

Ordinance No. 1 - 2003

AN ORDINANCE ESTABLISHING A PERMITTING PROCESS FOR WIRELESS COMMUNICATION FACILITIES, WIND ENERGY CONVERSION SYSTEMS (WECS), AND OTHER TALL STRUCTURES IN MADISON COUNTY, MONTANA

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Section 1. Purpose

To accommodate development in Madison County and the region, while protecting the public health, safety and general welfare and visual environment of Madison County. This ordinance is established to outline a permitting process for wireless communication facilities, wind energy conversion systems, and other tall structures, while providing a balance between private interests and public concerns.

These standards shall be construed to be consistent with any federal or state regulations which pre-empt or take precedence over the standards herein. In the event that either federal or state government adopt standards more stringent than those described herein, the more stringent standards shall apply.

Section 2. Legal Authority

The general powers of county commissioners are broadly described in Montana law, as follows: "The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law" (7-5-2101, MCA).

Section 3. Definitions

For the purposes of this Ordinance, the following definitions shall apply:

Co-Location: Locating wireless communication equipment for more than one provider on a single structure.

Wind Energy Conversion System (WECS) Facility: The equipment, physical plant and portion of the property needed to convert wind power into energy, including

but not limited to the base, tower, cables and wires, rotor blades, inverters, conductors, transmission lines, accessory buildings, landscaping, fencing and screening, and parking areas.

Wireless Communication Facility: The equipment, physical plant and portion of the property and/or building used to provide power and communication services, including but not limited to cables and wires, conduits, pedestals, antennas, towers, concealed structures, electronic devices, equipment buildings and cabinets, landscaping, fencing and screening, and parking areas.

Section 4. Applicability

With the following exceptions, any structure or facility standing 100 feet or more above ground level or any WECS facility producing 250 kilowatts (kW) per hour or more within the unincorporated areas of Madison County, whether upon public or private lands, shall be subject to this Ordinance. Hereinafter, the term "facility" or "facilities" refers to any wireless communication facility, WECS facility, or other structure covered by this Ordinance.

Exceptions:

1. Pre-existing facilities standing 100 feet or more above ground level.
2. Facility maintenance or repair.
3. Reconstruction that involves 50% or less of a pre-existing facility standing 100 feet or more above ground level.
4. Co-location of wireless communication equipment on a pre-existing facility or on a facility permitted under this Ordinance.
5. Temporary communication facilities for emergency communications by public officials.
6. Structures used primarily for human habitation.

Section 5. General Standards

All facilities must demonstrate compliance with the following general standards prior to County issuance of a permit.

A. Public Safety

The proposed facility shall be located and designed to ensure public safety. The following measures shall be implemented:

1. From property lines, rights-of-way, or overhead power lines, each element of the facility shall be set back a minimum distance that is equal to 120% of its maximum height. A smaller setback may be allowed, if it can be demonstrated that there will be no public safety hazard.
2. At least one weatherproof warning sign shall be posted at the site.
3. The facility shall comply with Federal Aviation Administration (FAA) recommendations for airspace and shall not penetrate any airport protection zones designated by the County.
4. A water supply adequate for firefighting may be required.

B. Compatibility with Adjoining Land Uses and Scenic Resources

The proposed facility shall be located and designed to maximize compatibility with adjoining land uses and minimize negative impacts on scenic resources.

1. The facility should be located to minimize its visibility from any existing residential development on immediately adjacent properties or within a radius of one-half mile from the project site, whichever distance is greater.
2. Existing natural vegetation and grades on the site shall be preserved to the fullest extent possible.
3. The site shall be covered by a noxious weed management plan approved by the Madison County Weed Board.
4. All elements of the facility (except the warning sign covered in A.2. above) should maintain a galvanized steel finish or, subject to any applicable standards of the FAA or other applicable local, state, or federal agency, be painted a neutral color so as to reduce visual obtrusiveness.
5. Security lighting on the site may be mounted up to 20 feet in height and shall utilize cut-off lighting directed towards the ground to reduce or minimize light pollution.
6. Except for 5. above, the facility shall not be artificially lighted unless required by the FAA or other state or federal agency. If lighting is required, the use of red beacons is preferred to flashing strobe lights.
7. Noise levels during facility operation shall not constitute a public nuisance, as described in 27-30-101 et seq., MCA.
8. Where reasonable, less visible alternatives exist, applicant must demonstrate they have been explored and found to be unworkable.
9. In the case of wireless communication facilities, co-location on existing towers is preferred.

