Resolution No. _____

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

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Section 1. Purpose

To accommodate development in Lincoln County and the region, while protecting the public health, safety and general welfare and visual environment of Lincoln 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 adopts standards more stringent than those described herein, the more stringent standards shall apply.

Section 2. 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" (7-5-201, MCA).

Section 3. Definitions

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

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

Tall Structure: A structure, including antenna or other projection, standing 60 feet or more above ground level, exclusive of flag poles.

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 60 feet or more above ground level or any WECS facility producing 250 kilowatts (kW) per hour or more within the unincorporated areas of Lincoln 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 60 feet or more above ground level.
2. Facility maintenance or repair.
3. Reconstruction that involves 50% or less of a pre-existing facility standing 60 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. Design Standards

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

1) General and Public Safety Standards

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

a) 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.

b) Towers should be structurally designed to accommodate at least 2 additional antenna.

c) At least one weatherproof warning sign shall be posted at the site.

d) One identification sign may be posted at the site not greater than six (6) square feet.

e) Advertising signage is not permitted

f) The site shall be fenced or protected to prohibit unauthorized access.

g) The facility shall comply with the Federal Aviation Administration (FAA) recommendations for airspace and shall not penetrate any airport protection zones designated by the County.

h) A water supply adequate for firefighting may be required.

i) Existing natural vegetation and grades on the site shall be preserved to the fullest extent possible.

j) The site shall be covered by a noxious weed management plan approved by the Lincoln County Weed Board.

k) All elements of the facility (except the warning sign covered in 1.b. 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.

l) 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.

m) Except for k. above, the facility shall not be artificially lit 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.

n) Noise levels during facility operation shall not constitute a public nuisance, as described in 27-30-1010 et seq., MCA.

o) Frequency Exposure

Communication facilities are prohibited from exceeding or causing other facilities to exceed the radio frequency emission standards specified by Part 1, Practice and Procedure, Title 47 of the Code of Federal Regulations, Section 1.1310, Radio Frequency Radiation Exposure Limits. A statement by a licensed professional engineer shall be provided demonstrating that the proposed facility complies with all FCC standards for radio emissions.

2) Siting Standards

a) Facilities shall be a minimum of 1500 feet from a school or medical facility

b) Facilities shall be located and designed to minimize negative impacts on migratory birds.

c) Antenna towers over 60 feet in height shall be located at least 3 miles from any other communication facility over 60 feet in height. Antenna towers proposed to be located closer shall be co located. Exceptions to spacing requirements may only be allowed if co-location is scientifically proven to be unfeasible, and where it can be demonstrated that a unique hardship exists to prevent compliance with this section, including:

i) No existing towers or structures are located within the geographic area required to meet the applicants' engineering requirements.

ii) Existing towers or structures are not of sufficient height to meet the applicants' engineering requirements.

iii) Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment and cannot be reinforced to provide sufficient strength.

iv) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing tower or structure, or the antenna on the existing towers and structures would cause interference with the applicants proposed antenna.

v) The fees or costs required to share an existing tower or structure, or to adapt an

existing tower or structure for co-location are unreasonable. Costs less than new tower development are presumed reasonable.

vi) Property owners, or owners of existing towers or structures are unwilling to accommodate the applicant's needs.

vii) The applicant clearly demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

3) 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. In determining the potential adverse impact of the proposed facility upon such areas, the Planning Department shall consider the following factors:

a) The extent to which the proposed communication facility is visible from the viewpoint(s) of the impacted resource;

b) The type, number, height and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;

c) The amount of vegetative screening;

d) The presence of reasonable alternatives that allow the facility to function consistently with its purpose.

e) Proximity to any existing residential development on immediately adjacent properties or within a radius of one-half mile from the project site, whichever distance is greater.

f) Screening and landscaping appropriate to the context of the site and in harmony with the character of the surrounding environment is required when any part of the facility is visible from a public right-of-way or adjacent residential use. Natural materials shall be used for screening and fencing. Wire fencing, If utilized, shall be screened from public view. If a facility fronts on a public road or abuts a residential use, a combination of hedges and/or evergreen trees (at least 4 feet in height when planted) shall be planted along the roadway or around the facility to provide a continuous visual screen. Towers and antenna support structures shall be finish coated in a uniform non-reflective color that blends with the surrounding environment.

4) 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 Planning Department, 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:

a) Re-use the facility, or transfer it to another owner who will re-use it; or

b) Remove the facility. If the facility is not reused or removed within 90 days of determination of 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. Lincoln County may require that the operator provide a financial guarantee, good for one year beyond the life of the project, in an amount sufficient to cover the cost of removing the facility.

The site where a facility has been abandoned is to be restored to at least its original condition upon removal of the facility. Lincoln County may require that the operator establish an escrow account for this purpose, which would be available to Lincoln County in the event the site is abandoned. Upon approval by the Lincoln Board of County Commissioners, payments may be made into the account at a rate to ensure sufficient funds would be available at the end of the facility's intended life for the purpose of restoring the site.

5) Indemnification and Insurance.

The facility owner and/or property owner, jointly and severally, shall indemnify, defend, and hold harmless Lincoln 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 Lincoln County Planning Office.

Section 6. Permitting Process

1) Permit Required

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

2) Permit Application – General Requirements

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

3) 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 Lincoln County Planning Office with any comments (Sample notification letter available from Planning Office).

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

4) Notification of Property Owners

Applicant shall demonstrate that adjoining owners, any applicable property owner's association (as identified by the Planning Department), and properties within one-half mile (1/2) from the project site, were notified by certified mail of the proposed facility, and given at least 45 days to contact the Lincoln County Planning Office with any comments (Sample notification letter available from Planning Office).

