

2019-20121

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Requested By: BOARD OF SUPERVISORS
Navajo County Recorder - Doris Clark
12-11-2019 11:48 AM Recordings Fee \$0.00



RESOLUTION 34 -19

**A RESOLUTION OF THE NAVAJO COUNTY BOARD OF SUPERVISORS
APPROVING A SPECIAL USE PERMIT FOR CHEVELON BUTTE RE LLC**

WHEREAS, an application for a Special Use Permit was duly filed on September 27, 2019 by Chevelon Butte RE LLC to construct and operate a portion of a 477 MW maximum capacity wind generation facility; and

WHEREAS, the application concerns the following real property in Navajo County: APN: 110-01-004 and 110-01-005, a portion of Township 15 North, Range 15 East, Sections 22, 26, 27, 34, 35, and 36 of the Gila and Salt River Meridian in the Chevelon Canyon area; and

WHEREAS the application was considered by the Navajo County Planning & Zoning Commission at a duly noticed public hearing on October 17, 2019; and

WHEREAS, the Navajo County Board of Supervisors after considering the testimony and other evidence presented at the hearing, as well as the recommendations of staff, found that the Special Use Permit is consistent with the public health, safety and general welfare and should be approved subject to the conditions set forth herein;

NOW, THEREFORE BE IT RESOLVED the Board of Supervisors hereby approves the Special Use Permit, subject to the following conditions:

1. Maximum Number/Output. This Special Use Permit shall allow for the development of a portion of the Chevelon Butte Wind Farm with a collective nameplate capacity of approximately 477 MW, including the installation of a maximum of 8 wind turbines with a maximum tip height each of 755 feet, along with the construction of roadways, transmission lines and switching stations, temporary construction areas, and other appurtenant infrastructure as required to operate the facility and/or as identified in the Special Use Permit application and related materials. This Special Use Permit and the conditions of approval are only applicable to the portion of the Chevelon Butte Wind Farm installed in Navajo County.
2. All improvements and infrastructure, including, but not limited to, the switching station, wind turbines, signs, etc., shall adhere to all applicable Navajo County Codes, Standards, and Ordinances and are subject to applicable building permit and/or other permitting processes. No building or structure may be constructed or occupied prior to complete compliance with all appropriate Public Works Department requirements. This shall include, but not be limited to, grading and

drainage plans, flood control requirements as deemed necessary, and the issuance of building, construction and/or other permits for all proposed improvements and structures.

3. All electrical collector lines, which connect electricity generation devices to any substations, shall be placed underground except in the following cases:
 - a. They cross sensitive biological or archaeological resources, such as canyons, wetlands or sites eligible for the national register, or rugged terrain that would prevent the use of underground trenching technology.
 - b. Project terrain is found to be unsuitable, as determined by the applicant and confirmed by the County Engineer.
 - c. Burying the lines would violate applicable laws or regulations.

In all of the abovementioned cases, collector lines will be allowed above ground subject to approval by the Public Works Department. Utility lines serving the electricity or phone requirements of buildings shall be placed in accordance with the utility's easement requirement.

4. Setbacks:

- a. The setbacks for any wind turbines, as measured from the Project Boundary, shall be as follows:
 - i. Adjacent non-participating property owners that have not provided written acknowledgement and agreement to the lesser setbacks as they pertain to the property, regardless of parcels size: 1.1 times (110%) the total turbine height.
 - ii. Distance to any residential structures outside the Project Boundary that are in existence at the time of approval of this Special Use Permit: ½ mile (2,640 feet) or more if required to meet with sound requirements.
 - b. Setbacks for all other structures shall be as required by the zoning district of the relevant parcel, as measured to the project boundary. No structures outside of wind turbines shall exceed 35 feet in height unless they are necessary for the operation of the wind turbines. In this case, buildings exceeding 35 feet in height shall be set back from the project boundary a distance of one foot for every foot in height.
5. Prior to the issuance of any building or related permits and the commencement of construction, the following are to be submitted for review and approval by the Navajo County Public Works Department.

- a. A Transportation and Access Plan/Statement. The applicant shall submit a Transportation and Access Plan/Statement for the development of the Chevelon Butte Wind Farm Project to the Navajo County Public Works Department for review and approval. The Transportation Plan shall, at a minimum, address the following:
 - i. Site access. Provide specific and detailed information regarding off and on-site roadways, including roadway widths and surfacing. Also, if deemed necessary, provide additional information regarding existing on-site roadways/easements, including title reports, other documentation rearing the roadway(s), exhibits, and/or legal descriptions indicating the existing and proposed alignments. Staff notes, and the applicant acknowledges, that the realignment, abandonment and/or dedication of roadways may require separate action by the Navajo County Board of Supervisors.
- b. Construction Management Plan. The Applicant shall prepare a Construction Management Plan for the wind farm. This plan shall address the following:
 - i. Traffic control methods (in coordination with the Department of Transportation prior to initiation of construction), including lane closures, signage, and flagging procedures.
 - ii. Site access planning directing employee and delivery traffic to minimize conflicts with local traffic.
 - iii. Lighting. During construction of the wind farm, any temporary construction lighting shall be positioned downward, inward, and shielded to eliminate glare from all adjacent properties. Emergency and safety lighting shall be exempt from this condition.
- c. Construction Mitigation Plan. The applicant shall prepare a Construction Mitigation Plan for the wind farm. This plan shall address, at a minimum, the effective mitigation of dust, hours of construction activity, access and road improvements, and handling of general construction complaints.
- d. Site Plan. A detailed site plan is to be submitted and is to include, at a minimum, the following:
 - i. Precise location of all proposed wind turbines and associated collector lines, the generation-tie transmission line, Switching Station and interconnection with the existing APS line, and access roads. Setbacks shall be indicated for all structures to the nearest boundary/boundaries of the Special Use Permit site.

