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SABIN CENTER FOR CLIMATE CHANGE LAW

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**OPPOSITION TO RENEWABLE ENERGY  
FACILITIES IN THE UNITED STATES**

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The Sabin Center for Climate Change Law develops legal techniques to fight climate change, trains law students and lawyers in their use, and provides the legal profession and the public with up-to-date resources on key topics in climate law and regulation. It works closely with the scientists at Columbia University's Earth Institute and with a wide range of governmental, non-governmental and academic organizations.

Sabin Center for Climate Change Law

Columbia Law School

435 West 116<sup>th</sup> Street

New York, NY 10027

**Tel:** +1 (212) 854-3287

**Email:** [columbiaclimate@gmail.com](mailto:columbiaclimate@gmail.com)

**Web:** <http://www.ColumbiaClimateLaw.com>

**Twitter:** @ColumbiaClimate

**Blog:** <http://blogs.law.columbia.edu/climatechange>

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**Coordinating Editor:** Hillary Aidun

**Authors:** Radhika Goyal, Kate Marsh, Neely McKee, and Maris Welch

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## 1. INTRODUCTION

Achieving lower carbon emissions in the United States will require developing a very large number of wind, solar, and other renewable energy facilities, as well as associated storage, distribution, and transmission, at an unprecedented scale and pace. Although host community members are often enthusiastic about renewable energy facilities' economic and environmental benefits, local opposition can also arise. This report was compiled in 2020 and 2021 to document local restrictions on and opposition to siting renewable energy projects. Importantly, the authors do not make normative judgments as to the legal merits of individual cases or the policy preferences reflected in local opponents' advocacy, nor as to where any one facility should or should not be sited. Bracketing any such judgment, the report demonstrates that local opposition to renewable energy facilities is widespread and can impede development.

The report provides state-by-state information on local laws to block, delay or restrict renewable energy. These include moratoria on wind or solar energy development; outright bans on wind or solar energy development; regulations that are so restrictive that they can act as de facto bans on wind or solar energy development; and zoning amendments that are designed to block a specific proposed project. While local governments at times enact legislation in response to a specific project proposal, as discussed below, some municipalities have banned, placed moratoria on, or significantly restricted wind and solar energy development even absent a proposed project. On the other hand, many local governments have allowed or welcomed renewable energy facilities while setting reasonable regulations; only local laws that scuttled a specific project or that are so restrictive that they could have the effect of barring wind or solar development are included in this report.<sup>1</sup>

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<sup>1</sup> For example, some local communities have required that wind turbines be sited so far from residences or property lines that constructing a viable wind farm becomes infeasible; wind developers have indicated that a 1500-foot setback from occupied structures represents the upper limit of what is typically workable for designing a utility-scale wind project. IOWA ENVIRONMENTAL COUNCIL, SUCCESSFUL COUNTY WIND SITING PRACTICES IN IOWA 5 (Jan. 2020).

State laws are only discussed in this report where state-level siting restrictions impede renewable energy development. Because the report focuses on siting standards, policies related to other issues that affect renewable energy—such as net metering, renewable energy standards, and subsidies—are not discussed.

In many instances opponents seek to block a specific project using means other than local legislation, including strategies that are commonly used to challenge development. The report accordingly provides a list of contested projects in each state, where such projects were identified. These include projects that have faced opposition by local individual residents, community-based groups, or nonprofit organizations with a local presence. This opposition takes many forms, including comments at public hearings, letter-writing campaigns, petitions, participation in administrative proceedings, and lawsuits filed against local governments or developers. In many cases, opponents have succeeded in delaying a project's approval, scaling down a project's size, or achieving a project's cancellation.

In nearly every state, local governments have enacted policies to block or restrict renewable energy facilities and local opposition has resulted in the delay or cancellation of particular projects. Our research found 103 such local policies and 165 contested renewable energy facilities.<sup>2</sup> Additionally, some of the states that have seen the most renewable energy development—such as Texas, New York, and Kansas—also have relatively greater incidence of opposition. This report demonstrates that “not in my backyard” and other objections to renewable energy occur throughout the country, and can delay or impede project development.

This report was prepared as part of the work of the Renewable Energy Legal Defense Initiative (RELDI), a joint project of the Sabin Center for Climate Change Law and the law firm of Arnold & Porter, which provides pro bono legal representation to community groups and local residents who support renewable energy developments in their communities but are facing opposition. More information about RELDI can be found [here](#).

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<sup>2</sup> This report includes all the instances of local opposition we have found, but it does not purport to be exhaustive and there may be relevant local laws and contested projects that were not identified in our research.

## 2. ALABAMA

### 2.1 Local Laws/Ordinances

- **Dekalb County:** Under a 2019 ordinance, any wind energy system that does not operate continuously for 365 days may be deemed abandoned.<sup>3</sup>
- **Baldwin County:** Large wind energy conversion systems (WECS), Utility Scale WECS, and wind farms are all prohibited under any zoning designation by county ordinance. The ordinance requires WECS located near a scenic byway or corridor to not cause an adverse visual impact.<sup>4</sup>

### 2.2 Contested Projects

- **Shinbone Ridge Wind:** 32 local property owners sued Pioneer Green Energy over its proposed wind project in Cherokee County, resulting in the company pulling out of its land lease in March 2019.<sup>5</sup>
- **Noccalula Wind:** A civil lawsuit filed by property owners in the area and a local push for a land ordinance in Etowah County prompted Pioneer Green Energy to pull out of its lease in 2014.<sup>6</sup>
- **Turkey Heaven Mountain Wind:** In October 2015, Cleburne County commissioners decided that due to public concerns they would stop the project from moving forward. A civil lawsuit had been filed by homeowners near the proposed property.<sup>7</sup>

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<sup>3</sup> DEKALB COUNTY, ALA., AL Code § 45-25-260.06 (2019).

<sup>4</sup> BALDWIN COUNTY, ALA., ZONING ORDINANCE § 13.13 (2014).

<sup>5</sup> William Thorton, *Alabama regs too strict for turbines, says lawyer for wind energy developer*, ANNISTON-GADSDEN REAL-TIME NEWS, Mar. 6, 2019.

<sup>6</sup> William Thorton, *Wind energy company pulling out of Cherokee, Etowah County Projects, opposition says*, ANNISTON-GADSDEN REAL-TIME NEWS, Aug. 19, 2014.

<sup>7</sup> Laura Camper, *Wind turbine company has no plans for Alabama after lawsuit from Cleburne County homeowners*, WIND ACTION, Oct. 20, 2015.

### 3. ALASKA

#### 3.1 Local Laws/Ordinances

*No ordinances were found at this time.*

#### 3.2 Contested Projects

- **Eva Creek Wind:** This 24-MW wind farm was successfully constructed in summer 2012 and is operated by Golden Valley Electric Association. The project, however, was met with opposition based on the cost of the project.<sup>8</sup>

### 4. ARIZONA

#### 4.1 Local Laws/Ordinances

*No ordinances were found at this time.*

#### 4.2 Contested Projects

- **Sterling Solar:** The 1200-MW Sterling Solar project in Mohave County has been in the process of approval for nearly ten years, slowed in part by local opposition. At a meeting of the Mohave County Board of Supervisors in early November 2020, the project was granted a two-year extension as it seeks approval from the Western Area Power Administration.<sup>9</sup>
- **Avra Valley:** Fotoradio Renewable Ventures constructed a 96,000-panel, 300-acre, 25-MW solar farm near the Tucson mountains that began operations in December 2012, despite from nearby residents who expressed concern at town meetings about the project's appearance, effect on home values and heat production.<sup>10</sup>

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<sup>8</sup> Ground Truth Trekking, *Eva Creek Wind*, (visited Dec. 18, 2020), <http://www.groundtruthtrekking.org/Issues/RenewableEnergy/Eva-Creek-Wind-GVEA.html>.

<sup>9</sup> Brandon Messick, *Stirling Solar project meets with more delays*, HAVASU NEWS, Nov. 9 2020.

<sup>10</sup> Tony Davis, *Solar farm fails to get support from neighbors*, ARIZONA DAILY STAR, Apr. 9, 2011; NRG *Completes 25-MW Avra Valley Solar Photovoltaic Facility*, BUSINESS WIRE, Dec. 13, 2012.

