

**DEVELOPMENT REGULATIONS AMENDMENTS
ENERGY OVERLAY**

NEW SECTION (Chapter 19.39 Klickitat County Code)

19.39 Energy Overlay Zone

19.39:1 Purpose

- A. To provide areas suitable for the establishment of energy resource operations based on the availability of energy resources, existing infrastructure, and locations where energy projects can be sensitively sited and mitigated.
- B. To provide siting criteria for the utilization of wind and solar energy resources. Each energy resource project will be subjected to individualized review and the imposition of conditions based on site specific information which will be tailored to address project impacts in accordance with the siting criteria. The ultimate goal is to achieve a predictable but sensitive siting process which effectively and efficiently addresses project impacts.

19.39:2 Application

- A. The Energy Overlay zone is an overlay over existing zones. Projects permitted through the Energy Overlay zone shall comply with the standards of this chapter rather than the standards of the existing zone.
- B. The Energy Overlay zone applies to the area demarcated on the zoning map. The area demarcated for wind and solar energy is the same. The Energy Overlay does not apply to lands within the Columbia River Gorge National Scenic Area, except for lands within the urban areas designated by 16 U.S.C. § 544b(e). In the event of a conflict between this provision and a County zoning map, this provision shall control.
- C. Any applicant who has applied for a conditional use permit for an energy project authorized by this chapter, may, in the alternative, elect to be sited through the procedures in this chapter. The applicant need not re-apply for a permit under this chapter. However, the County may require any supplementary information needed to complete review under this chapter and comply with its requirements.
- D. Energy systems listed in KCC 19.39:4, which can generate more than 25kw, or wind turbines greater than 120 feet in height, are subject to the requirements of this chapter.
- E. Energy systems that can generate no more than 25kw, solar panels attached to a building or providing energy primarily for on-site use, and wind turbines 120 feet in height or less are permitted outright by KCC 19.39:4, but are not subject to the additional requirements of this chapter. However, the Mitigation Summary developed in the Klickitat County Energy Overlay Environmental Impact Statement may be used as a guide by the county to develop conditions

that may be appropriate and reasonable to mitigate project impacts. All other code requirements still apply.

19.39:3 Other Applicable Requirements

A. Project applicants will need to comply with other applicable county requirements, such as the critical areas ordinance, environmental review regulations, and building code requirements.

19.39:4 Principal Uses Permitted Outright

A. Wind turbines

B. Solar energy facilities

C. Accessory buildings, uses, and structures needed for operation of the above permitted uses, including utilities and utility infrastructure needed for the principal use. For purposes of this chapter, accessory uses include the mining and utilization of on-site gravel for on-site use only, as necessary for the energy development, such as for the construction of internal roads.

D. Temporary uses associated with investigatory work to determine the suitability of the site for energy development, such as meteorological towers. The placement of meteorological towers and other such equipment need not obtain a permit through this chapter. However, all other applicable code requirements apply.

19.39:5 Review Process for Energy Resource Operations

A. Energy resource operations listed in KCC 19.39:4 are permitted outright. However, a permit is required under this chapter to ensure compliance with mitigation conditions developed in accordance with the requirements of this chapter.

B. All energy resource operations will be reviewed by the Klickitat County Planning Department and project conditions will be developed and imposed by the Klickitat County Planning Department.

19.39:6 Public Notice Requirements

A. When an application is deemed complete, the County will post a notice of application on its website.

B. The project applicant is responsible for holding at least one informal community meeting within the County to inform the public about the proposed energy facility. The meeting may be held before the project application is deemed complete, and must be held a minimum of two weeks before the SEPA responsible official issues a SEPA determination. The project applicant will provide public notice of the community meeting through written and electronic notification as described in [NEW SECTION 20.08. XXX] below. The project applicant will also provide newspaper publication in a paper of general circulation.

C. Additional public notice specific to energy resource operations is required by the County's SEPA regulations. *See* 20.08.XXX.

