

**CUSTER COUNTY ORDINANCE
ORDINANCE NO. 2026-04**

AN ORDINANCE ESTABLISHING REGULATORY STANDARDS FOR LARGE-SCALE ENERGY PROJECTS.

WHEREAS, the Board of Commissioners is tasked with providing for the health, safety, and general welfare of citizens of Custer County;

WHEREAS, one of the primary and essential services provided by Custer County is the power to enact licensing and zoning ordinances; and

WHEREAS, Facilities, infrastructure, and other improvements upon real property for the utilization of renewable energy and other technology advancements which are intended to produce, store, and use electric energy are becoming more common and constantly evolving in design and demand; and

WHEREAS, unregulated large-scale energy projects may have negative impact upon the public health, safety, and welfare of the citizens of Custer County which may include environmental impacts, risks of industrial disaster, diminution of property values, decreased living standards for neighboring citizens, and other unforeseen consequences; and

WHEREAS, Idaho Code §67-6511 authorizes the County to adopt Zoning Ordinances and Amendments; and

WHEREAS, upon publication of notice and conducting the hearings required by Idaho Code §67-6509, and the Board of County Commissioners having determined this Large-Scale Energy Projects Ordinance is in the best interest of the health, safety, and welfare of the citizens of Custer County;

NOW THEREFORE, the Board of Commissioners of Custer County ordains as follows:

STANDARDS FOR LARGE-SCALE ENERGY PROJECTS

CHAPTER 1: PURPOSE AND SCOPE

This Chapter establishes the regulations and siting criteria for new and expanding large-scale energy projects in Custer County. The regulations contained herein are designed to protect and promote the public health, safety, and community welfare of Custer County; to promote the proper location and development of such projects based on the effective use of local resources; and avoid unreasonable adverse impacts on the citizens of Custer County.

CHAPTER 2: DEFINITIONS

- A. Battery Energy Storage System (BESS): Technology that uses batteries to store electrical energy, which can be discharged later to stabilize power grids and manage renewable energy variability.

- B. Battery(ies): Shall be broadly construed to include a variety of energy storage systems including, but not limited to, chemical-based batteries, flywheel, pumped hydro-electric, compressed air, mobile or mechanical, and solar thermal energy systems.
- C. Energy: Use of solar, water, wind, nuclear fuel, fossil fuels, and other fuel sources, or related emergent technology to produce electricity for commercial use.
- D. Energy System or Energy Project: Any project and/or construction pertaining to the generation, conversion, storage, or transmission of energy, cited in this Ordinance, including but not limited to wind, solar, geothermal, nuclear, fuels, digesters, BESS, and any related emerging technology. An energy system may refer to a single unit of the project, such as one turbine, one solar array, one battery energy storage system unit or an accessory device or structure.
- E. Large-Scale Energy Projects: Projects that are capable of producing as per nameplate 10 megawatts (MW) or more; encumber 2.5 or more acres of land; or structural improvements exceeding 60 feet in height that produce power via the harnessing of wind, solar, geo-thermal, nuclear, fuels, digesters, or other energy forms of transmission or storage; or in the case of BESS nameplate capacity of ninety-one (91) Kilowatts (KW) or more.
- F. Nameplate Capacity: The maximum energy output that an energy generator or system can produce without exceeding the design thermal limits.

CHAPTER 3: PERMITTING REQUIREMENTS:

The following requirements are in addition to all other procedural requirements that large-scale energy projects are subject to within this ordinance. Where there is a conflict between these requirements and those noted elsewhere in the Zoning Ordinances, the requirements of this Chapter shall govern;

A: Permits Required: A conditional use permit is required prior to commencing any construction or ground-disturbing activities related to the installation of any large-scale energy projects. Where applicable, zoning certificates may also be required prior to commencing work.