## 5. ARKANSAS

### 5.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 5.2 Contested Projects

- **Wind Catcher Project:** This project was approved by the Arkansas Public Service Commission in 2018 despite opposition from a group called Protect Our Pocketbooks that ran an extensive ad campaign and was rumored to be backed by dark money. The project was planned to be the largest wind farm in the United States with 2000 megawatts. However, the project required multiple approvals because it would have been located—and delivered electricity to customers—in multiple states. It was ultimately canceled when the Texas Public Service Commission (PSC) denied approval.<sup>11</sup>

## 6. CALIFORNIA

### 6.1 Local Laws/Ordinances

- **San Bernardino County:** In 2019, the San Bernardino County Board of Supervisors banned “utility oriented renewable energy” in rural areas. The law does allow individual household solar panels and community solar projects.<sup>12</sup>
- **San Diego County:** San Diego County limits small wind turbine height to 80 feet regardless of parcel size (contrary to state law requiring that small wind turbine regulations allow turbines to be at least 100 feet).<sup>13</sup>

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<sup>11</sup> Max Brantley, *Mystery: Dark money behind opposition to wind energy project*, THE ARKANSAS TIMES, March 7, 2018; Dan Gearino, *AEP Cancels Nations’s Largest Wind Farm: 3 Challenges Wind Catcher Faced*, INSIDE CLIMATE NEWS, Jul. 30, 2018.

<sup>12</sup> Christian Roselund, *San Bernardino County bans large-scale solar, wind in some areas*, PV MAGAZINE, Mar. 1, 2019.

<sup>13</sup> CALIFORNIA ENERGY COMMISSION, IMPLEMENTATION OF SMALL WIND SYSTEM ORDINANCES BY CALIFORNIA COUNTIES 1 (March 2016), available at <https://ww2.energy.ca.gov/2016publications/CEC-300-2016-001/CEC-300-2016-001.pdf>.

## 6.2 Contested Projects

- **Panoche Valley Solar Project:** In 2009, San Benito County approved a 399-MW solar facility near the town of Hollister. Shortly thereafter, the Sierra Club, the Santa Clara Valley Audubon Society and Defenders of Wildlife sued the county, alleging that the project endangered key populations of native species. The parties reached a settlement in 2019, reducing the size of the project to  $\frac{1}{3}$  of the original plan.<sup>14</sup>
- **Terragen Wind Project:** In late 2019, Terragen Wind applied to the Humboldt County Board of Supervisors to construct 47 wind turbines on the Monument and Bear River ridges near Scotia. This proposal was met with opposition by members of the local community, who argued that the ridges were sacred prayer sites of the Tsakiyuwit tribe.<sup>15</sup> The Board of Supervisors ultimately denied the project application.<sup>16</sup>
- **Aramis and SunWalker Solar Projects:** The Aramis (410 acres) and SunWalker (70 acres) solar projects, near Livermore, have been met with opposition by local politicians and interest groups. Two residents running in the election for the Alameda County Board of Supervisors, in partnership with citizen group Save North Livermore Valley, urged the board to place a moratorium on solar development on agricultural land. Opponents of the projects argue that the project's locations “conflict with agriculture, natural habitat, open space, and visual and scenic resources.” After the East County Board of Zoning Adjustments approved both projects, local groups have stated their intent to appeal the decision. As of December 2020, four separate appeals have been filed.<sup>17</sup>

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<sup>14</sup> Paul Rogers, *Giant California solar project cut back after environmentalists oppose it*, MERCURY NEWS, July 21, 2017.

<sup>15</sup> Elaine Weinreb, *Overflow Crowd Again Turns Out for Public Hearing on Controversial Wind Farm Proposal*, NORTH COAST JOURNAL, Nov. 17, 2019.

<sup>16</sup> Thadeus Greenson & Elaine Weinreb, *Why the Supes Denied Terra-Gen's Wind Project, Despite a Series of 11th Hour Concessions from the Company*, NORTH COAST JOURNAL, Dec. 17, 2019.

<sup>17</sup> Ryan J. Degan, *Supervisor candidates urge a pause on Livermore solar projects*, PLEASANTON WEEKLY, Oct. 7, 2020; Cierra Bailey, *Livermore: Resident groups, developer all appeal county's approval of 410-acre solar project*, PLEASANTON WEEKLY, Dec. 9, 2020.

## 7. COLORADO

### 7.1 Local Laws/Ordinances

- **Washington County:** A temporary moratorium on the county's processing of wind and solar farm permits in unincorporated parts of the county came into effect on March 24, 2020.<sup>18</sup>

### 7.2 Contested Projects

- **Pueblo:** In December 2018, Pueblo County commissioners denied Invenergy's application to construct a 100-MW solar energy generation facility after local residents expressed fears of fire and property value depreciation. The commissioners encouraged Invenergy to look for another site in the county for potential development.<sup>19</sup>
- **Tessera:** In 2010, Tessera Solar proposed a 145-MW solar facility in Saguache County, Colorado. Residents organized against the proposed solar plant due to concerns about noise and environmental impact. Ultimately, Tessera Solar withdrew the application because the project failed to meet state noise requirements.<sup>20</sup>

## 8. CONNECTICUT

### 8.1 State Policy

In 2017, the Legislature enacted Public Act No. 17-218, effectively banning utility scale solar on "forest land or prime farmland" in Connecticut.<sup>21</sup>

### 8.2 Local Laws/Ordinances

*No ordinances were found at this time.*

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<sup>18</sup> WASHINGTON COUNTY, CO., Resolution 64 (Mar. 24, 2020).

<sup>19</sup> Anthony Mestas, *County denies solar project*, THE PUEBLO CHIEFTAIN, Dec. 12, 2018.

<sup>20</sup> The Creston Eagle, *County to hold public hearing on Tessera solar proposal Dec. 6* (visited Dec. 18, 2020), <https://crestoneeagle.com/county-to-hold-public-hearing-on-tessera-solar-proposal-dec-6/>; Megan Verlee, *Residents Fight Over Solar Projects*, COLORADO PUBLIC RADIO, Dec. 21, 2010.

<sup>21</sup> CT Gen Stat § 16a-3k (2018).



### 8.3 Contested Projects

- **Tobacco Valley Solar Farm:** Connecticut's Department of Energy and Environmental Protection rejected a solar project on farmland in Simsbury in 2017, but the project was later approved by the Connecticut Siting Council. A group of abutting property owners and an individual were intervenors, and later the town of Simsbury appealed the decision by the Council, but this appeal was rejected. The project is currently operating.<sup>22</sup>
- **Connecticut Wind Colebrook project:** Of the 6 turbines that BNE Energy proposed to build in Colebrook, three of them were contested in 2014 by community group Fair Wind CT for alleged errors in the approval of BNE's petition. That year the Connecticut Supreme Court ruled that the errors were harmless and dismissed the lawsuit.<sup>23</sup>

## 9. DELAWARE

### 9.1 Local Laws/Ordinances

- **Bethany Beach:** A 2018 ordinance prohibits commercial solar installations. Rooftop solar is permitted.<sup>24</sup>

### 9.2 Contested Projects

- **University of Delaware:** A neighbor challenged a single turbine used by the University to study renewables, arguing that backroom dealings led to an expedited approval process. The Delaware Court of Chancery rejected the plaintiff's claim.<sup>25</sup>
- **Ocean City, MD:** As discussed further in the Maryland section, the Skipjack Wind Farm Project is proposed off the coast of Ocean City, Maryland, and was proposed to connect

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<sup>22</sup> Gregory B. Hladky, *Residents Win Battle Against Bullard Farm Solar Plant*, THE HARTFORD COURANT, Jun. 22, 2017; Gregory B. Hladky, *'We traded green for green.'* *Controversial solar array built on Simsbury farmland now producing power*, THE HARTFORD COURANT, Dec. 13, 2019.

<sup>23</sup> *CT's first commercial wind project wins legal battle*, HARTFORD BUSINESS JOURNAL, Sept. 16, 2014.

<sup>24</sup> AMERICAN PLANNING ASS'N, *PLANNING AND ZONING FOR SOLAR ENERGY* 6 (July 2011).