C. Migratory Birds

The proposed facility shall be located and designed to minimize negative impacts on migratory birds.

D. Abandonment

A facility will be considered to be abandoned if it is totally unused for a period of 12 consecutive months. Determination of abandonment shall be made by the county planner, who shall have the right to require documentation from the facility owner regarding the record of facility usage. Upon determination of abandonment, the facility owner shall have 90 days to:

1. Re-use the facility, or transfer it to another owner who will re-use it; or
2. Remove the facility. If the facility is not reused or removed within 90 days of determination and abandonment, the County may remove the facility at the facility and/or property owner's expense, unless the landowner assumes responsibility for the facility and has an alternate use for the same.

E. Indemnification and Insurance

The facility owner and/or property owner, jointly and severally, shall indemnify, defend, and hold harmless Madison County and all of its agents and employees

from all claims, damages, and causes of action arising from the operation and presence of the facility, and occasioned by the conduct of the facility owner and/or property owner. The facility owner shall maintain insurance against any liability arising from the operation and presence of the facility, including bodily injury, death, and damage or destruction of the property of others, in the following amounts as per 2-9-108, MCA: \$750,000 for each claim, and \$1.5 million for each occurrence. Over the life of the facility, the facility owner shall annually submit a certificate of insurance to the Madison County Planning Office.

Section 6. Permitting Process

A. Permit Required

A permit must be obtained from Madison County prior to construction and operation of a new or expanded facility (Exception: co-location).

B. Permit Application -- General Requirements

Applicants should use Exhibit A. in assembling their permit application package.

C. Consultation with Pertinent County, State, and Federal Agencies.

Applicant shall demonstrate that the following agencies were notified of the proposed facility, and given at least 45 days to contact the Madison County Planning Office with any comments (Sample notification letter available from Planning Office).

- Madison County Airport Board
- Madison County Road Department
- Madison County Weed Board
- Local Fire Department (and/or Fire Prevention Specialist)
- Any Municipality within five miles
- Montana Aeronautics Division, Montana Department of Transportation
- Montana Department of Environmental Quality (if transmission lines are proposed that would require review under the Montana Major Facility Siting Act)
- Montana Department of Transportation (if project would require highway access)
- Federal Aviation Administration
- U.S. Fish and Wildlife Service

D. Notification of Adjoining Property Owners

Applicant shall demonstrate that adjoining property owners and any applicable property owners association (as identified by the county planner) were notified of the proposed facility, and given at least 45 days to contact the Madison County Planning Office with any comments (Sample notification letter available from Planning Office).

E. Application Submittal and Review (for both types of facilities)

1. Five copies of a facility application shall be submitted to the Madison County Planning Office, along with an application review fee of \$500.
2. The county planner shall verify that the application is complete and schedule a public hearing before the Madison County Commissioners.
3. The county planner shall issue a legal notice of the public hearing by publication in a newspaper of general circulation in the county. Said notice should first appear not less than 15 days prior to the public hearing. The notice should run two consecutive weeks.
4. The county planner shall notify the applicant, each adjoining property owner, and any applicable property owners association (as identified by the county planner) of the hearing by first-class mail not less than 15 days prior to the date of the hearing.
5. The applicant shall place a copy of the application in the local public library nearest the proposed facility site.
6. The applicant and property owner shall allow County representatives to visit the site as a part of their application review. Such visit shall be conducted in accordance with Montana open meeting law.
7. Prior to the public hearing, the county planner shall prepare a report and recommendation for the County Commissioners. The report should address the extent to which the proposal complies with this Ordinance.
8. The Madison County Commissioners shall hold the public hearing and accept both written comment and verbal testimony from the public and the applicant.

F. Application Decision

1. The Madison County Commissioners shall act to approve, conditionally approve, or deny the application.
2. Written notification of the Commissioners' decision shall be mailed to the applicant and shall include an explanation of the basis for the decision.
3. In the event of conditional approval, all conditions must be met prior to the County's issuance of the permit.
4. The approved permit must be recorded at the County Clerk and Recorder's Office, at the applicant's expense.

Section 7. Severability

If any part or portions of this Ordinance shall be declared invalid or unenforceable for any reason by a court of competent jurisdiction, the remainder shall nonetheless continue in effect.