B: Coordination and Documentation: The applicant of any conditional use permit that has been issued by Custer County shall provide the County with copies of all applications for state and federal permits and licenses before starting construction. Upon the issuance of any state or federal permits or licenses, environmental assessments, records of decision, memoranda of understanding, exemptions, variances, or other similar authorizations of approvals related to the proposed energy project, the applicant shall also provide copies of these documents to the county for the life of the energy project.

C. Conditional Use Permit Application Requirements:

1. Name, address, phone number, and email address of applicant. If the applicant is not the property owner, the name phone number, address, and email address of the property owner shall be supplied along with authorization that the applicant is an agent of the owner.
2. Property Deeds. If applicant or project owner is not the property owner, written permission is required from the property owner along with a copy of any lease, easement, license, or other agreement relating to the use.
3. Specific Site Plan(s): Engineer stamped plans drawn to scale, showing the physical features and land uses of the project area, both before and after construction of the proposed energy project, where features and uses are changed. Project area to include both the land specifically encumbered by the project as well as key features of the land nearby.
 - a. Property lines and all improvements located on the subject property including the location, dimensions, and types of existing structures, including but not limited to septic tanks and drain fields, canals, laterals, easements, etc.;
 - b. Proposed Project Boundaries;
 - c. Descriptions and locations of all methods of mounting that will be required for towers, foundations, guy anchors, and/or associated equipment;
 - d. Proposed height and setbacks for all project equipment.
 - e. The right-of way of any public road or easements that are contiguous with the property including but not limited to over head utility lines.
 - f. The location of any adjacent or nearby wildlife corridors, scenic corridors, and other environmentally sensitive areas;
 - g. The location of any nearby or adjacent, or onsite historical, cultural, or archeological resources;
 - h. The location, height, and dimensions of all existing and proposed structures and fencing;
 - i. The location, grades, dimensions, and surfacing of all temporary and permanent onsite roads and access roads from the nearest public road;
 - j. State and federal resources, lands and other protected areas near the project site;
 - k. Existing topography with contours at intervals that accurately depict the site, depending on the size and slope of the site;
 - l. Water bodies, waterways, canals, wetlands, and drainage channels,

- m. The location of, and distances to, onsite and adjacent residences
 - n. The location of and distance to, Confined Animal Feeding Operations;
and
 - o. The location of and distance to and airports and/or airstrips.
4. Copies of all baseline natural resources studies applicable to the project site, to included but not limited to; wildlife, aquifer, surface and ground water, soil and air quality.
- a. Wind Energy Projects: Evidence that the most recent U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines General Framework of Tiered Approach has been followed.
 - b. Wind Energy Projects; Reports addressing: Specifically bats, birds of prey, and raptors.
 - c. As well as the impact of blasting and other ground work for bases, foundations, and utility lines on nearby wells.
5. A list of permits approvals, or other actions that the applicant has requested or will request from other government agencies or from public or privately-owned utility companies that would be serving the proposed site.
6. A transportation plan showing how vehicles would access the site. The plan shall describe the impacts if any of the proposed energy project will have on the local and regional road systems during both construction and operation.
7. A revegetation plan for restoring all areas that may have been disturbed during construction.
8. A drainage and erosion control plan for construction and operation, as required.
9. A plan to protect any archaeological, historical, or cultural sites or artifacts found at the site.
10. A description of actions the applicant would take to restore the site to a useful nonhazardous condition upon the project's termination.
11. Certification and demonstration that foundation and structural plans were designed by an Idaho licensed engineer.
12. Comment letters from agencies with jurisdiction (e.g. canal company, highway district, East Idaho Public Health Department, fire district or department, Idaho department of water resources. Department of Environmental Quality, Custer County Sheriff's Office, Post Office, Idaho fish and Game, or any other affected agency.

13. Where applicable, wind turbine specifications including rated nameplate capacity, manufacturer and model, rotor diameter, tower height, and tower type, (monopole, freestanding, or guyed); and

14. Where applicable, solar system specifications including rated nameplate capacity, manufacturer model and height above ground or roof, whichever is applicable.

