

**MINUTES OF RECONVENED AND CONTINUED
REGULAR MONTHLY MEETING
OF THE BOARD OF COUNTY COMMISSIONERS
OF SAN MIGUEL COUNTY, NEW MEXICO
HELD MONDAY, DECEMBER 20, 2010, BEGINNING AT 1:30 P.M.**

CALL TO ORDER

Chairman David R. Salazar called the meeting to order, the Commission having previously recessed its regular monthly meeting held Tuesday, December 14, 2010, at both its chambers and at Ilfeld Auditorium; whereupon Chairman Salazar reconvened said regular monthly meeting on Monday, December 20, 2010, at 1:30 p.m., at its chambers at the San Miguel County Courthouse, Second Floor, 500 W. National Avenue, Las Vegas, New Mexico.

ROLL CALL

The Clerk called the roll, with all Commissioners being present and in attendance, as follows: Chairman David R. Salazar, Vice-Chair June J. Garcia, and Commissioners Albert J. Padilla, Nicolas T. Leger and Marcellino A. Ortiz; whereupon, after pledging allegiance to the flag of the United States and saluting the NM state flag, the Commission took-up and continued with Item 40 of its previously approved agenda, as follows:

**ITEM 40 OF PREVIOUSLY APPROVED AGENDA,
AS CONTINUED FROM MEETING RECESSED ON DECEMBER 14, 2010**

Chairman Salazar noted that the meeting was a continuation of the meeting recessed by the Commission on December 14, 2010, and that the Commission would proceed to deliberate upon the proposed wind energy facility ordinance, having entertained public comment at the December 14 meeting, at Ilfeld Auditorium; whereupon the Chairman invited his fellow Commissioners to proceed with their deliberation concerning the proposed ordinance.

Commissioner Leger was recognized and proceeded to address the Commission and the public, speaking generally about energy consumption and availability, and the ever-increasing need for alternate energy sources. Commissioner Leger then made the following proposals concerning proposed county ordinance No. 12-14-10-WIND:

1. At Section 4, Definitions, Letter C, Commissioner Leger moved that Letter C of Section 4 be deleted, and upon a second by Commissioner Ortiz, the motion carried. **(Unless otherwise indicated, all motions were approved by unanimous voice vote of the Commission).**

2. At Section 4, Letter Z, Commissioner Leger moved that county staff engage an independent expert to determine the proper definition of “prescribed sound measurement methods” and that upon a later recommendation of staff, such definition be adopted by the Commission, and that the existing definition be removed. **Upon a second by Commissioner Ortiz, the motion carried.**
3. At Section 4, Letter GG, Commissioner Leger moved to strike the existing language as contained in the proposed ordinance, and insert in lieu thereof, the following: GG. Wind Energy Conversion System or WECS is a panemone wind horizontal and vertical axis energy harvester having a type of perpendicular to wind energy conversion system, and having a rotating axis positioned at 90 degrees to the direction of the wind, while the wind catching blades move parallel or perpendicular to the wind. **Upon a second by Commissioner Garcia, Leger’s motion carried.**
4. At Section 4, Letter HH, Commissioner Leger recommended that by general consensus the Commission direct staff to engage an independent expert to provide an appropriate definition, and that said definition be added to the ordinance and the present language removed therefrom. **Upon the consensus of the Commission, Leger’s recommendation was approved.**
5. At Section 6.2, Letter E (i) and (ii), Commissioner Leger moved that under (i), the following language be substituted for the existing language: an analysis of any noise levels in the project using the ANSI 12 standard; and that under (ii), the following language be substituted for the existing language: map of any noise sensitive environment, including occupied residences, hospitals, schools, and places of worship, located [at setback distance determined by the Commission] of the proposed facility. **Upon a second by Commissioner Padilla, Leger’s motion carried.**
6. At Section 6.2, Letter E (iii), Commissioner Leger moved that the present language be stricken and that the following language be inserted in lieu thereof: (iii) a predictive analysis that assesses the range in wind turbine noise levels that can be reasonably expected to occur throughout the range of predominate daytime/nighttime meteorological conditions that are prevalent in the project area based upon reasonably public available meteorological data with a report to be prepared by a qualified acoustics engineer who analyses and determines pre-existing, pre-development noise regime levels within [at setback distance determined by the Commission] of the proposed facility. **Upon a second by Commissioner Ortiz, Leger’s motion carried.**
7. At Section 6.2, Letter E (iv), Commissioner Leger moved that the present language be stricken and that the following language be inserted in lieu thereof: (iv) owner shall provide acceptable noise resolution program to be utilized by owner if complaints concerning documented noise level [at setback distance determined by the Commission] or more above the pre-

development background levels indicated in the report prepared under Letter E (iii) above. **Upon a second by Commissioner Garcia, Leger's motion carried.**