<sup>25</sup> Nick Roth, *Federal judge dismisses wind turbine lawsuit*, THE CAPE GAZETTE, Feb. 11, 2015; *Lechlitter v. Delaware Dep't of Nat. Res. & Envtl. Control*, No. CV 7939-VCG, 2015 WL 9591587, at \*6 (Del. Ch. Dec. 31, 2015), *aff'd*, 146 A.3d 358 (Del. 2016).

to the grid at a facility in Delaware’s Fenwick Island State Park. Some Delaware residents advocated against the interconnection facility—for example, writing letters to the editor—on the grounds that the project will not generate energy or jobs for their state, and could have visual and environmental impacts. The State of Maryland recently approved the wind farm, but the developer abandoned plans to site the interconnection facility at Fenwick Island State Park.<sup>26</sup>

## 10. FLORIDA

### 10.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 10.2 Contested Projects

- **Mt. Joy:** In the Gettysburg and Littlestown areas, the proposed Mt. Joy solar project would be constructed by Brookview Solar I LLC and would span nearly 1,000 acres. Controversy has arisen concerning the project’s construction in Mt. Joy’s Agricultural Conservation zone, leading hundreds to organize against the proposal. After a series of public hearings, the project has not been approved. At the most recent hearing, in August 2020, large groups of protestors argued that the town supervisor should be fired because he owns a solar lease.<sup>27</sup>

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<sup>26</sup> James Dawson, *Delaware’s Star-Crossed History with Offshore Wind Power*, THE DELAWARE REPUBLIC, Jul. 7, 2017; Kevin Chandler, *Surfriders oppose Skipjack Farm proposal*, CAPE GAZETTE, Dec. 24, 2019; Matthew Prensky, *Larger Wind Turbines Approved Off Coast: What You Need to Know*, SALISBURY DAILY TIMES, Aug. 21, 2020; Bethany Hooper, *Wind Farm Developer Drops Delaware State Park Plan*, THE DISPATCH, July 10, 2020.

<sup>27</sup> Christine Demas, *Hundreds Turn Out To Hear Proposal for Mt. Joy Industrial Solar Project*, GETTYSBURG CONNECTION, Feb. 15, 2020; Jim Hale, *Solar opponents protest outside Mt. Joy meeting*, GETTYSBURG TIMES, Aug. 22, 2020.

## 11. GEORGIA

### 11.1 Local Laws/Ordinances

- **Thomas County:** In October 2018, Thomas County commissioners voted unanimously to implement a moratorium on solar energy facility construction, but clarified that the moratorium would not be “indefinite.” As of December 2020, it appears that the moratorium is still in place.<sup>28</sup>
- **Lee County:** In May 2019, Lee County officials placed a moratorium on solar farm construction in response to increased interest from solar developers.<sup>29</sup>
- **Grady County:** In February 2017, Grady County commissioners issued a “60-day solar panel moratorium,” due to opposition surrounding the construction of a solar farm in the county.<sup>30</sup>

### 11.2 Contested Projects

- **Tanglewood:** Despite extensive local opposition, in June 2020, UK-based Renewable Energy Systems completed the construction of the 57.5-MW GA Solar 3-Tanglewood Solar project in Mitchell County after a lengthy approval process.<sup>31</sup>
- **Sumter County:** After many years of debate, tabling from county officials, and opposition, the Sumter County Commission approved Americus Solar LLC’s 1,115 MW-generating, 10,000-acre solar farm in October 2019. At a series of meetings and public hearings, residents expressed concern regarding the project’s appearance, environmental conservation, and potential effect on property values. Opposition has continued to delay the project’s completion.<sup>32</sup>

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<sup>28</sup> Patti Dozier, *Commissioners put indefinite moratorium on solar facilities*, THOMASVILLE TIMES-ENTERPRISE, Oct. 24, 2018.

<sup>29</sup> Marilyn Parker, *Ordinance will restrict Lee Co. solar farm development*, WALB NEWS 10, May 15, 2019.

<sup>30</sup> Jordan Barela, *Grady Commissioners issue 60-day solar panel moratorium*, TIFTON GAZETTE, Feb. 22, 2017.

<sup>31</sup> RES powers up 575-MW Origis-operated solar park in Georgia, RENEWABLES NOW, June 30, 2020.

<sup>32</sup> Marilyn Parker, *Sumter Co. commission approves nearly 10,000 acre solar farm*, WTOC 11, Oct. 15, 2011.

## 12. HAWAII

### 12.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 12.2 Contested Projects

- **Kahuku Wind:** In October 2019, approximately 128 protesters, led by Keep the North Shore Country, were arrested after trying to block the wind turbines for this project from being delivered. The group has filed several legal challenges, arguing that Honolulu's decision to grant a permit for the project violates Endangered Species Act protections for the Hawaiian Petrel and Hawaiian Hoary Bat.<sup>33</sup>
- **Na Pua Makani Project:** Keep the North Shore Country filed a lawsuit challenging the placement of turbines under Honolulu's zoning ordinance over the project's proximity to schools and homes. Another organization called Life of the Land filed a motion to block the project's power purchase agreement. In September 2019, the project's building permit was rescinded until the project could come into compliance with all applicable requirements.<sup>34</sup>

## 13. IDAHO

### 13.1 Local Laws/Ordinances

- **Bingham County Zoning Ordinance:** Under a 2018 ordinance, turbines must be at least 3 times tower height from the nearest residence or commercial building, unless a personal agreement between property owners is approved. In all instances, the distance must still be at least 1.5 times as long as the tower height.<sup>35</sup>

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<sup>33</sup> Keep the North Shore Country, *Three Legal Active Fronts* (visited Dec. 18, 2020), <https://www.keepthenorthshorecountry.org/>; Mark Ladao, *Wind farm opponents protest in Mayor Kirk Caldwell's Office*, STAR ADVERTISER, Nov. 1, 2019; Andrew Gomes, *4 truckloads of wind turbine parts delivered to Kahuku after 6 more arrests*, STAR ADVERTISER, Oct. 1, 2019.

<sup>34</sup> HONOLULU, HAW., RESOLUTION 19-241 (Sep. 24, 2019); Henry Curtis, *Three Legal Snags for Na Pua Makani -Kahuku Wind Farm*, ILILANI MEDIA, March 9, 2020.

<sup>35</sup> BINGHAM COUNTY, ID., Zoning Ordinance § 7.43 (August 2018).

- **Bonneville County Zoning Ordinance:** In 2010, Bonneville County Planning and Zoning Commission significantly restricted wind development to a specific “turbine zone” in the southeastern portion of the county. No new wind projects have been proposed for Bonneville County since these restrictions were put in place.<sup>36</sup>

## 13.2 Contested Projects

- **Ridgeline Wind Energy Project:** In 2010, Ridgeline Energy was denied a permit by the Bonneville County Planning and Zoning Commission to construct a wind farm outside of Idaho Falls. The Commission cited fears of impacts to property values and disrupted scenic value of the area as key reasons to deny the project. Bonneville County ultimately rejected the project.<sup>37</sup>
- **Blue Ribbon Energy Project:** In 2010, Blue Ribbon Energy applied for a permit to construct 27 wind turbines near Goshen, Idaho. The Bingham County Planning and Zoning Commission denied this request, citing a lack of sufficient information on the turbines’ proximity to residences.<sup>38</sup> As discussed, in 2012 the county passed an ordinance that has effectively blocked all wind development.

# 14. ILLINOIS

## 14.1 Local Laws/Ordinances

- **Ford County:** A moratorium on wind energy development has been in place since 2017. The zoning committee is in the process of revising the 2017 ordinance and is debating the length of setback requirements, which has been stalled due to the COVID-19 pandemic.<sup>39</sup>

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<sup>36</sup> The Associated Press, *E. Idaho county restricts wind farm development*, MIDDLETOWN JOURNAL, Nov. 19, 2010

<sup>37</sup> Local News 8, *Wind farm denied in Bonneville County*, LOCAL NEWS 8, Aug. 25, 2010; Brad Carlson, *Bonneville Co. tables Ridgeline wind project after appeal*, IDAHO BUSINESS REVIEW, Oct. 26, 2010.

<sup>38</sup> Kendra Evensen, *Wind Turbine Permit Denied*, BLACKFOOT JOURNAL, Nov. 20, 2010.

<sup>39</sup> Carol Thilmony, *Ford County Board hears concerns over wind farm*, FORD COUNTY RECORD, Sep. 22, 2020.