D. Additional requirements for Conditional Use Permit: An applicant requesting a conditional use permit for an energy project must follow the requirements of Custer County Zoning Ordinances regarding conditional use permits.

E. Zoning Certificates: All structures in the proposed site will require zoning certificates. A conditional use permit must be obtained prior to applying for any zoning certificate related to the energy project.

F. Duration of Approval: An applicant/owner has one year from the date of final approval of an energy project to secure a zoning certificates for the project, or the conditional use permit expires automatically.

CHAPTER 4: ZONING DISTRICTS WHERE PERMITTED

Conditional Use Permits for large-scale energy projects may only be permitted within an Industrial or Commercial zone.

CHAPTER 5: DETERMINATION OF SCALE

All energy generation sources (e.g., solar and wind, or two or more systems of the same time), regardless of ownership, will be used to determine the scale of the project for the purposes of these regulations.

CHAPTER 6: GENERAL REQUIREMENTS In addition to all other requirements large-scale energy projects are subject to within this Ordinance, the following general requirements for such projects must be met, unless otherwise noted. Where there is a conflict between these requirements and those noted elsewhere in this Ordinance, the requirements of this Chapter shall govern.

A. Access and Parking: The applicant has secured, or can secure, all necessary access approvals from the applicable highway districts or the Idaho Transportation Department for access points for temporary and permanent project roads and parking areas at the project site. The applicant agrees to:

1. Use existing roads for access to the extent practical and avoid construction of new roadways as much as possible.
2. Restore the natural grade and revegetate land used for temporary construction access roads, equipment staging areas, parking, and field office sites used during construction of the energy project. The applicant must specify the

type and amount of seeds or plants used to revegetate the disturbed areas and a timeline to complete this work.

3. Construct and maintain all-weather access roads as needed to assure adequate, safe, and efficient emergency vehicle and maintenance vehicle access to the site.

B. Dust Control: During site development and construction, the applicant must regularly water or otherwise treat unpaved roads and staging areas as necessary to minimize dust and wind erosion.

C. Erosion and Sediment Control: The applicant must conduct all roadwork and other site development work in compliance with a National Pollutant Discharge Elimination System (NPDES) permit as required by U.S. Environmental Protection Agency regulations. Applicants must submit copies of their NPDES permit and erosion and sediment control plan as part of the application submittal. The plan must include measures to prevent damage to local roads and adjacent areas.

D. Fire Protection: The owner/operator of an energy project must implement fire protection measures for the construction and operation of the energy project that are acceptable to the County, the Fire Protection District having jurisdiction and other land management agencies adjacent to the proposed energy project, if any. For power generation projects, the applicant must submit a copy of a Fire District fire prevention or protection plan at the time of application. Personal use projects are exempt from this requirement.

E. Fish, Wildlife, and Native Plant Protection: The applicant of any large-scale energy projects shall certify that the proposed energy project will be designed, constructed, and operated without significant adverse impact to fish, wildlife and native plant resources, including fish and wildlife habitat, migratory routes, and state or federally listed threatened or endangered fish, wildlife, or plant species.

F. Protection of Historical and Cultural Resources: Construction and operation of the proposed energy project shall not cause significant adverse impact to historical and cultural resources identified by the State Historic Preservation Office or identified in the Comprehensive Plan. The applicant agrees to implement a plan to preserve any previously undiscovered archeological, historical, or cultural artifacts discovered during construction or operation of the energy project in compliance with applicable County, state, and federal Law.

G. Signs: Billboards (off-premises signs), logos, or advertising signs of any kind are not permitted for any large-scale energy projects or on any energy systems or facilities. Signs required for public or employee safety or otherwise required by law are allowed. On-site signs may be allowed as for other businesses.

