

Ordinance No. 2026-01

AN ORDINANCE FOR PROTECTION OF WATER AND SOIL FROM ALTERNATE ENERGY PRODUCTION IN DAWSON COUNTY CONSERVATION DISTRICT

Section 1. Finding, Policy and Intent.

- 1.1. Pursuant to §76-15-102 Mont. Code Ann., it is the policy of this State to provide for the conservation of soil and soil resources of this State, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.
- 1.2. Pursuant to §76-15-701, et seq. Mont. Code Ann., the supervisors of a conservation district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion.
- 1.3. It is the policy of Dawson County Conservation District to provide for the conservation of the soil and water resources of the district and the prevention of soil erosion, accelerated soil erosion and the prevention of sediment damage to the land, water and other resources within the boundaries of the conservation district.
- 1.4. It is Dawson County's Conservation District's intent, in furtherance of the policy of the State of Montana and of Dawson County Conservation District, to protect the soil and water resources within the boundaries of the conservation district from alternate energy development, installation and operation within the boundaries of the Dawson County Conservation District.
- 1.5. Further it is the policy of Dawson County Conservation District to prevent soil erosion, prevent the loss of topsoil and vegetation decline, prevent reduced nutrient retention in the soil, prevent reduced soil fertility and land degradation, prevent sedimentation in the waterways, protect water resources and prevent the wasting of them, prevent contamination of water resources resulting from alternate energy development, installation and operation within the boundaries of the Dawson County Conservation District.
- 1.6. It is not the intent of this land use ordinance to preclude or prohibit alternate energy development and operations in our district by enacting this ordinance but to provide a protective measure to our soils and water that allows for the beneficial use of all our natural resources.

Section 2. Definitions.

- 2.1 "Abandonment" means give up, discontinue, and withdraw from any alternative energy facility or system that ceases to produce energy on a continuous basis for 12 months. Any facility or system that ceases to produce energy on a continuous basis for 12 months will be considered abandoned.

2.2 “Alternate Energy” means renewable energy sources (solar, wind, geothermal, water, biomass, fuel cells) used for heating, cooling, or generating electricity.

2.3 “Alternative Energy Facility” is a commercial facility directly generating electricity or indirectly generating electricity of energy through production of hydrogen, compressed air, or other energy carrier from conversion of alternative energy to energy and consisting of one or more wind turbines under common ownership or operating control, and includes substations, permanent MET towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity directly, or through alternative energy conversion to another form of energy, to off-site customer(s).

2.4 “Alternate Energy Permit (AEP)” Permit needed for construction, development and operation of an Alternative Energy Facility.

2.5 “Arc second” is a unit of measurement when finding the exact point of Latitude and Longitude.

2.6 “District” or “conservation district” means the Dawson County Conservation District, a governmental subdivision of the State of Montana and a public body, corporate and politic, exercising public powers.

2.7 “Electric Line” is a set of conductors used to transmit and/or distribute electrical energy within the wind energy facility or with outside transmission lines.

2.8 “Erosion” means the process by which the surface layer of the land is worn away by the action of water, wind, gravity, or a combination thereof.

2.9 “Gate” is a door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier as a part of the fence to which it is attached.

2.10 “Height (of turbine)” is the vertical distance from the construction grade of the property to the highest point of a turbine rotor blade when in the upright position.

2.11 “MET Tower” is a temporary or permanent meteorological towers used for the measurement of wind speed.

2.12 “Non-Participating Property” is a parcel of real estate that is not a participating parcel.

2.13 “Occupied Structure” is a building in which people live, work or frequent.

2.14 “Operator” the person, individual, or entity who plans to construct, alter, expand, or operate an alternative energy facility in the District.

2.15 “Participating Property” is a parcel of real estate on which a participation agreement or contract has been executed.

2.16 “Permittee (Alternative Energy Facility)” is an individual, group of individuals, corporations, partnerships, joint venture, owners, or any other business entity, or combination thereof, and all subsequent assignees and/or transferees of these rights, and that submits a Alternative Energy Facility application, develops the energy facility and subsequently operates such facility.

2.17 “Public” means belonging to or open to, enjoyed and used by and/or maintained for the public generally, but not limited to, a facility the control of which is wholly or partially exercised by some government agencies.