Section 8. Penalties

Any person, firm, or corporation that violates the provisions of this Ordinance shall be guilty of a misdemeanor and punishable by a fine of up to \$500 and/or a jail term of not greater than six months. Criminal responsibilities of firms or corporations shall be governed by relevant provisions of 45-2-311 and 45-2-312, MCA.

PASSED BY THE BOARD OF MADISON COUNTY COMMISSIONERS and
signed after the First Reading, this _____ day of _____, 2002.

David Schulz, Chairman

C. Ted Coffman

Frank G. Nelson
Board of Madison County Commissioners

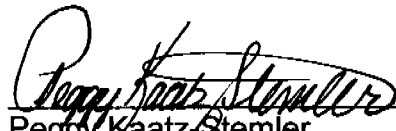
This Ordinance shall take effect as of February 5, 2003.

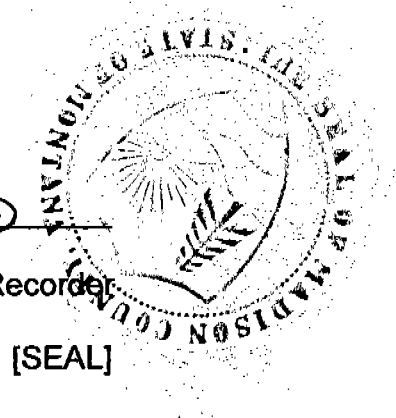
PASSED BY THE BOARD OF MADISON COUNTY COMMISSIONERS and signed after the Second Reading, this 6 day of JANUARY, 2003.


David Schulz, Chairman


C. Ted Coffman


Frank G. Nelson
Board of Madison County Commissioners


Peggy Kaatz Stemler
Madison County Clerk & Recorder



[SEAL]

**MADISON COUNTY, MONTANA
PERMIT APPLICATION FORM**

Exhibit A.

**for
Wireless Communication Facilities, Wind Energy Conversion Systems, and
Other Tall Structures**

*Madison County Planning Office
313 E. Idaho Street (old schoolhouse)
P.O. Box 278 Virginia City, MT 59755*

*Telephone: (406) 843-5250
Fax: (406) 843-5229*

Applicant (Property Owner and Owner/Operator of Proposed Facility Must Sign):

Property Owner Name(s): _____
Address: _____
Telephone and Fax Numbers: _____
Signature and Date: _____

[Note to Property Owner: If approved, this permit will be issued to both you and the facility owner/operator. The permit will be recorded and the rights and obligations pertaining thereto will run with the land. You will be liable for the cost of removing an abandoned facility. An approved permit will affect your legal rights. You may wish to check with legal counsel before signing this application.]

Facility Owner/Operator Name(s): _____
Address: _____
Telephone and Fax Numbers: _____
Signature and Date: _____

Permit Application is for (check one):

- Wireless Communication Facility
- Wind Energy Conversion System (WECS)
- Other Tall Structure (Specify: _____)

Property Location and Legal Description: _____

Permit Application is: Approved Conditionally Approved Denied

Chairman, Board of Madison County Commissioners

Date

Checklist of Permit Application Requirements:

- Site plan.
- Vicinity map. Identification of existing adjoining landowners and land uses.
- Topographical map at a scale which accurately represents ground features.
- Drawings and description of proposed facility.
- Photorealistic renderings of the proposed facility from public vantage points.
- Verification of agency notifications.
- Verification of neighborhood notifications.
- Proof of liability insurance (Provide either now or prior to permit issuance).
- County road encroachment permit, as appropriate.
- Verification of County-approved noxious weed management plan.
- Signatures of both the facility owner/operator and the landowner.

Application Submittal Instructions:

1. Five complete copies of the permit application shall be submitted to the Madison County Planning Office. An application review fee of \$500 must accompany the application.
2. Applicant shall place a sixth copy of the permit application in the local public library nearest the proposed facility site.
3. Where more than one facility is proposed, a permit application and review fee shall be submitted for each site.

Permit Recording Requirement:

An approved permit takes effect once it has been recorded at the Madison County Clerk and Recorder's Office. Recording and associated fees are the responsibility of the Applicant.

Note:

Lease agreements between the property owner and facility owner/operator are subject to the Montana Subdivision and Platting Act. Easement agreements are not.