H. Visual Impact: Applicants must demonstrate the intent to reduce the visual impact of construction and operation of the proposed energy project to the extent practical by methods that may include, but are not limited to, the following:

1. Avoiding state or federal scenic areas and significant visual resources listed in the Comprehensive Plan;
2. Using natural topography to obscure the project;
3. Using materials and colors that blend with the background unless otherwise required by the Federal Aviation Administration;
4. Retaining or planting vegetation to obscure views of the energy project; and
5. Setting the energy project back such reasonable distances as may be determined by the Planning and Zoning Commission from the edge of public arterial rights of-way and from waterways, scenic areas, and designated parks and recreation areas.

I. Weed Control: The applicant shall submit a plan for weed control and shall certify in writing that the plan will be implemented during construction and operation of the proposed energy project.

J. Proximity to the Airport: The applicant shall provide a statement of air traffic impact if the project falls within one mile of an airport.

K. Restricted Parcels: No Energy Project may be located or constructed in any type of Flood Zone or may be located or constructed on designated wetlands or historical, cultural, or archeological resources identified by the State Historic Preservation Office or identified in the Comprehensive Plan.

L. Cleaning Chemicals and Solvents: During operation of the proposed solar energy project, all chemicals or solvents used to clean photovoltaic panels or heliostats must be low in volatile organic compounds. The operator should use recyclable or biodegradable products to the extent possible.

M. Development Agreements: The applicant shall coordinate with the Planning & Zoning Office to create a Development Agreement which will include but will not be limited to how the applicant will contribute to bearing any burdens to community infrastructure which may result from approval of the energy project. The agreement may also include additional site-specific requirements that the County deems reasonably necessary for safety, quality, and mitigation of impact on neighboring properties, including, but not limited to setbacks, height restrictions, and other siting and design elements.

CHAPTER 7: DECOMMISSIONING:

Applicant shall submit a decommissioning plan to the County which shall address all of the following:

1. Defined conditions upon which decommissioning will be initiated (such as, end of land lease, no power production for nine months, obsolete equipment and similar circumstances);
2. A description as to how the useful life of the system will be determined and who will make this determination;
3. Restoration of property to the condition prior to development for the Energy Project, including measures to ensure that soils are not contaminated during decommissioning;
4. The timeframe for completion of decommissioning activities;
5. An engineer's cost estimate for all aspects of the decommissioning plan;
6. Description of any agreement with the landowner regarding decommissioning;
7. Provisions for updating the decommissioning plan:

a. Removal of Facilities: It is the express policy of Lincoln County that energy project facilities be removed once they are no longer in use and not a functional part of providing solar service and that it is the facility owner's responsibility to remove such facilities and restore the site to its original condition or a condition approved by the Lincoln County Board of County Commissioners. This restoration shall include removal of any subsurface structure or foundation, including concrete, down to three feet (3') below the surface. After a facility is no longer in operation due to abandonment, the facility owner shall have ninety (90) days to effect removal and restoration unless weather prohibits such efforts.

b. Security for Removal: The facility owner shall provide to Lincoln County, prior to the issuance of the conditional use permit or the issuance of a building or siting permit, a surety bond equal to a written estimate from a qualified facility removal contractor to guarantee that the facility will be removed when no longer in operation. Lincoln County will be named as obligee in the bond and must approve the bonding company.

c. A statement signed by the owner or operator that they take full responsibility for reclaiming the site in accordance with the decommissioning plan and the conditional land use permit upon cessation of use.

CHAPTER 8: PENALTIES

A violation of any section or subsection of this Chapter is subject to any and all actions and penalties outlined in the Lincoln County Zoning Ordinance or any successor ordinance.

CHAPTER 9: SEVERANCE

If any provision of this chapter or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this chapter or these regulations, which can be given effect without the invalid

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provision or application. To this end, the provisions of these regulations are declared to be severable.

CHAPTER 10: EFFECTIVE DATE This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY, IDAHO on this 10th day of August, 2026.

COUNTY OF CUSTER
BOARD OF COUNTY COMMISSIONERS

Randy Conzatti
Chairman

ATTEST

Theresa Lianopoulos
Clerk of the Board of
County Commissioners