2.18 “Public Road” means any road, highway or section line which is now or hereafter designated and maintained by Dawson County, or organized townships, as part of the county or township road system, whether primary or secondary, hard-surfaced, or other dependable road. Setbacks will be measured from the road right-of-way.

2.19 “Residence” means a building used as a dwelling for one or more families or persons.

2.20 “Residential Area” means an area zoned for residential use.

2.21 “Rotor Diameter” means the diameter of the circle formed by the swept area of the wind turbine blades.

2.22 “Site Plan” is a detailed plan for making improvements to parcel(s) of land for the purpose of building and development as provided in this ordinance.

2.23 “Total Height” when referring to wind turbine, the distance measured from the ground level to the blade extended at its highest point.

2.24 “Variance” is a modification of the terms of these regulations where such variance will: (a) the variance is not detrimental to public health, safety or general welfare; (b) the variance is due to conditions peculiar to the property, such as physical surroundings, shape, or topographical conditions; (c) strict application of the regulations to the property results in an unnecessary hardship to the owner as compared to others subject to the same regulations and that is not self-imposed; (d) the variance may not cause a substantial increase in public costs; and (e) the variance may not place the property in nonconformance with any other regulations.

2.25 “Water Resource” includes all wells, springs, wetlands, streams, stock tanks, perineal streams, lakes & ponds.

2.26 “Wind Turbine” is a wind energy conversion system which converts wind energy into electricity, hydrogen, compressed air, or some other energy carrier and includes the turbine, bases, tower, base and pad transformer, if any, provided that such a system shall only be a wind turbine if it has a nameplate capacity of 50 kilowatts or greater.

Section 3. General Provisions. No commercial alternative energy facility shall be constructed, altered, expanded, or operated within the boundaries of the District unless an AEP has been issued by the District. An AEP may be issued only upon meeting all requirements in these regulations. It shall be a violation of these regulations for anyone to own or operate an alternative energy facility within the District unless said owner or operator holds an AEP from the District. These regulations do not preclude monitoring, soil testing, or survey work prior to obtaining an AEP. Agricultural applications are exempt from this ordinance if rated less than fifty (50) kilowatts.

Section 4. Alternative Energy Construction Permit (AEP)

4.1 Application. The Operator must apply for an AEP before an alternative energy facility may be constructed, altered, expanded or operated within the District. The Operator is solely responsible for the costs of the preparation and submission of the Application. The Operator must submit twelve (12) copies of the following materials with the Operator's Application:

4.1.1 A Map (to scale) showing:

4.1.1.1 A USGS Topographical Map (to scale) of the site within the District including proposed alternate energy facility and all adjoining properties along the proposed facility perimeter and internal boundaries, which show all existing features, including water resources, property boundaries, structures, improvements, roads, utility lines, restricted areas, public facilities, and natural features ("Site").

4.1.1.2 The detailed map (to scale) must also show the location of all proposed improvements for the alternative energy facility, including placement of each wind turbine, solar structures, battery storage facility, MET towers, electrical lines (both buried and above-ground) and roads. All wind turbines must have associated Global Positioning System (GPS) positions identified.

4.1.1.3 The detailed map (to scale) must also show Locations of recreational properties, fish wildlife & parks wetlands and conservation lands and all BLM lands within or adjacent to the alternative energy facility internal boundaries and external perimeter.

4.1.1.4 The detailed map (to scale) must also show ingress and egress routes from the site as proposed during construction and operations thereafter indicating:

- a. Locations of all roadways
- b. Locations of all proposed roadways or rights of way
- c. Widths and lengths of roadways
- d. Proposed roadway surface and cover

4.1.1.5 Site Information

- a. Name of alternative energy facility.
- b. Name and address of alternative energy facility owner.
- c. Name and address of alternative energy facility current operator.
- d. Legal description(s) of the alternative energy facility and all properties located within the alternative energy facility perimeter within the District boundaries
- e. Name, dimensions and location of any parks, public land, historic resources, churches, multi-use trails, or areas of recreational significance, as available from public documents, within two thousand six-hundred and forty (2,640) feet of all proposed wind turbine locations.
- f. Names of property owners, identified as participating or nonparticipating within 2.5 times rotor diameter distance of proposed turbine locations.