19.39:7 Application Requirements

A. Expanded Checklist.

1. An Expanded Checklist shall be submitted to the Klickitat County Planning Department. The Expanded Checklist may be submitted simultaneously with any other permit applications that may be required from the county.
2. The Expanded Checklist shall (in addition to being consistent with the SEPA Checklist required under Title 20) provide analysis on impacts to elements of the environment as noted in the SEPA Checklist required by Title 20 and Chapter 197-11 WAC, and explain the mitigation proposed to minimize those impacts.
3. Site specific studies for impacts to habitat/wildlife impacts (including avian impacts), cultural resource impacts, and a grading and stormwater management plan complying with state best management practices stormwater quality standards, shall be attached to the Expanded Checklist.
4. Because additional studies may be required by the Planning Director for effective review and sensitive siting, a pre-application meeting with a representative from the Planning Department is recommended. The level of detail and analysis necessary is dependent on the type of project proposed, its location, and the currently available environmental review relevant to the proposal. In general, smaller projects will require less analysis than larger, more complex ones.
5. In drafting the Expanded Checklist the applicant may review Klickitat County's Energy Overlay Environmental Impact Statement ("Energy Overlay EIS"). The Energy Overlay EIS provides information on environmental conditions within the county and suggested mitigation for addressing energy development impacts.
6. The Expanded Checklist shall include sufficient information to adequately describe the proposal and its impacts, including but not limited to, information on the maximum megawatts of the project, the total square footage of buildings to be constructed, the maximum height and number of wind turbines and solar panels (if applicable), expected noise generation levels, the length of new roads and power lines, and transportation impacts.
7. An application for review under this Chapter shall not be deemed complete until the identified reports are provided. Except for site specific studies for impacts to habitat/wildlife, upon a clear showing by the applicant that the study is not applicable or is unnecessary, the Planning Director may waive specific application requirements. Such a determination shall be documented in writing in the project file. Should the applicant

prepare an EIS, the Planning Director may waive all requirements for the submittal of individual studies at the time of application.

B. Other Application Requirements.

1. Project applicants shall comply with all other applicable county application requirements.
2. For projects with an estimated value of over \$1 million, KCC 19.08.110 shall be complied with before review under this Chapter may commence.

19.39:8 Development Standards

A. Setbacks

1. Energy resource operations shall be sited a minimum of 200 feet away from existing residential structures. The location and density of residential uses in the vicinity may require increased setback requirements.
2. There shall be a minimum of twenty feet between energy resource operations and the property line.

B. Height Limits

1. Height limits are not set for wind turbines, transmission towers, wind data collecting devices such as anemometers, and towers required by the energy resource operation for air emissions. However, the county may place reasonable limitations on height (or impose other alternative mitigation) if necessary to mitigate impacts to existing uses or if necessary to address impacts to public safety.
2. Building structures shall not exceed 65 feet unless additional height is necessary for the energy resource operation and impacts to existing uses can be mitigated to below a level of probable, adverse significance.

19.39:9 Use and Construction Standards

A. Project Conditions Tailored to Energy Resource Operation

1. Permits shall incorporate project specific mitigation measures and conditions to mitigate adverse project impacts. The conditions and mitigation measures shall be based on site specific studies provided by the applicant and other relevant environmental review.
2. Conditions shall be designed to address each element of the environment discussed in the Expanded Checklist, including but not limited to surface/groundwater;

plants; habitat/wildlife (including avian impacts); cultural resources; health and safety; and traffic/transportation.

3. The Expanded Checklist shall assess habitat type and value, presence of sensitive species, and the relative abundance of vulnerable species. Based on the Expanded Checklist, an assessment will be made as to the sensitivity of various areas of the site for impacts to wildlife habitat.

B. Conditions and Standards Applicable to all Energy Resource Operations

1. Noise

- (a) Maintain sound levels at project boundaries that are under the maximum levels for the adjacent receiving properties based on the receiving properties' environmental designation for noise abatement per state regulations.
- (b) Comply with applicable noise control regulations.