- ii. Details regarding proposed buildings or structures, including dimensions, footprint, height, square footage, parking, etc.
 - iii. Details regarding all roadways – both on- and off-site – along with the roadway width and proposed surfacing. Off-site roadway information is to be provided to indicate access from the site to a dedicated public roadway.
- e. **Revegetation/Restoration Plan.** A revegetation and restoration plan shall be prepared in consultation with input from the Arizona Game and Fish Department. The revegetation and restoration plan must address any areas which may be disturbed during the construction and/or operation of the facility. Within 6 months from the issuance of a Certificate of Occupancy for the commencement of operation of the wind farm (commercial production of electricity), the applicant shall provide post-construction revegetation and restoration all of areas identified in the Navajo County approved plan.
- f. **Grading and Drainage Plan.** The wind farm shall be constructed in compliance with the County-approved grading plan as determined and approved by the Planning and Zoning Director or their designee prior to the commencement of any construction activities. The grading plan shall:
 - i. Clearly show existing and proposed contours
 - ii. Note the locations and amount of soil to be removed, if any, and the percent of the site to be graded
 - iii. Limit grading to the greatest extent practicable by avoiding steep slopes and laying out turbines parallel to landforms.
 - iv. Take advantage of natural flow patterns in drainage design and keep the amount of impervious surface as low as possible to reduce stormwater storage needs.
- g. Documentation confirming an Interconnection Agreement (or equivalent documentation).
- h. A fire control and prevention plan shall be provided as outlined in the Uniform Fire Code and as required by the local Fire District or State Fire Marshall.
- i. Decommissioning.
 - i. The Special Use Permit holder shall maintain a decommissioning

bond in the amount of the full decommissioning cost at the end of the anticipated life of the project, net of salvage value, as estimated by a Professional Engineer registered in the State of Arizona. Said bond shall be reviewed and approved as to form, substance, and amount by the Public Works Department. The Engineer's estimate of decommissioning cost shall be renewed no less than every five (5) years by a Professional Engineer registered in the State of Arizona, and a copy of each renewed estimate shall be provided to the Public Works Department for review and approval. The decommissioning bond shall be adjusted in accordance with the renewed cost estimate within thirty (30) days after approval by the Public Works Department. The Special Use Permit holder shall provide proof that the bond is in place no later than the date of commencement of construction. The bond shall be provided for the benefit of Navajo County and all private lessors on whose land any portion of the project will be located.

- ii. Applicant Obligation. Within 12 months after the permanent cessation of use of the wind farm for electrical power generation or transmission, the applicant, or its successor, at its sole cost and expense, shall commence decommissioning of the wind farm in accordance with the decommissioning plan approved by the County.
- iii. Applicant Default; Decommissioning by the County.
 1. If the applicant, or its successor, fail to commence decommissioning of the wind farm within 12 months, the County shall have the right, (after providing written notice to comply with this condition to the applicant or its successor) but not the obligation, to commence decommissioning activities and shall have access to the property, access to the full amount of the decommissioning security, and rights to the wind farm equipment and materials on the property.

Nothing herein shall limit other rights or remedies that may be available to the County to enforce the obligations of the Applicant, including under the County's zoning powers.

- iv. Equipment/Building Removal. All physical improvements, materials, and equipment related to wind energy generation, both surface and subsurface components, shall be removed and the site restored to its pre-project condition to the extent reasonably possible. Foundations and footings will be removed to 36" below grade. The soil grade will also be restored following disturbance caused in the removal process. Perimeter fencing will be removed and recycled or reused. Where the current or future landowner

prefers to retain the fencing, these portions will be left in place.

- v. Infrastructure Removal. All access roads will be removed, including any geotextile material beneath the roads and granular material. The exception to removal of the access roads and associated culverts or their related material would be upon written request from their current or future landowners to leave all or a portion of these facilities in place for use by that landowner. Access roads will be removed within areas that were previously used for agricultural purposes and soil will be redistributed to provide substantially similar growing media as was present within the areas prior to site disturbance.