- **Piatt County:** In August 2019, a moratorium on wind energy projects was extended until March 2021 with unanimous approval from the County Board.<sup>40</sup>

## 14.2 Contested Projects

- **DeWitt County:** The Alta Farms II project was approved in July 2020 by the DeWitt County Board despite local opposition. The 66-turbine project has been in development for the past 10 years. While the company, Tradewind, is planning construction in Spring 2021, some property owners who oppose the project are considering filing a lawsuit.<sup>41</sup>
- **Ford Ridge Wind Farm:** The first phase of Apex Energy’s Ford Ridge Wind Farm of Apex Energy has received necessary permits, but the full project has been blocked by Ford County’s moratorium on wind energy, discussed above.<sup>42</sup>
- **Champaign & Vermillion Counties:** Invenergy successfully constructed a 104-turbine wind farm initially approved in 2011. Despite numerous local hearings where residents expressed concerns with noise, safety and shadow flicker, the boards and zoning commissions of both counties approved the project by a majority of votes.<sup>43</sup>
- **Macon County:** Radford Run’s Wind Farm was constructed in 2017 in Northwest Macon County despite opposition from community members and a prolonged development process. Three dozen landowners in the area filed a lawsuit to halt the project in 2015 arguing that the “county did not properly provide statutory notices for a public hearing leading up to the board’s decision or allow them to view the wind farm applications in time for the hearing.” The suit was dismissed.<sup>44</sup>

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<sup>40</sup> Staff, *County moratorium on wind farm applications extended*, PIATT COUNTY JOURNAL-REPUBLICAN, Aug. 19, 2020.

<sup>41</sup> Wind Watch, *Construction for Dewitt County Wind Farm Set for 2021* (visited Dec. 15, 2020), <https://www.wind-watch.org/news/2020/07/16/construction-for-dewitt-county-wind-farm-set-for-2021/>.

<sup>42</sup> Carol Thilmony, *Ford County Board hears concerns over wind farm*, FORD COUNTY RECORD, Sep. 22, 2020.

<sup>43</sup> *Vermillion County Board Approves Wind Turbine Ordinance*, WILL ILLINOIS PUBLIC RADIO, JULY 12, 2011.

<sup>44</sup> Ryan Voyles, *What’s that? 400-foot turbine alters Macon County landscape*, HERALD & REVIEW, Jun. 11, 2017.

- **Harvest Ridge Wind Farm:** This 200-MW farm was completed by EDP Renewables in September 2020. Residents of Newman Township—which hosts some of the turbines—voted 86-57 in favor of enacting a zoning ordinance to block the then-proposed farm in June 2018. However, the County Board decided not to forward any requests for changes that late into the project’s approval process.<sup>45</sup>
- **Niyol Wind Farm:** In April 2020, the Planning Commission voted 4-2 to table the conditional use permit application for this project after a group called Concerned Citizens for a Safe Logan County expressed concerns regarding population density, sound levels and environmental protection.<sup>46</sup>
- **Mount Pulaski:** Considerable opposition to the construction of a wind farm in the Mount Pulaski area led the Logan County board to initially deny the application for a conditional use permit in 2015. The project was eventually able to proceed in 2018.<sup>47</sup>
- **Livingston:** The Pleasant Ridge Wind Energy Project from Chicago-based Invenenergy LLC hoped to build the 136-turbine project near Forrest in Livingston County. When the project was met with local opposition, in June 2015 members of the appeals board questioned whether the project meets the county’s comprehensive plan and whether the company had made proper financial assurances to the county. The project was ultimately cancelled.<sup>48</sup>

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<sup>45</sup> Tracy Crane, *Wind Farm Developer Moving Ahead Despite Newman Township Vote*, NEWS GAZETTE, Jul. 12, 2018.

<sup>46</sup> Wind Action, *Planning Board Tables Controversial Wind Turbine Permit Requests* (visited Dec. 20, 2020), <http://www.windaction.org/posts/51183-planning-board-tables-controversial-wind-turbine-permit-requests#.X5OeuWdKhQJ>.

<sup>47</sup> Jessica Lema, *7,600-acre wind farm petition falls flat in Logan County*, THE LINCOLN COURIER, Jan. 23, 2015; *Swift Current Buys Rights to 200MW Wind Project in Illinois*, RENEWABLES NOW, Feb. 3, 2017.

<sup>48</sup> *Illinois wind-farm project runs into opposition*, THE ASSOCIATED PRESS, June 5, 2015.

## 15. INDIANA

### 15.1 Local Laws/Ordinances

- **Allen:** As of 2018, only small wind systems are permitted.<sup>49</sup>
- **Boone:** Boone County banned wind development in 2009.<sup>50</sup>
- **DeKalb:** In 2018, DeKalb County passed a new ordinance that requires 3,000-foot setbacks from property lines. The ordinance also requires that neighboring residents experience no shadow flicker.<sup>51</sup>
- **Fulton:** In December 2017, the Fulton County Zoning Board enacted a full ban on wind farms.<sup>52</sup>
- **Hamilton:** In 2010, Hamilton County limited turbine height (including blade length) to 300 feet tall. However, after the County Board of Commissioners denied a conditional use permit for Hamilton County Wind in 2019, the county established an indefinite moratorium on wind development in order to redraft county wind regulations. It is unclear whether or not this moratorium is still in effect.<sup>53</sup>
- **Jasper:** In 2019, Jasper County established 1,760-foot setbacks to property lines and 2,400-foot setbacks to homes, roads, and places of worship.<sup>54</sup>
- **Kosciusko:** Kosciusko County requires wind turbine setbacks of at least 3,960 feet or 6.5 times the turbine height from property lines. It also limits turbine noise to 32 dBA, requires zero shadow flicker effects on neighboring homes, and limits construction to dedicated industrial zones.<sup>55</sup>

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<sup>49</sup> Kevin Kilbane, *More wind farms likely in Indiana's future, but probably not near Fort Wayne and Allen County*, NEWS SENTINEL, Apr. 20, 2018.

<sup>50</sup> Gus Percy, *Wind farms in Boone County are not likely*, BATESVILLE HERALD-TRIBUTE, Oct. 4, 2019.

<sup>51</sup> Susan Stephens, *DeKalb County Approves Tough Wind Ordinance*, NORTHERN PUBLIC RADIO, Nov. 22, 2018.

<sup>52</sup> Niko Burton, *Wind farms still banned in Fulton County*, WSBT 22, Dec. 11, 2017.

<sup>53</sup> Hamilton County, Ind., Ord. No. 11-22-10-A, (Nov. 22, 2010).

Jeff Bahr, *Hamilton County Rejects Wind Project*, THE GRAND ISLAND INDEPENDENT, Dec. 16, 2019.

<sup>54</sup> Nick Fiala, *Jasper County Commissioners approve wind amendments*, RENSESELAER REPUBLICAN, May 6, 2019.

<sup>55</sup> KOSCIUSKO COUNTY, IN, Code § 3.29 (2020).



- **Marshall:** In 2013, Marshall County commissioners voted unanimously to ban all commercial wind development.<sup>56</sup>
- **Miami:** In 2018, Miami County increased setbacks to 2,000 feet from property lines and roadways.<sup>57</sup>
- **Montgomery:** A 2019 Zoning Ordinance renders it effectively impossible to construct wind farms in Montgomery County. The ordinance calls for setbacks either 5 times the turbine height or 2,640 feet (which may be increased to 3,200 feet at the zoning board's discretion). It also requires setbacks of 1 mile from a town or school, a maximum of 32 dBA, and zero shadow flicker. Property values must be guaranteed for residents within 2 miles of any turbine, and commercial turbine construction is limited to industrial districts.<sup>58</sup>
- **Noble:** As of 2013, Noble County requires 3,960-foot setback from property lines.<sup>59</sup>
- **Pulaski:** In 2018, Pulaski County Commissioners banned all commercial wind development.<sup>60</sup>
- **Rush:** In order to block the West Fork Wind Energy Project, the Rush County Board of Zoning appeals established a 2,640-foot setback requirement from non-participating property lines in 2016. The County also limits turbine height to 200 feet.<sup>61</sup>
- **Tippecanoe:** In 2019, Tippecanoe County Commissioners voted to prohibit all wind turbines over 140 feet tall.<sup>62</sup>

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<sup>56</sup> Michela Tindera and Jimmy Jenkins, *Tilting at Windmills: A closer look at Indiana's expanding wind power industry*, INVESTIGATIVE JOURNALISM EDUCATION CONSORTIUM, July 24, 2013.

<sup>57</sup> Cody Neuenschwander, *Miami County plan commission approves stricter setbacks for wind turbines*, KOKOMO TRIBUNE, Apr. 12, 2018.

