoustics expert, selected and paid for by the applicant, shall make a baseline determination of preconstruction noise levels, including modeling and enforcement.

SECTION 10. FINANCIAL SECURITY. Prior to the start of construction of a wind energy facility, the applicant for a permit for the construction, operation, or expansion of the wind energy facility, or wind energy facility expansion, shall establish financial security in the amount of one hundred percent (100%) of the estimate of the total cost to decommission and remove the wind energy facility, as determined by an independent consultant selected and paid for by the applicant. To establish financial security, the applicant shall file with the county a surety bond, collateral bond, irrevocable letter of credit, parent guaranty, cash, cashier's check, certificate of deposit, bank joint custody receipt, or other approved negotiated instrument, or any combination of the foregoing, in the required amount. The county shall take custody and hold the bond or other form of financial security.

SECTION 11. OTHER PERMIT CRITERIA AND CONDITIONS.

SITING REQUIREMENTS FOR MOUNTAIN RIDGES: In accordance with Tennessee Code Annotated Section 65-4-201, the public utilities commission shall not issue a certificate of public convenience and necessity for a wind energy facility that includes any wind turbine with a total height in excess of three hundred fifty feet (350') as measured from the ground at its base to the maximum height of the blade tip located on a mountain ridge at an elevation above two thousand five hundred feet (2,500') mean sea level or five hundred feet (500') or more above mean sea level of the adjacent valley floor. This subsection shall not apply to single wind turbines less than one hundred feet (100') in height as measured from the ground at its base to the maximum height of the blade tip and used to generate electricity that is consumed on the same site where the wind turbine is located.

ROAD USE AND SERVICES MAINTENANCE AGREEMENT approved by the County Road Superintendent and Tennessee Department of Transportation. The agreement shall address the following, at minimum:

- 1) A compilation of routes that will be used for construction and maintenance purposes, approved by the appropriate highway superintendent;
- 2) A documented baseline survey to determine existing road conditions prior to construction. The survey shall include time-stamped photographs or video, or a combination thereof, and a written agreement to document the condition of the public facility;
- 3) A surety bond or similar instrument approved by the County Attorney, in an amount sufficient to ensure that future repairs to public roads are completed to the satisfaction of the unit of local government. The cost of bonding is to be paid by the applicant. This requirement may be addressed in conjunction with the Economic Development Agreement;
- 4) A plan to address transportation routes and conditions during construction. If the route includes a public road, it shall be approved by the appropriate highway and law enforcement officials and school transportation departments;

- 5) A plan to avoid damage and to address repair to damaged roads and/or infrastructure;
- 6) A requirement that newly constructed wind energy facility roads will not impede the flow of water; and
- 7) Provisions to address crop, field tile, waterway and other infrastructure damage.

ECONOMIC DEVELOPMENT AGREEMENT: approved by the appropriate authority. The authority may include other stakeholders in the negotiations at its discretion, and the applicant shall disclose all tax incentives, rebates or other arrangements with State or Federal government pertaining to the project.

FINANCIAL SECURITY: In addition to the provisions of Section 10, the following shall apply:

- 1) The independent consultant selected to provide the estimate of decommissioning cost shall be an independent and certified Professional Engineer.
- 2) The decommissioning cost estimate shall be without regard to salvage value of the equipment.
- 3) The owner(s)/operator(s) of the wind energy facility shall be required to submit updated estimates to the county at five (5) year intervals from the date of issuance of the permit for the facility.
- 4) The financial security shall be replaced, if necessary, at five (5) year intervals in order to assure that the amount thereof remains equal to the most recent estimate of the cost of decommissioning with no regard for salvage values.

DECOMMISSIONING STANDARDS: In addition to the provisions of Section 13, the following shall apply:

- 1) Decommissioning shall include removal of wind turbines and foundations to a depth of 36 inches. All buildings, cabling, electrical components, roads, and any other associated facilities shall be removed.
- 2) Except as otherwise provided by section 1) above, disturbed earth shall be graded and reseeded, unless the Participating Landowner of the affected land requests otherwise in writing. Any alterations to county roads or property during decommissioning must be approved by the County Road Superintendent.
- 3) If the Owner/operator fails to complete decommissioning within the period prescribed, the wind energy facility shall be deemed to be in violation of Resolution 10-2019-14 and Cumberland County may take such measures as necessary, including court action, to ensure the completion of decommissioning.

LIABILITY INSURANCE. The owner or operator of the wind energy facility shall maintain a current general liability policy covering bodily injury and property damage and shall be required to name Cumberland County as an additional insured with dollar amount limits not less than \$2,000,000 per occurrence, \$5,000,000 in the aggregate, and a deductible which is reasonably industrial available and which is mutually suitable to the applicant or successor and the County.

CHANGE IN OWNERSHIP. The owner(s) or operator(s) listed in the application must inform the designee of all changes in ownership and operation during the life of the project, including the sale or transfer of ownership or change in operator. Failure to do so will result in revocation or suspension of the permit.