4.1.1.6 Environmental Impact Documentation: The Operator, at Operator's sole expense will have a third party, who is a qualified professional, conduct a Site analysis to identify and assess any potential impacts on the natural environment including water resources, erosion, highly erosive areas, analysis on soil type and erosion risks relating thereto, degree of threatened or existing erosion, other fragile ecosystems, areas of soil disturbance and adjacent agricultural uses such as grazing, cultivation and rotating crops. The applicant

will respond appropriately to minimize, eliminate or mitigate adverse impacts identified in the analysis. The Operator will identify and evaluate the significance of any effects or concerns that will remain after mitigation efforts. In addition, a water usage or impact study must be completed that will indicate any impact that the alternate energy facility will have on water resources in the District.

4.1.1.7 Operation and Maintenance Plan: A plan for the operation and maintenance of the alternative energy facility which will include measures for preventing or mitigating the risks identified to soil and water resources in the Environmental Impact Documentation.

4.1.1.8 Complete Decommissioning Plan: A Decommissioning Plan which provides a plan for the removal and reclamation of an abandoned or closed alternative energy facility which includes measures for preventing or mitigating the risks identified to soil and water resources in the Environmental Impact Documentation. The Decommissioning Plan must include a performance bond in the favor of the District in an amount equal to the estimated cost of site reclamation and restoration. Said amount to be approved by the District.

4.1.1.9 Storm Water Pollution Prevention Plan (SWPPP): Watershed Assessment Plan for drainage disposal and erosion control approved by the District.

4.2 Fee. The District shall establish a schedule of fees, and other matters pertaining to this chapter. This schedule may be amended from time to time by the District. All fees shall be determined based on the actual cost of time, materials, and overhead expenses, including but not limited to costs accrued by the District in conjunction with its duties and mission.

4.3 Determination on Application. Upon receipt of a complete Application, the District shall publish notice of the Application in a newspaper of general circulation for Dawson County and comply with the notice requirements of other laws.

4.4 The District shall conduct a hearing on the proposed Application and solicit public comment. The District shall grant or deny the Application within 90 days of the hearing. The District cannot approve the application unless all requirements of this ordinance have been satisfied.

Section 5. Setbacks

5.1 All portions of an Alternative Energy Facility must be setback no less than one half mile from all wells, springs, wetlands, streams, stock tanks, perineal streams, lakes & ponds.

5.2 All low-lying land and gullies within the Site must be bored 125 ft from the center on each side to prevent erosion.

Section 6. Review and Inspections and Transfer

6.1 The District will from time to time review the Site Plan and inspect the Alternative Energy Facility to ensure that the permit holder is in conformity with this ordinance.

6.2. Within ninety (90) days from the start of construction of the project and ninety (90) days from the completion of construction of the project within the District, the Operator must submit documentation demonstrating that it is in compliance with the permit.

6.3 An AEP may be transferred upon the certification by the transferee to the District that the transferee agrees to abide by the conditions of the Ordinance and the AEP. A change in ownership that results in the inability, unwillingness, or failure to abide by the Ordinance and the AEP will be a basis for revocation of the AEP.

Section 7. Board of Adjustment.

1) A board of adjustment shall be established, pursuant to §76-15-721, Mont. Code Ann. to hear and determine matters filed pursuant to §76-15-223, Mont. Code Ann. through §76-15-725, Mont. Code Ann.

2) The board of adjustments shall be structured as set forth in §§76-15-721 through 76-15-722, Mont. Code Ann.

3) All meetings of the board of adjustment shall be open to the public and its records and proceedings shall be public.

Section 8. Petition for Variance/Appeal. Any qualified elector may seek a petition for variance from this ordinance with the Board of Adjustment or Appeal a Decision of the Board as provided by 76-15-223, Mont. Code Ann. through §76-15-727, Mont. Code Ann.

Section 9. Enforcement. The District will enforce this Ordinance in accordance with §76-15-709, Mont. Code Ann. and all applicable law.

Section 10. Compliance With Other Laws. Approval for any land disturbance does not relieve, impair, diminish, divest, or control any existing laws of the State of Montana or the United States.

Section 11. Liability. Neither the approval of a plan or any other action of the District or the supervisors under the provision of this ordinance, nor the compliance with the provisions of this ordinance shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law, nor impose any liability upon the district or the supervisors for damage to any person or property.

Section 12. Severability Clause. If any section, clause, or portion of this ordinance shall be held by a court of competent jurisdiction to be invalid or unconstitutional, such finding shall not affect any other section, clause, or portion of this ordinance.

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