<sup>58</sup> MONTGOMERY COUNTY, IN, Code § 159, Article 6 (2019).

<sup>59</sup> Ken de la Bastide, *Two central Indiana counties establish setback rules that could preclude wind turbines*, INDIANA ECONOMIC DIGEST, May. 17, 2013.

<sup>60</sup> Michael Gallenberger, *Pulaski County Commissioners Approve Ban on Commercial Wind Turbines*, WKVI, Oct. 2, 2018.

<sup>61</sup> James Sprague, *Rush County deals blow to another wind project*, CONNERSVILLE NEWS EXAMINER, Dec. 16, 2016.

<sup>62</sup> Associated Press, *Wind Turbine Height Limit Set For Rural Areas Near Lafayette*, WFYI, May 7, 2019.

- **Tipton:** An ordinance establishing 2,640-foot setbacks from property lines was passed in 2015. The 202-MW Wildcat Wind Farm was still able to be built, but residents have opposed it.<sup>63</sup>
- **Wabash:** In 2017, Wabash County tightened its restrictions on wind development, requiring 3,960-foot setbacks for wind systems and zero shadow flicker for non-participants.<sup>64</sup>
- **Wayne:** A 2016 ordinance passed by the Wayne County Commissioners prohibits industrial turbines. Those who wish to construct an industrial turbine must apply for a zoning variance permit, which will be evaluated on a case-by-case basis.<sup>65</sup>
- **Whitley:** As of 2016, Whitley County requires setbacks equal to 6.5x the height of the tower, of 2,640 feet.<sup>66</sup>

## 15.2 Contested Projects

- **Jordan Creek Wind Farm:** This project was approved in late 2019 despite local opposition due to concerns about long-term viability of the project and small setbacks from private property lines. Facebook groups, such as the ‘Warren County Concerned Citizens’ and ‘Indiana Land & Liberty Coalition’, took a strong stance against the project but failed to stop it.<sup>67</sup>
- **Big Blue Ribbon Wind Farm:** The Henry County Planning Commission rejected a proposal for this 38-turbine wind farm in 2018 after much debate and backlash within the community. Residents were concerned about property rights as well as the distance between the turbines and their homes.<sup>68</sup>

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<sup>63</sup> Carson Gerber, “Windfall to some, a curse to many”: Tipton wind farm pays millions in taxes, but anti-wind sentiment remains, KOKOMO TRIBUNE, Sep. 14, 2020.

<sup>64</sup> Wabash Plain Dealer, *Wabash County revises wind farm regulation relating to ‘shadow flicker’*, INDIANA ECONOMIC DIGEST, Dec. 22, 2017.

<sup>65</sup> Mickey Shuey, *Commissioners vote to limit wind farms in Wayne County*, INDIANA ECONOMIC DIGEST, Dec. 8, 2016.

<sup>66</sup> Christopher Stephens, *Wind farm foe rezones to fight back*, THE HERALD BULLETIN, Jul. 17, 2016.

<sup>67</sup> Jeremy Ervin, *Contentious wind farm seeks zoning nod*, JOURNAL & COURIER, Nov. 2, 2016; Land and Liberty Coalition, Full Site (visited Dec. 15, 2020), <https://www.landandlibertycoalition.com/>.

<sup>68</sup> *Commission Rejects Proposal to Build Controversial Wind Farm in Henry County*, FOX 59 NEWS, July 23, 2019.

- **Prairie Breeze Wind Farm:** Juwi Wind withdrew its proposal to construct a 150-MW wind farm in 2014 in Tipton County after the County's Zoning Board of Appeals restrictions made it essentially impossible to proceed.<sup>69</sup>
- **West Fork Wind Energy Project:** In 2015, NextEra proposed a 150-MW wind farm in Rush, Henry, and Fayette Counties. It was denied by Henry County; Rush County passed new restrictive wind ordinances to block the project. It is unclear whether or not the project will move forward in Fayette County.<sup>70</sup>

## 16. IOWA

### 16.1 Local Laws/Ordinances

- **Hardin County:** An indefinite moratorium on wind farm construction was enacted in Fall 2019.<sup>71</sup>
- **Adair County:** The County's Board of Supervisors in November 2019 capped the number of commercial wind turbines allowed in the county at 535; there were 532 turbines built or under construction at the time.<sup>72</sup>
- **Madison County:** In October 2019, the Madison County Board of Supervisors approved a moratorium on wind and solar projects. In December 2020, the Board enacted a wind ordinance that limits wind turbines in the county to the current number of turbines, effectively prohibiting new development.<sup>73</sup>

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<sup>69</sup> *Juwi Wind Abandons Plans for 150MW Prairie Breeze Wind Farm in Tipton Country in BZA-Imposed Impossible Conditions*, INDIANA DG, July 3, 2014.

<sup>70</sup> Bob Hansen, *Not sure if wind project still on tap*, NEWS EXAMINER, May 22, 2020

<sup>71</sup> Karen Uhlenhuth, *In Iowa, Conservative Group Looks to Counter Local Wind & Solar Opposition*, ENERGY NEWS, June 17, 2020.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*; *Madison County puts effective ban on wind energy*, DES MOINES REGISTER, January 20, 2021.

## 16.2 Contested Projects

- **Fairbank Wind Farm:** A wind farm that was approved in 2015 and then constructed was taken down in 2018 following successful legal challenges by residents.<sup>74</sup>
- **Arbor Hill Wind Farm:** In August 2018, the Madison County Coalition for Scenic Preservation challenged Madison County's decision to approve this 52-turbine wind farm. In June 2019 the district court dismissed the case and the plaintiffs appealed; the Iowa Court of Appeals affirmed the lower court in January 2021.<sup>75</sup> However, Madison County subsequently adopted an ordinance that prevents the project from proceeding; MidAmerican has sued the county.<sup>76</sup>
- **MidAmerican Wind XII Project:** In December 2018, The Iowa Utilities Board approved MidAmerican Energy's 591 MW Wind Farm despite challenges from environmental groups such as the Environmental Law & Policy Center that MidAmerican maintains coal and fossil fuel plants in other locations.<sup>77</sup>
- **Waterworks Prairie Park Solar Project:** The Iowa City City Council unanimously voted against a lease agreement with MidAmerican for a solar project in Waterworks Prairie Park due to concern among local residents about the potential damage to the prairie ecosystem.<sup>78</sup>

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<sup>74</sup> Mitchell Schmidt, *Wind turbines haven't been universally welcomed by everyone in Iowa*, THE GAZETTE, Feb. 23, 2019.

<sup>75</sup> Wind Watch, *Madison County Residents Plead For End to Windmill Construction* (visited Dec. 28, 2020), <https://www.wind-watch.org/news/2020/01/30/madison-county-residents-plead-for-end-to-windmill-construction/>; *Madison County Coalition v. Zoning Board of Adjustment of Madison County*, 19-1326 (Iowa Ct. App. 2019).

<sup>76</sup> *MidAmerican Energy sues Madison County Supervisors*, THE DES MOINES REGISTER, Jan. 24, 2021.

<sup>77</sup> Karen Uhlenhuth, *Iowa utility's wind farm approved over objections from clean energy groups*, ENERGY NEWS NETWORK, Dec. 6, 2018.

<sup>78</sup> Rachel Schilke and Riley David, *Iowa City City Council spikes solar energy project in Waterworks Prairie Park*, THE DAILY IOWAN, Apr. 7, 2020.

## 17. KANSAS

### 17.1 State Policy

In 2004, Kansas Governor Kathleen Sebelius instated a wind development moratorium on a small region of the Flint Hills in order to protect the tallgrass prairie. In 2011, Governor Sam Brownback doubled the protected area, renaming it the “Tallgrass Heartland.” This moratorium was continued in July 2020 by Governor Laura Kelley.<sup>79</sup>

### 17.2 Local Laws/Ordinances

- **Reno County:** In response to the opposition to the proposed NextEra wind farm, the Reno County Planning Commission has approved a wind farm zoning ordinance that extends setbacks for commercial wind turbines to 2,500 feet or four times the height of the tower. As of December 2020, the ordinance awaits approval by the Reno County Commission.<sup>80</sup>
- **Douglas County:** In response to the NextEra Energy proposal for the construction of a wind farm in Douglas County in December 2013, the Douglas County Commission issued a moratorium on wind farm development lasting until April 2014.<sup>81</sup>
- **McPherson County:** In response to Gamesa Energía Southwest’s proposal for a 105-MW wind farm in 2005, the county passed a wind farm moratorium that was repeatedly extended, effectively killing the project.<sup>82</sup>
- **Linn County:** In response to a wind project proposed by E.ON in 2018, Linn County has instated a moratorium on wind development. Originally lasting until December 2020, this moratorium has been renewed until December 2021.<sup>83</sup>

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<sup>79</sup> Chad Frey, *Kelly reaffirms wind moratorium*, THE KANSAN, July 30, 2020.