SETBACKS: Section 6 of Resolution 10-2019-14 is deleted and replaced with: The minimum setback distance for any wind turbine of a wind energy facility from any non-participating landowner's property line shall be the greater of ten (10) times the total height of the turbine structure as measured from the ground at its base to the maximum height of the blade tip or one mile; except, that a non-participating landowner may elect to sign a waiver to allow any wind turbine or group of turbines of a wind energy facility to be placed up to one and one-tenth (1.1) times the total height of the turbine structure as measured from the ground at its base to the maximum height of the blade tip from the landowner's property line.

ADDITIONAL AGREEMENTS. The owner(s) or operator(s) must enter into necessary agreements specified in the permit application, including establishment of escrow accounts, as needed.

COMPLAINT PROCEDURE. The owner(s) or operator(s) will maintain current contact information for the purpose of receiving reports of nuisance or damage by Cumberland County residents or visitors to Cumberland County, as specified in the permit application.

SECTION 12. DENIAL OR REVOCATION OF PERMIT. The county may deny the issuance or renewal of a permit, or revoke, suspend, or modify any existing permit for cause, including but not limited to the violation of any conditions of the permit or of the county's regulations, obtaining the permit by misrepresentation, or failing to fully disclose all relevant facts. Prior to any revocation or suspension of a permit, the permit holder shall be given notice of the noncompliance and a six-month cure period, during which time the Board of Commissioners may impose financial penalties for noncompliance.

SECTION 13. DECOMMISSIONING OR REMOVAL. A facility is deemed to be decommissioned or removed if:

- (i) Any wind turbine of a wind energy facility ceases to generate electricity for one hundred eighty (180) continuous days, unless the termination of electricity was mandated by state or federal law; provided, that one (1) or more extensions may be allowed for one-hundred-eighty-day periods at a time; or
- (ii) Any wind turbine or group of wind turbines of a wind energy facility violates the noise level restrictions, unless the turbine or group of turbines is brought into compliance within one hundred eighty (180) days of the violation; provided, that a single one-hundred-eighty-day extension may be allowed.

Within twelve (12) months following the decommissioning of a facility or expansion, the property shall be restored to its original condition prior to commencement of activities on the site.

SECTION 14. ANNUAL REPORTING. On or before January 1 of each year after the effective date of these regulations, the county shall submit a written report on its permitting activities to the agriculture and natural resources committee of the house of representatives and the energy, agriculture and natural resources committee of the senate. The report shall include, but not be limited to, data on the number of approved and denied permits, data summarizing the

findings of the environmental impact assessment and wildlife impact assessments conducted during the permit process, data on the activities of any wind energy facilities currently in operation, and data on any decommissioned facilities.

SECTION 15. EFFECT ON OTHER LAW. The issuance of a permit under these regulations shall not preclude the applicant's obligation to obtain any and all other applicable local, state, or federal permits, licenses, or approvals. Enforcement of these regulations does not limit the county's ability to plan for and regulate the siting or permitting of a wind energy facility or wind energy facility expansion also in accordance with applicable land-use regulations authorized under titles 5 and 6 of the Tennessee Code.

SECTION 16. PUBLIC RECORDS. All permit applications and other documents received by the county, and any documents used by the county to evaluate the permit application, shall be subject to disclosure under § 10-7-503; except, proprietary information contained in a permit application or in other documents received by the county, or in any other documents used by the county to evaluate and approve or deny the permit applications, shall remain confidential and not subject to disclosure to the public pursuant to T.C.A. § 65-17-108, § 10-7-503, or any other law.

SECTION 17. ENFORCEMENT. The county may enforce these regulations by seeking injunctive relief or instituting other appropriate actions or proceedings in the chancery court of either the county in which any violation of T.C.A. § 65-17-104 or of the county regulations occurred, or the local government in which the person responsible for the violation resides or has the person's principal place of business to ensure compliance. The chancery court may grant a temporary or permanent injunction restraining the violation of § 65-17-104 or of the county regulations. The institution of an injunctive action is in addition to, and not in lieu of, all civil penalties and other remedies prescribed in Tennessee Code Annotated, title 5 for permit violations and violations of county regulations.

SECTION 18. CERTIFIED COPY OF REGULATIONS. Upon passage of the regulations, or any amendment thereto, the county clerk shall furnish a certified copy of the adopted regulations or amendments to the Tennessee Department of Environment and Conservation.

SECTION 19. AMENDMENT OR REPEAL OF REGULATIONS. These regulations may only be amended or repealed by a two-thirds (2/3) majority vote of the Board of County Commissioners of Cumberland County.

SECTION 20. CONFLICT WITH OTHER LAW. In the event that county regulations conflict with applicable federal law or regulations, the federal requirements shall take precedence over the conflicting requirements of these regulations.

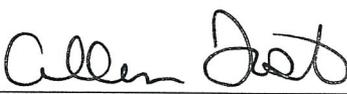
Passed by a two-thirds (2/3) majority vote of the Board of County Commissioners of Cumberland County, this the 21st day of October, 2019.

SPONSOR:


CARL S. MACLEOD

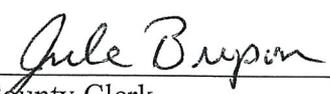
County Commissioner

APPROVED:



County Mayor

ATTEST:



County Clerk