2. Air Quality

- (a) All applicable air emission permits shall be obtained and all conditions complied with.
- (b) Revegetate any disturbed areas that are not permanently occupied by the project features.
- (c) Provide a minimum of 15-cm (6-inch) gravel surface on project roads to reduce wind erosion.
- (d) Maintain a water truck on-site during construction for dust-suppression.

3. Vegetation and Wildlife

- (a) Limit construction disturbance by flagging the limits of construction and conduct ongoing environmental monitoring during construction to assure that flagged areas are avoided.
- (b) Develop a reseedling/restoration and weed management plan in consultation with the Klickitat County Weed Control Board.
- (c) Compliance with all applicable local requirements is required.
- (d) Overhead collector lines and transmission lines should be constructed consistently with the existing Avian Power Line Interaction Committee (APLIC) recommendations for raptor protection on power lines (including minimum conductor spacing and the use of anti-perch guards).
- (e) Additional conditions for wind projects
 - (i) Conduct project pre-assessment studies consistent with the Washington Department of Fish and Wildlife Wind Power Guidelines effective on the date of ordinance adoption. Consultants preparing the studies shall consider any later amendments to the Guidelines. Project applicants are further advised to consult with WDFW and local habitat/wildlife experts regarding turbine siting before making final siting decisions.

(ii) Use bird flight deflectors on guyed permanent meteorological towers or use unguyed meteorological towers.

(iii) Monitor raptor nests on site for activity prior to construction and modify construction timing and activities to avoid impacts to nesting raptors. At a minimum, one raptor nest survey during breeding season within 1-mile of the project site should be conducted to determine the location and species of active nests potentially disturbed by construction activities, and to identify active and potentially active nest sites with the highest likelihood of impacts from the operation of the wind plant. A larger survey area (e.g., a 2-mile buffer) is recommended if there is some likelihood of the occurrence of nesting state and/or federally threatened and endangered raptor species (e.g., ferruginous hawk, bald eagle, golden eagle), or if empirical data on displacement impacts may be monitored after construction.

(iv) A minimum of one full season of avian use surveys is recommended following current state-of-the-art protocols to estimate the use of the project area by avian species/groups of interest during the season of most concern (usually spring/early summer). Additional seasonal data (e.g. fall or winter) is recommended in the following cases: 1) use of the site for the avian groups of concern is estimated to be high relative to other projects, 2) there is very little existing data regarding seasonal use of the project site, and/or 3) the project is especially large. This additional avian use data should be collected to refine impact predictions and make decisions on project layout.

(v) Identify and remove all carcasses of livestock, big game, etc. from within the project that may attract foraging bald eagles or other raptors.

(vi) Monitor the project for a minimum of one year following project start-up to estimate bird and bat fatality rates using standard protocol. Report bird fatalities observed for the life of the project to WDFW and USFWS on a quarterly basis.

(vii) The applicant shall form a Technical Advisory Committee (TAC) before project construction and after all permit appeal periods have closed. Representatives of Washington State Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, landowners, the applicant, the Yakama Nation, and local environmental groups shall be invited to participate. The TAC will consider problems and impact mitigation issues and will serve for the life of the project. TAC will examine information relevant to assessing project impacts to avian and bat species. TAC will determine whether further mitigation measures would be appropriate, considering factors such as the species involved, the nature of the impact, monitoring

trends, and new scientific findings regionally or at a nearby wind power facility. If appropriate in the TAC's judgment with respect to the significance of the impact identified, the TAC shall recommend mitigation measures. The ultimate authority to implement additional mitigation measures, including any recommended by the project TAC, will reside with the project owner. The TAC's participation is intended to ensure that monitoring data is considered in a forum in which independent and informed parties can collaborate with the owner to develop appropriate responses.