<sup>80</sup> John Green, *Review of commercial wind regs results in little change*, THE HUTCHINSON NEWS, Nov. 20, 2020; John Green, *Planning Commission settles on draft commercial wind regulations*, THE HUTCHINSON NEWS, Dec. 18, 2020.

<sup>81</sup> Kansas Wind Energy Information Network, *Proposed Kansas Wind Projects* (visited Dec. 21, 2020), [http://www.kansasenergy.org/KS\\_wind\\_projects\\_case.htm#proposed](http://www.kansasenergy.org/KS_wind_projects_case.htm#proposed).

<sup>82</sup> *Id.*

<sup>83</sup> Wind Action, *Linn County extends wind turbine moratorium* (visited Dec. 29, 2020), <http://www.windaction.org/posts/51577-linn-county-extends-wind-turbine-moratorium#.X-wHkGRKg-Q>

### 17.3 Contested Projects

- **Neosho Ridge Wind:** Plans by Apex Clean Energy to construct a 300-MW wind farm in Neosho County, despite eventual success, were met with opposition from residents in 2018. Residents expressed concern regarding the cost of the project and potential issues with regulating the wind farm due to the lack of a strong zoning ordinance. Despite this, Apex Clean Energy was able to get a permit and the farm recently began construction.<sup>84</sup>
- **Pretty Prairie Wind Farm:** When this 80-turbine, 220-MW wind farm was proposed in 2019, local Reno County residents launched a campaign and protest petition to pressure the company and county leaders to terminate the project. The County Commission rejected the project in Spring 2019. Developer NextEra unsuccessfully sued to nullify the decision.<sup>85</sup>
- **Anderson County Wind Farm:** In 2015, Calpine Corporation proposed to build roughly 100 turbines over 30,000 acres on a ridge in Eastern Anderson County, to produce roughly 200 MW. Landowners Against Windmills organized in response, arguing that the county's zoning director unlawfully allowed Calpine to construct a 328-foot tower earlier without a special use permit, violating public notice requirements. Calpine Corporation withdrew its project proposal. As of December 2020, there are no Calpine projects in Kansas or public plans to build in Anderson County.<sup>86</sup>
- **Ninnescah Wind Energy Project:** The 150-MW Ninnescah Wind Energy Project first faced opposition in 2013, prompting the developer to withdraw its application and address certain deficiencies. In October 2013, after the developer resubmitted its application, the Special Use permit was unanimously approved by the Pratt County Commission.<sup>87</sup>

<sup>84</sup> Colleen Williamson, *Wind farm opponents: Zoning is the best protection*, PARSONS SUN, Nov. 14, 2018; Michelle Froese, *IEA to build 300-MW Kansas wind farm*, WIND POWER ENGINEERING & DEVELOPMENT, August 6, 2019.

<sup>85</sup> *Kansas judge rules against NextEra in wind farm fight*, OK ENERGY TODAY, June 22, 2020.

<sup>86</sup> Vickie Moss, *Kaput? Wind farm company now silent on plan*, THE ANDERSON COUNTY REVIEW, October 18, 2016; Calpine, *Our Fleet* (visited Dec. 29, 2020), <https://www.calpine.com/Operations/Power-Operations/Our-Fleet>.

<sup>87</sup> Kansas Wind Energy Information Network *supra* note 77.

- **Leon Wind:** A proposed 68-turbine project south of Leon was canceled in 2005. The Butler County Planning Commission unanimously recommended approval of the project but the County Commission rejected it due to local opposition.<sup>88</sup>

## 18. KENTUCKY

### 18.1 Local Laws/Ordinances

- **Clark County:** A group of residents called the Clark Coalition are organizing against a pro-solar zoning ordinance in Clark County. The ordinance would allow industrial solar development on land zoned for agricultural purposes. Currently, a change.org petition has almost 3,000 signatures, arguing that the ordinance would be a “devastating destabilization of our property values, environmental health, and infrastructure efficiency county-wide.” The county’s Fiscal Court has not met to pass the ordinance, and its passage remains up in the air.<sup>89</sup>

### 18.2 Contested Projects

- **Mercer County:** In October 2020, local opponents concerned about farmland preservation successfully blocked a proposed solar farm in Harrodsburg when the county withheld approval, over the recommendation of the planning and zoning commission.<sup>90</sup>
- **Madison County:** Following expiration of a solar moratorium, Acciona Energy USA is in the process of getting approval to construct a solar energy project on approximately 1,100 acres with 250,000 solar panels in Madison County. The County’s Board of Adjustments tabled the approval process at their August 2020 meeting and requested

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<sup>88</sup> *Id.*

<sup>89</sup> Fred Petke, *Thousands Sign Online Petition to Prevent Major Solar Developments in Clark*, WINCHESTER SUN, Aug. 18, 2020.

<sup>90</sup> Robert Moore, *Residents Speak Out Against Proposed Solar Farm*, HARRODSBURG HERALD, Aug. 12, 2020; Facebook, *Preserve Mercer County Farm Land Public Group* (visited Dec. 27, 2020), <https://www.facebook.com/Preserve-Mercer-County-Farm-Land-103778018155757/>.

additional information from the company in response to concerns by local residents, who argue that the solar farm will pose health risks and be an eyesore.<sup>91</sup>

## 19. LOUISIANA

### 19.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 19.2 Contested Projects

*No contested projects were found at this time.*

## 20. MAINE

### 20.1 State Policy

Governor LePage signed an executive order in January 2018 that put a moratorium on wind energy development in certain parts of western and coastal Maine, including coastal islands and significant avian migratory pathways. In February 2019, Governor Mills signed an executive order to end the moratorium.<sup>92</sup>

### 20.2 Local Laws/Ordinances

- **Dixmont:** The 2009 Wind Energy Facility Ordinance includes a setback requirement of 2500 feet from nonparticipating residences.<sup>93</sup>
- **Montville:** The 2009 Wind Turbine Generator Ordinance includes a setback requirement from nonparticipating residences of one mile or 13 times turbine height, whichever is greater.<sup>94</sup>

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<sup>91</sup> Change.org, *Petition on Madison County, KY Board of Adjustments and Development, On Proposed Solar Farm* (visited Dec. 28, 2020), <http://bit.ly/2KwLLnT>.

<sup>92</sup> Exec. Order No. 2 FY. 17/18 (Jan. 24, 2018); Maine Exec. Order No. 3 FY. 18/19 (Feb. 14, 2019).

<sup>93</sup> Dixmont, Me., “Dixmont Wind Energy Facility Ordinance” (Oct. 1, 2009).

<sup>94</sup> Monville, Me., “Town of Montville Wind Turbine Generator Ordinance” (Mar. 28, 2009).



## 20.3 Contested Projects

- **New England Clean Energy Connect (via Central Maine Power):** There has been a multi-year conflict over a transmission line through Maine to transmit hydroelectric power from Quebec. The Maine Department of Environmental Protection (DEP) reviewed the project for more than two years before issuing permits in May 2020. Opponents have pushed for a statewide referendum on the project.<sup>95</sup>
- **Aqua Ventus:** A project to test the feasibility of floating wind turbines was first approved in January 2018 by the Maine PUC but was then tabled due to Governor LePage's now-ended moratorium on wind. Comments were filed by opponents, including local fishermen and town boards. The project was eventually awarded power contract in November 2019 upon a unanimous vote from the PUC.<sup>96</sup>
- **Somerset Wind:** In addition to three existing turbines, more than 200 wind turbines were proposed by NRG in rural Somerset County in 2017. Anti-wind group Saving Maine and county commissioners argued that the turbines would have a visual impact and potentially damage the aquifer that feeds into Moosehead Lake.<sup>97</sup> It appears that the project was not built; no updates after October 2017 could be found.
- **Bingham Wind:** An anti-wind group dropped a lawsuit against SunEdison for building a wind farm in Bingham in 2015. The settlement requires the company to set up a \$2.5 million conservation fund to support conservation groups in Maine.<sup>98</sup>
- **Fox Island Wind:** The Fox Island Neighbors challenged the Condition Compliance Order that the DEP issued to Fox Island Wind. In 2015 Maine's Supreme Judicial Court

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<sup>95</sup> Robert Walton, *New England takes key step to 1.2 GW of Quebec hydro as Maine approves transmission line*, UTILITY DIVE, May 12, 2020; Jessica Piper, *Outside groups fighting over CMP corridor spent \$3.7M after referendum was invalidated*, BANGOR DAILY NEWS, Dec. 15, 2020.