8. At Section 6.2, Letter F (vi), Commissioner Leger moved that the present language be stricken and that the following language be inserted in lieu thereof: Contain a statement to indicate how the applicant will comply with the Migratory Bird Treaty Act, 16 U.S.C., Section 703, et seq.; the Bald and Golden Eagle Protection Act, 16 U.S.C., Section 668, 54 U.S. Stat. 250; the Endangered Species Act, 16 U.S.C. 1531, et seq.; the National Wildlife System Improvement Act of 1997, Public Law 105-57; and the National Environmental Policy Act, Public Law 91-190, 42 U.S.C. 4321-4347, January 1, 1970, et seq. **Upon a second by Commissioner Garcia, Leger's motion carried.**
9. At Section 8, introductory paragraph, Chairman Salazar noted a typographical error referring to Section 15, and noted that said reference should properly be to Section 17, and there was no objection or opposition to said correction by Chairman Salazar.
10. At Section 8.2, Commissioner Leger moved that the existing language be stricken and that the following language be inserted in lieu thereof: each project tower shall be 2.0 times to WECS height (tower height = WECS height x 2 distance from all property boundaries). **Upon a second by Commissioner Padilla, Leger's motion carried.**
11. At Section 8.4, Commissioner Leger moved that the existing language be stricken and that the following language be inserted in lieu thereof: each project tower shall be at least 2.0 times to WECS height (tower height = WECS height x 1.25) distant from any existing above-ground transmission lines. **Upon a second by Commissioner Garcia, Leger's motion carried.**
12. At Section 8.5, Commissioner Leger moved that the existing language be stricken and that the following language be inserted in lieu thereof: each project tower shall be at least one-half (1/2) miles distant from any occupied residence, commercial building, hospital, school or place of worship. **Upon a second by Commissioner Ortiz, Leger's motion carried.**
13. At Section 8.6, Commissioner Leger moved that the existing language be stricken and that the following language be inserted in lieu thereof: each project tower shall be at least one-half (1/2) mile distant from any scenic or historic area, or resource-significant site, designated as such by the Historic Preservation Division of the New Mexico Office of Cultural Affairs, or any site that has national historic designation. **Upon a second by Commissioner Padilla, Leger's motion carried.**

14. At Section 8.7, Commissioner Leger moved that the existing language be stricken and that the following language be inserted in lieu thereof: the noise report required by Section 6(E) shall verify that wind turbine noise levels are not predicted to exceed any hourly LEQ [as determined by independent consultant retained by the county, and previously amended hereinabove] at any of the closest noise sensitive receptors, including in the report occupied residences, schools, hospitals and places of worship. The County may impose a noise setback that exceeds the distance setbacks in Section 8 of this Ordinance, as specified above, if based on the Noise Report submitted by applicant under Section 6.2(E) of this Ordinance, such additional setbacks are necessary to protect the public health and safety, and promote the general welfare of the citizens of San Miguel County. **Upon a second by Commissioner Padilla, Leger's motion carried.**
15. At Section 17.1, Commissioner Leger moved to strike the existing language and insert in lieu thereof the following language: The County may approve a variance for any provision or application of this Ordinance upon application of the owner or operator of a proposed wind energy facility so long as the application for variance is reasonable and does not jeopardize the health, safety and general welfare of the citizens of San Miguel County; except that the setback requirements as provided under Section 8 hereof shall at no time be subject to variance, except that all affected landowners within the one-half (1/2) mile setback may waive any objection or requirement, whereupon a variance of Section 8 requirements may be considered and approved. **Upon a second by Commissioner Ortiz, Leger's motion carried.**
16. At Section 3, Purpose, Chairman Salazar moved to strike the existing language and insert in lieu thereof the following language: The purpose of this Ordinance is to set forth regulations that govern the locating, construction and regulation of wind energy facilities in San Miguel County, taking into consideration the health and safety of the citizens of the County, and in furtherance thereof, to: **Upon a second by Commissioner Leger, Salazar's motion carried.**
17. At Section 16.1, Chairman Salazar moved to strike the existing language and insert in lieu thereof the following language: any project facility that is not in continuous and uninterrupted operation for twelve (12) consecutive months, shall be deemed non-operational and abandoned, and upon written notice thereof by the County to the owner/operator, such owner/operator shall within thirty (30) days of receipt of such notice advise the County that such project facility will be removed, and the estimated time for said removal. **Upon a second by Commissioner Leger, Salazar's motion carried.**
18. At Section 6, Application Process, Chairman Salazar moved that the existing language be stricken and the following language inserted in lieu thereof: No application for conditional use permit shall be considered, and no

permit issued, unless the County determines that the applicant has complied with each requirement set forth in Section 6; and no conditional use permit shall be issued unless the County determines that the conditional use sought is not harmful to the health, safety and welfare of the citizens of San Miguel County, and not contrary to the land development standards set forth in the County's Comprehensive Plan. **Upon a second by Commissioner Garcia, Salazar's motion carried.**

19. At Section 6, Commissioner Garcia moved that a new, additional Section 6 (xxi) be added that contains language providing for resolution of complaints concerning any project facility, and that such language include the minimum period of time allowed to address and resolve complaints, and notification to the person(s) complaining concerning the complaint resolution. **Upon a second by Commissioner Padilla, Garcia's motion carried.**

ADJOURNMENT

No Commissioner seeking recognition for further amendments or changes to the proposed wind energy facility ordinance, and county staff being directed to proceed with the above changes, for presentment to the Commission and final passage at such time of San Miguel County Ordinance 12-14-10-WIND, Commissioner Padilla moved adjournment, and upon a second by Commissioner Garcia, Padilla's motion carried and the Commission adjourned its meeting at 2:51 p.m.

APPROVED this 8th day of February, 2011, as the official minutes of the continued regular monthly meeting of the Board of County Commissioners of San Miguel County, New Mexico, held December 20, 2010, as continued from December 14, 2010.

David R. Salazar, Chairman

Nicolas T. Leger, Vice Chairman

Marcellino A. Ortiz, Member

Ron R. Ortega, Member

Arthur J. Padilla, Member

Attest:

Melanie Y. Rivera
San Miguel County Clerk