4. Stormwater
 - (a) Design and implement stormwater drainage systems in consultation with a professional engineer to ensure that minimal erosion will occur.
 - (b) After construction, monitor the site for erosion on a weekly basis and after large rainfall or snowmelt events, and take corrective action as necessary.
5. Geologic and Flood Hazards
 - (a) Design structural foundations and buildings in accordance with Uniform Building Code requirements for seismic zone 2B.
 - (b) Compliance with all applicable local requirements is required.
6. Water Resources
 - (a) Except for wind projects, water availability shall be demonstrated as needed for the project.
 - (b) For all projects, water required for onsite use (restroom facilities and general maintenance) shall be obtained in accordance with state and local requirements.
7. Cultural Resources
 - (a) Complete a cultural resource survey of areas of the project site that will be disturbed temporarily or permanently.
 - (b) During construction, flag and avoid cultural resources, and monitor construction activities to ensure that flagged cultural properties are avoided.
 - (c) Train construction workers on the need to avoid cultural properties and procedures to follow if previously unidentified cultural properties, including Indian graves, are encountered during construction.
 - (d) If any previously unidentified cultural resource properties are encountered during construction, cease construction activities in the immediate vicinity of the site pending evaluation by a qualified archeologist and consultation with the State Office of Archaeology and Historic Reservation to identify appropriate mitigation measures such as avoidance or scientific data recovery.
8. Visual Resources
 - (a) Lighting for security shall be minimized and lighting fixtures shall be directed away from adjacent properties.

- (b) Provide a clean looking facility free of debris and unused or broken down equipment by: storing equipment and supplies off site, promptly removing damaged or unusable equipment from the site
- (c) Coordinate paint colors and use non-reflective paints to reduce glare.
- (d) A bond, letter, or other security acceptable to the county is required to ensure proper decommissioning of each turbine and all solar panels. The amount of the security shall be determined on the basis of the site-specific conditions affecting the costs of decommissioning, access, depth of foundation, terrain, etc., to include credit for salvage value of the equipment.

9. Public Safety

- (a) Develop and maintain an on-site health and safety plan that informs employees and others on site what to do in case of emergencies, including the locations of fire extinguishers and nearby hospitals, telephone numbers for emergency responders, and first aid techniques. Employees shall be trained to address healthy and safety emergencies, and to safely operate and maintain the turbines and other mechanical equipment.
- (b) For projects in which hazardous substances are stored or used, a Spill Prevention and Emergency Cleanup Plan will be designed to assist on-site workers with accidental releases. Any large spill will require emergency response through the local fire department or designated contractor.
- (c) During project construction and all project welding operations, have a readily accessible water truck and chemical fire suppression materials available on site to allow immediate fire response.
- (d) Provide project staff with cellular or on-site phones to enable timely communication with the Fire Department and other emergency services.
- (e) Fence site as appropriate and post signs warning of electrical dangers/ with emergency contact numbers e.g. phone numbers of emergency responders.
- (f) Monitor the site for evidence of unauthorized use and provide additional security as appropriate.

10. Mitigation conditions shall also be developed, as appropriate, based on the Mitigation Summary developed in the Klickitat County Energy Overlay Environmental Impact Statement. For wind power projects, the County shall consider recommended conditions listed in the current, and as amended, Washington State Department of Fish and Wildlife Wind Power Guidelines. However, any recommendations taken from the Guidelines and imposed as a project condition must address project impacts and be reasonable.

C. Compliance with Project Conditions

- 1. County officials shall have the right to enter the project site to verify compliance with project conditions.
- 2. Compliance with project conditions and code requirements is required. In addition to such other remedies available under law, any county department or other

decision maker issuing any decision, environmental determination (such as a mitigated determination of non-significance), approval, authorization, or other determination, including a determination on the conditions to apply to a particular project under this chapter (“authorization”), has the authority to rescind such authorization for failure to substantially comply with any required condition, mitigation, or code requirement.

19.39:8 Appeal.

A. Appeals may be filed to the Board of Adjustment within 20 days of the decision on project consistency with this chapter, as provided in chapter 19.60.

B. If other appeal hearings are provided or available, then all appeal hearings shall be consolidated before a single hearing body. If more than one appeal hearing is provided or available and is before a hearing body other than the board of adjustment, then the energy resource permit appeal hearing shall be before the board of county commissioners or to such hearing officer as may be designated by the board. The decision of the board of county commissioners shall be final unless appealed to superior court within twenty-one days of issuance.