<sup>96</sup> PUC hits pause button on Maine Aqua Ventus' power contract, MAINEBIZ, Jan. 10, 2018; Nadja Skoplajak, *Maine Aqua Ventus Gets Power Contract*, OFFSHOREWIND.BIZ, Nov. 6, 2019.

<sup>97</sup> Doug Harlow, *Opposition to new industrial wind towers grows in Somerset County*, CENTRAL MAINE, Oct. 28, 2017.

<sup>98</sup> Staff, *\$2.5 million conservation fund set up in Bingham wind pact*, CENTRAL MAINE, Sept. 15, 2015.

concluded that the order was supported by substantial evidence and within the agency's discretion.<sup>99</sup>

- **Mars Hill Wind:** The Maine Supreme Judicial Court dismissed a nuisance lawsuit in 2013 against a wind energy company over its northern Maine wind farm, which the plaintiff argued created a noise so loud he was forced to sleep in a soundproof bunker.<sup>100</sup>
- **Oakfield Wind:** This project was completed in September of 2015 and includes 34 turbines with a capacity of 50 MW. Anti-wind group Friends of Main Mountains challenged a Clean Water Act permit granted by the Army Corps of Engineers to allow the project; in 2014 a federal district court denied the challenge.<sup>101</sup>
- **Cumberland Solar Project:** At a 2018 Town Council vote on the Cumberland Solar Project, the facility was opposed by neighbors who feared the visual impact of a solar farm and potentially negative effects on their property values. However, the project has moved forward.<sup>102</sup>
- **Monmouth:** In response to the Monmouth Solar Project, a retroactive moratorium on commercial solar facilities was put on the ballot in Monmouth.<sup>103</sup> In March 2021, the proposed moratorium was defeated and two days later, the project received approval from the Planning Board.<sup>104</sup>

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<sup>99</sup> *Fox Island Wind Neighbors v. DEP*, 116 A.3d 940, 2015 ME 53 (2015).

<sup>100</sup> *Maine high court dismisses Mars Hill man's wind turbine complaint*, ASSOCIATED PRESS, Nov. 11, 2013.

<sup>101</sup> *Completed wind farm to continue providing economic benefits to Oakfield*, BANGOR DAILY NEWS, Sept. 18, 2015; *Friends of the Boundary Mountains v. U.S. Army Corps of Engineers*, 24 F. Supp. 3d 105 (D. Me. 2014).

<sup>102</sup> Alex Lear, *Neighbors not sold on Cumberland solar array*, THE PORTLAND PRESS HERALD, Apr. 24, 2018.

<sup>103</sup> Sam Shepherd, *Monmouth voters defeat moratorium that would have halted commercial solar projects*, CENTRALMAINE.COM, Mar. 10, 2021.

<sup>104</sup> Sam Shepherd, *Monmouth solar project planned on 55 acres gets OK from Planning Board*, CENTRALMAINE.COM, Mar. 17, 2021.

## 21. MARYLAND

### 21.1 Local Laws/Ordinances

- **Alleghany County:** The County's Wind Energy Conversion Systems Regulations provides restrictions on wind energy, including a 2000-foot setback from residences for wind turbines.<sup>105</sup>

### 21.2 Contested Projects

- **Skipjack:** As mentioned, the Skipjack Wind Farm Project is proposed to be built off the coast of Ocean City, Maryland. The project has been met with opposition from the tourism industry, which opponents argue would be negatively impacted by the sight and sound of the turbines. In February 2018 the Ocean City Council voted unanimously to oppose the project, a decision that was later overridden by the Maryland House of Delegates. In August 2020, the Maryland Public Service Commission (PSC) approved a plan to use larger wind turbines for the project.<sup>106</sup>
- **Dan's Mountain Wind Farm:** This wind project in Allegheny County has faced growing opposition, and in 2015 the Zoning Board of Special Appeals rejected variances required for the project to proceed. The PSC refused to preempt the county, concluding that the environmental benefits did not outweigh the aesthetic and auditory costs. In April 2018, the Court of Special Appeals reversed this decision. Despite pressure from Allegheny Neighbors and Citizens for Home Owners Rights Limited group, the PSC ultimately approved the project in June 2020.<sup>107</sup>
- **Washington County Solar Farm:** In November 2015, the county zoning board granted permission to Perennial Solar LLC proposed 8MW solar farm.<sup>108</sup> Opposing residents and

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<sup>105</sup> ALLEGANY COUNTY, M.D, Code § 360-107 (2019).

<sup>106</sup> Scott Dance, *Maryland Offshore Wind Distance*, THE BALTIMORE SUN, Mar. 12, 2018; Matthew Prenskey, *Larger Wind Turbines Approved Off Coast: What You Need to Know*, SALISBURY DAILY TIMES, Aug. 21, 2020.

<sup>107</sup> *Dan's Mountain Wind Force, LLC v. Allegheny Cty. Bd. of Zoning Appeals*, 236 Md. App. 483, 182 A.3d 252, 260 (2018); Scott Dance, *Maryland Wind Farms*, THE BALTIMORE SUN, Nov. 15, 2017; Greg Larry, *Dan's Mountain Wind Farm Receives Approval*, THE CUMBERLAND TIMES-NEWS, June 10, 2020.

<sup>108</sup> Julie E. Greene, *Top Md. court to hear Washington County's appeal over solar farm jurisdiction*, HERALD MAIL MEDIA, Feb. 6, 2019.

the Board of County Commissioners of Washington County -- where the farm would be located -- appealed this decision and in July 2019, the Maryland Court of Appeals upheld the Court of Special Appeals judgment in dismissing the appeal.<sup>109</sup>

## 22. MASSACHUSETTS

### 22.1 Local Laws/Ordinances

- **Charlton:** In 2019 the town amended zoning regulations for large-scale, ground-mounted solar arrays to prevent construction beyond what was already approved following a one-year moratorium imposed in 2018. Only 30 installations are now permitted town-wide.<sup>110</sup>

### 22.2 Contested Projects

- **Bay State Wind:** This offshore wind project was proposed near an uninhabited island off of Martha's Vineyard, belonging to the Town of Chilmark. In 2017 the Chilmark selectmen refused to endorse the project, arguing that it will bring big industry and that the electricity generated would be sent to Somerset instead of the Vineyard.<sup>111</sup>
- **Shutesbury Solar:** A 2016 lawsuit alleged that the site of a proposed 6.2-MW solar farm may be on top of Native American Burial Grounds, and asked for a standard assessment. The U.S. District Court for the District of Massachusetts dismissed the case on jurisdictional grounds, and the project was able to proceed.<sup>112</sup>
- **Falmouth Wind:** In a 2017 lawsuit in which the town selectmen challenged their own zoning board, a judge agreed with the board that wind farm posed a nuisance and

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<sup>109</sup> Les Knapp, *Court of Appeals Holds Solar Siting Decisions Are Made by the State, Not by Local Zoning*, CONDUIT STREET, July 19, 2019.

<sup>110</sup> Debbie LaPlaca, *Charlton town meeting voters close door to new solar farms*, WORCESTER TELEGRAM, Jun. 12, 2019.

<sup>111</sup> Rich Saltzberg, *Chilmark selectmen won't endorse Bay State Wind project*, MV TIMES, Nov. 8, 2017.