6. Noise requirements and mitigation measures:

- a. Prior to the issuance of any permits for the installation of any wind turbines, an Acoustic Analysis (Sound Study) is to be provided to the Navajo County Public Works Department for review and approval.
- b. The Acoustic Analysis is to be completed in accordance with the requirements of Section 2008 of the Navajo County Zoning Ordinance, as well as the "Sound Requirement Guidelines for Wind Energy Generation Facilities" as adopted by Navajo County under Resolution 57-10.
- c. The placement of any turbines identified under Condition 6(b) above shall be in accordance with the results of the Acoustical Analysis and the noise requirement, mitigation measures and physical setbacks, as identified in Section 2008 of the Navajo County Zoning Ordinance.
- d. Post-construction sound studies and monitoring shall be in accordance with Section 2008 of the Navajo County Zoning Ordinance.

7. Lighting.

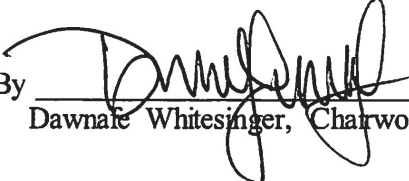
- a. Concurrent with the submittal of an application for any building or related permits for any wind turbines, the applicant shall provide information regarding the type of safety lighting that is proposed and confirmation that the safety lighting is in conformance with FAA regulations. To the extent allowable by the FAA, the project shall utilize lighting that is not constantly on, but is aircraft or radar activated. The system shall be installed during construction of the project and activated when approved by the FAA. All lighting, to the extent allowable by the FAA, shall adhere to the following:
 - i. The minimum number of lights on the masts and nacelles of wind turbines shall be used.

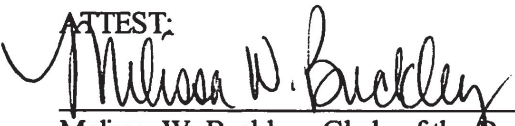
- ii. The use of low-intensity, red pulsating/blinking lighting is preferred, provided such lighting conforms to FAA regulations.
 - iii. The use of strobes or strobe-type lighting is prohibited unless expressly required by the FAA.
 - iv. To the extent possible, all safety lighting shall be synchronized to go on and off at the same time.
 - b. All outdoor lighting not directly affixed to the wind turbines shall be fully shielded and shall be directed downward and shall be activated by motion detectors except where used for ongoing operations or maintenance, in which case, such lighting should be shielded, cantered, or cut to ensure that light reaches only areas needing illumination.
8. All wind towers shall have interior ladders and locking doors, which shall be locked when not in use, to prevent interior/exterior access by the public.
 9. The maximum height of project fencing shall be a minimum of six feet and a maximum of eight feet in height (excluding barbed wire or cyclone wire fencing, which are permissible).
 10. Project fencing, if applicable, shall include minimum 18-inch by 18-inch signs warning of the presence of high voltage. Such signs shall be located a maximum of 300 feet apart and at all points of site ingress and egress.
 11. Development and use of the site shall include efforts, consistent with Best Management Practices, to reduce and mitigate dust created by this project during construction and operation. Efforts shall also be made to reduce the removal of vegetation during construction and use of the site and any roadways that provide access to the site.
 12. Material changes or modifications to this development or the site plan shall require an Amendment to this Special Use Permit by the Navajo County Board of Supervisors, upon the recommendation of the Navajo County Planning and Zoning Commission through the public hearing process. Non-material changes that do not alter the approved scope of the project may be administratively approved by the Navajo County Public Works Department.
 13. Power Purchase Agreement. Documentation confirming a power purchase agreement (or equivalent agreements) shall be required prior to issuance of any building or construction permits.
 14. Inspections. The applicant will allow designated County representatives or employees access to the facility upon reasonable notice for inspection purposes as set forth in their application.

15. Compliance. The wind energy generation facility shall be designed, constructed, and tested to meet relevant local, state, and federal standards as applicable.
16. Navajo County reserves the right to hire an outside consulting firm to assist in the review and analysis of any aspect of this development, including the Acoustical Analysis identified in Condition 6 above. Any such costs shall be reimbursed to Navajo County prior to issuance of a Certificate of Occupancy for operation of the facility.
17. Access to the project site, by construction equipment and heavy loads, could damage County maintained residential roadways. The County will record the condition of the roadways, following receipt of planned access to project, within a reasonable time, prior to commencement of construction operations of both the limited and full construction activities. The applicant shall participate in repairs of damage that exceeds normal wear and tear of these roadways prior to Certificate of Occupancy.
18. Development and operation of this site shall be in full compliance with the conditions as noted above for this Special Use Permit. Failure to develop and/or operate the site in full compliance may result in appropriate enforcement action, including, without limitation, injunctive relief.

4 **PASSED AND ADOPTED** by the Navajo County Board of Supervisors by a vote of 4 yeas and 0 nays on this 10th day of December 2019.

NAVAJO COUNTY BOARD OF SUPERVISORS

By 
Dawnate Whitesinger, Chairwoman of the Board

ATTEST:

Melissa W. Buckley, Clerk of the Board