NEW SECTION

20.08.XXX

A. When an MDNS is issued for an energy resource operation permitted under Chapter 19.39, except for projects listed under 19.39:2(E), the following notice requirements apply:

1. The applicant shall promptly mail notice of MDNS issuance to property owners within 300 feet of the project. If the applicant follows the notice requirements in good faith and documents notice provided under this subsection, no property owner’s failure to receive notification will constitute appealable error.

2. The County shall promptly post notice of MDNS issuance on its website.

3. Electronic Mail Notification.

a. The County shall promptly send notice of MDNS issuance by electronic mail (“e-mail”) to individuals who have notified the County that they wish to be on the County’s energy resource operation e-mail notification list.

b. The County will place an affidavit in the record stating that it has e-mailed notice to individuals on the County’s energy resource e-mail notification list, and will attach a copy of the current list to the affidavit.

c. If the County follows the notice requirements in good faith and documents e-mail notification as described above, no individual’s failure to receive e-mail notification will constitute appealable error.

d. The County may omit e-mail addresses from its notification list, if after e-mailing a notice asking for confirmation that the party wishes to remain on the list, no response is received within two weeks, or the e-mail is returned as undeliverable.

AMENDED SECTION

19.10.010

Special and Overlay Zones

Planned District	PD
Tourist Commercial	TC
Airport Approach	AA
<u>Energy Overlay Zone</u>	<u>EO</u>
Aggregate Resource	AR
Flood Hazardous	FH
Scenic Design	SD
View Protection	VP
Illumination Control	IC
Intent to Rezone	Intent
Cluster Development	CD
Public	P
Airport Development	AD
Scenic Design	DA
Resource Lands	RL

AMENDED SECTION

20.08.040 Lead Agency determination and responsibilities.

A. The department within the county receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940: unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining that lead agency. However, for energy resource operations requiring review under Chapter 19.39, the Klickitat County Planning Department shall be the lead agency, unless otherwise decided by the County.

AMENDED SECTION

19.60.100 Board of adjustment – Action final.

The action by the board of adjustment on an application for a conditional use permit or a variance, or on an appeal from the decision of the director of planning or an administrative officer shall be final and conclusive unless within twenty-one ~~ten~~ days from the date of ~~said~~ action issuance the original applicant or an adverse party files an appeal ~~makes application~~ to a court of competent jurisdiction ~~for a writ of certiorari, a writ of prohibition, or a writ of mandamus.~~

AMENDED SECTION

19.16.050 Accessory uses. Accessory uses permitted in the extensive agriculture district are as follows:

A. Uses customarily incidental to a parking use permitted outright, such private garages or parking areas for noncommercial vehicles only, but not including any business, trade or industry. On-site hazardous waste treatment generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;

B. The renting of rooms by the resident owner for lodging purposes only and for the accommodation of not more than two roomers in a dwelling unit;

C. Residences provided for farm laborers, not to exceed three dwelling units;

D. Utilities and utility infrastructure needed to support a principal use authorized in the energy overlay zone.

D.E. The accessory uses and exceptions which may be authorized by the board of adjustment in this district are those customarily incidental to conditional exceptions allowed.

AMENDED SECTION

19.18.050 Accessory uses. Accessory uses permitted in a general rural district are as follows:

A. Uses customarily incidental to a principal use permitted outright, such private garages or parking areas for noncommercial vehicles only, but not including any business, trade or industry. On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;

B. The renting of rooms by the resident owner for lodging purposes only, and for the accommodation of not more than two roomers in a dwelling unit;

C. Residences provided for farm laborers, not to exceed three dwelling units;

D. Utilities and utility infrastructure needed to support a principal use authorized in the energy overlay zone.

D.E. The accessory uses and exceptions which may be authorized by the board of adjustment in this district are those customarily incidental to conditional exceptions allowed.