5) Application Submittal and Review (for both types of facilities)

a) Two copies of a facility application shall be submitted to the Lincoln County Planning Office, along with an application review fee of $2500.

b) The Planning Department shall verify that the application is complete and schedule a public hearing before the Lincoln County Commissioners.

c) The Planning Department shall issue legal notice of the public hearing. The notice should run in two consecutive weeks.

d) The Planning Department shall notify the applicant, each adjoining property owner, any applicable property owners association (as identified by the Planning Department), and owners of property within one-half (1/2) mile from the project site, of the hearing by first-class mail not less than 15 days prior to the date of the hearing.

e) The applicant shall place a copy of the application in the local public library nearest the proposed facility site.

f) The applicant and property owner shall allow County representative to visit the site as a part of their application review. Such visit shall be conducted in accordance with Montana open meeting law.

g) Prior to the public hearing, the Planning Department shall prepare a report and recommendation for the County Commissioners. The report should address the extent to which the proposal complies with this Ordinance.

h) The Lincoln County Commissioners shall hold the public hearing and accept both written comment and verbal testimony from the public and the applicant.

6) Application Decision

a) The Lincoln County Commissioners shall act to approve, conditionally approve, or deny the application.

b) Written notification of the Commissioners' decision shall be mailed to the applicant and shall include an explanation of the basis for the decision.

c) In the event of conditional approval, all conditions must be met prior to the County's issuance of the permit.

d) The approved permit must be recorded at the County Clerk and Recorder's Office, at the applicant's expense.

7) Construction Period

Unless otherwise specified by the Lincoln County Commissioners, the applicant will have two

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(2) years after Lincoln County Commissioners have approved or conditionally approved an application in which to complete construction and receive the permit. A request to extend the construction period may be submitted to the Planning Office at least three months before the expiration of the approval. Notification and a public hearing as outlined in Section 6.C-F will be required for those projects for which construction has not started, or minimal construction completed, or minimal equipment has been purchased. The request for an extension must include a narrative addressing the following:

a) The general standards in Section 5.A-C, including supporting studies;

b) The estimated time needed to complete the project, with a schedule showing major milestones and estimated completion date;

c) The progress made to date;

d) Changes in land use and development patterns within one-half mile (1/2) of the site that have occurred since the application was originally approved or conditionally approved; and

e) An explanation as to why the extension is necessary.

Section 7. Modifications to Existing Permits

Modifications to the equipment and/or facilities for a permitted facility and time extensions for constructed facilities may be requested by submitting the permit application form with the review fee to the Lincoln County Planning Office. Notification and a public hearing as outlined in Section 6.C-F will be required for those projects where the Lincoln County Planning Office has determined the proposed modification is a significant change in the project scope, equipment, facilities, and/or facility duration.

Modifications may be approved by the Lincoln County Commissioners upon documented showing of:

1. Substantial compliance with the terms and conditions of the approved application; and
2. Either no change or improved compliance with the general standards listed in Section 5.

Section 8. Appeals

Those aggrieved by a decision of the governing body may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days of the date the decision was made by the governing body at public meeting.

The following aggrieved parties may appeal a permit decision

1. The property owner requesting the permit.
2. The tower operator requesting the permit.
3. A property owner with a property boundary contiguous to the tract containing the proposed building site.
4. A property owner within one-half mile of the building site.
5. Any aggrieved person or party, which is a person or party who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has

been or is likely to be specially and injuriously affected by the decision.

Section 9. 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 10. 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 provision of 45-2-311 and 45-2-312, MCA.

PASSED BY THE BOARD OF LINCOLN COUNTY COMMISSIONERS and signed after the First Reading, the _____ day of , 2026.

_____

Brent Teske, Chairman

_____

John Boyke

_____

Noel Duram

Board of Lincoln County Commissioners

_____

Corrina Brown

Lincoln County Clerk & Recorder

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Exhibit A.

LINCOLN COUNTY, MONTANA PERMIT APPLICATION / MODIFICATION FORM

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

Lincoln County Planning Office 512
California Ave.
Libby, MT 59923

Telephone: (406) 283.2309
E-mail: lcplanning@libby.org

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 and restoring the site. 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 (select one):

- ☐ Wireless Communication Facility
- ☐ Wind Energy Conversion System (WECS)
- ☐ Other Tall Structure (specify): _____
- ☐ Request is for (select one):
- ☐ New Facility
- ☐ Construction Period Extension
- ☐ Modification (describe): _____

Intended Facility Life / Duration of Permit: _____

Estimated Construction Start Date: _____ Construction Completion Date: _____

Property Location: _____

Legal Description: _____ Section: _____ Township: _____ Range: _____

Permit Application / Modification is: ☐ Approved ☐ Conditionally Approved ☐ Denied

_____ _____

Chairman, Board of County Commissioners Date

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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.

☐ Engineered 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).

☐ County road encroachment permit, as appropriate.

☐ Verification of County-approved noxious weed management plan.

☐ Signatures of both the facility owner/operator and the landowner.

☐ Narrative addressing the General Standards (Section 5).

Application Submittal Instructions:

1. Five complete copies of the permit application/request for modification shall be submitted to the Lincoln County Planning Office. An application review fee of $500 must accompany the application.
2. Applicant shall place a sixth copy of the permit application/request for modification 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 Lincoln County Clerk and Recorder's Office. Recording and associated fees are the responsibility of the Applicant.

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