<sup>112</sup> Scott Merzbach, *Judge tosses lawsuit over Shutesbury solar project*, GREENFIELD RECORDER, Aug. 14, 2017; Scott Merzbach, *Solar project in Shutesbury moves ahead*, DAILY HAMPSHIRE GAZETTE, Jan. 21, 2018.

ordered the shut-down of two turbines. The town selectmen decided not to appeal this decision.<sup>113</sup>

- **Cape Wind:** Due to litigation by the Alliance to Protect Nantucket Sound and Save our Sound, Cape Wind claims it was unable to meet critical milestones under its power purchase agreement. In 2015, the contract dissolved because of the company's inability to meet the financial deadlines.<sup>114</sup>
- **Amherst solar:** In 2011, the town of Amherst selected SunEdison to build a 2.4-MW solar array on a town landfill. In response, citizens filed a lawsuit in June 2011 against town officials, claiming they violated an agreement with the state that restricts the use of the landfill to active or passive recreation. The lawsuit became moot in February 2012, when the state Legislature passed a bill allowing all capped municipal landfills to serve as sites for solar projects. In April 2012, Plaintiffs amended the lawsuit to include potential impacts on the habitat of the grasshopper sparrow under the Massachusetts Endangered Species Act. Ultimately, town officials terminated their contract with SunEdison in 2016 after learning that the landfill solar project would be considered a take of the rare and endangered grasshopper sparrow.<sup>115</sup>
- **West Bridgewater Solar:** A 2-MW solar array that was proposed by Boston-based Citizens Energy was ultimately rejected by the West Bridgewater zoning board in 2013. Much of the opposition was a function of the proximity of homes to the solar array, which council members argued would have a negative impact on property values.<sup>116</sup>
- **Bullard Farm Solar Plant:** In response to opposition by a local group called Stop Bullard Farm Power Plant, the Holliston Planning Board unanimously decided to veto this proposed project in 2012. Opponents claimed that the solar array would pose risks to the

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<sup>113</sup> Ethan Genter, *Falmouth ordered to shut down turbines*, THE CAPE COD TIMES, Jun. 20, 2017.

<sup>114</sup> *Cape Wind in Jeopardy as Utilities Cancel Power Purchase Contracts*, POWER MAGAZINE, Jan. 7, 2015.

<sup>115</sup> Scott Merzbach, *Controversial Amherst solar project abandoned*, DAILY HAMPSHIRE GAZETTE, Jul. 8, 2016.

<sup>116</sup> Sandra L. Churchill, *West Bridgewater zoning board rejects solar farm proposal*, THE ENTERPRISE, Apr. 24, 2013.

health of area residents due to toxic chemicals in the panels and the output of electromagnetic frequency.<sup>117</sup>

## 23. MICHIGAN

### 23.1 Local Laws/Ordinances

- **Branch County:** The Branch County Concerned Citizens organization mounted a successful campaign against a proposed wind farm by lobbying for an ordinance that effectively blocked it, which received approval from the Sherwood Township planning commission and board, and Township voters. This effectively ended attempts to construct a wind project in the area.<sup>118</sup>
- **Matteson Township:** The Planning Commission approved an amendment to its zoning ordinance in February 2020 that imposes restrictions—including a height limit that developers say will make it impossible to harness any wind energy—following opposition from local residents.<sup>119</sup>
- **Monitor Township:** In March 2019, officials unanimously approved a wind energy moratorium following local opposition to the construction of a proposed wind farm.<sup>120</sup>
- **Sherwood:** Wind energy ordinance restrictions passed with a vote of 321 to 157 by Sherwood Township voters in August 2020. The restrictions were prompted by the proposed Branch County wind farm, which now been put on hold.<sup>121</sup>

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<sup>117</sup> The Patch, *Residents Win Battle Against Bullard Farm Solar Plant* (visited Dec. 13, 2020), <https://patch.com/massachusetts/holliston-hopkinton/residents-win-fight-against-bullard-farm-solar-plant>.

<sup>118</sup> Wind Watch, *DTE Puts Branch Wind Farm on Hold* (visited Dec. 12, 2020), <https://www.wind-watch.org/news/2020/08/12/dte-puts-branch-wind-farm-on-hold/>.

<sup>119</sup> Wind Watch, *Planning Board Approves Wind Turbine Ordinance* (visited Dec. 20, 2020) <https://www.wind-watch.org/news/2020/02/28/planning-board-approves-wind-turbine-ordinance/>

<sup>120</sup> Heather Jordan, *Wind Farms Restricted Under New Monitor Township Zoning Ordinance*, M LIVE MICHIGAN, Mar. 28, 2019.

<sup>121</sup> Wind Watch, *DTE Puts Branch Wind Farm on Hold* (visited Dec. 12, 2020), <https://www.wind-watch.org/news/2020/08/12/dte-puts-branch-wind-farm-on-hold/>

- **Batavia Township:** Similarly to Sherwood Township, voters approved a restrictive wind ordinance in response to the proposed Branch County wind farm in September 2020.<sup>122</sup>
- **Beaver Township:** Beaver Township enacted a 2,000-foot setback requirement to prevent the construction of the DTE wind farm project in May 2018, despite opposition to the requirement.<sup>123</sup>
- **Sanilac Township:** In February 2020 Sanilac Township enacted a height maximum of 100 feet for wind turbines.<sup>124</sup>
- **Watertown Township:** In May 2020, Watertown Township adopted a moratorium on large solar developments. In March 2021, another moratorium was proposed on the establishment, placement, construction, and enlargement of solar energy systems as well as on the issuance of permits, licenses and approvals for solar energy systems.<sup>125</sup>

## 23.2 Contested Projects

- **Superior Solar Project:** This proposed solar farm in Sands Township is projected to produce 150 MW of power. The project was opposed by several hundred residents who expressed their views in a petition to the Sands Township board. In October 2020, the board voted unanimously to approve the project. On December 15, 2020, The Sands Township board approved the siting permit.<sup>126</sup>
- **Crescent Wind Energy Center:** A 166-MW wind farm in Wheatland Township of Hillsdale County faced backlash from a group of local residents called the Concerned

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<sup>122</sup> *Id.*

<sup>123</sup> Isis Simpson-Mersha, *DTE says township ordinance makes wind farm project 'impossible'*, M LIVE MICHIGAN, May 16, 2018.

<sup>124</sup> SANILAC TOWNSHIP, M.I., Code § 5.16 (2020).

<sup>125</sup> Eric Levine, *Watertown continues to study solar ordinance*, SANILAC COUNTY NEWS, Mar. 24, 2021.

<sup>126</sup> Change.org, *Save the Sands Plains, Petition Started Oct. 1, 2020* (visited Dec. 15, 2020), <https://www.change.org/p/sands-township-2000-acre-solar-farm?redirect=false>; Jerry Tudor, *Sands Township solar farm moves one step closer to reality*, TV 6 UPPER MICHIGAN SOURCE, Dec. 22, 2020; Ryan Spitz, *Solar Farm Proposed in Sands*, THE MINING JOURNAL, Oct. 3, 2020; Sands Township Planning Commission Draft Minutes December 15, 2020, available at <http://www.sandstowship.org/wp-content/uploads/2020/12/12.15.2020-Draft-Minutes-PC.pdf>.

Citizens of Wheatland Township who spoke against the project at town meetings. Nonetheless, the township and the Michigan PSC approved the project and it was completed in 2020.<sup>127</sup>

- **Kenowa Ridge Project:** This project was canceled in December 2019 when restrictions enacted by Casnovia Township made the wind farm inviable. The Township initially approved the wind farm, but was sued by local residents concerned about property values and safety.<sup>128</sup>
- **Meade Wind Farm:** After years of planning, the construction of the 100-MW DTE Energy Meade Wind Farm in Meade Township, Huron County was rejected by local residents in May 2015. They voted 222 to 147 to overturn a decision made by the Meade Township board to approve the project by in November 2013 after an opposition campaign.<sup>129</sup>
- **DTE Energy:** A plan by DTE energy to construct a wind farm in Lapeer County has been put on hold as of August 2020. Since 2017, the company has been signing leases for farmland in Batavia, Matteson, Sherwood and Union townships. The townships have implemented restrictive wind energy ordinances in response to the project which, combined with financial difficulties on behalf of the company, led the company to put the project on hold. Groups like Concerned Citizens of Branch County led the opposition against the project.<sup>130</sup>
- **Summit Lake Wind Project:** This 49-turbine wind farm in L'Anse Township, Baraga County, proposed by the company Renewable Energy Systems, was canceled in April 2019. The project faced opposition from the community, with local group Friends of the

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<sup>127</sup> Dawson Bell, *Conflict Of Interest: Officials With Turbine Tower Leases Approve Wind Development*, MICHIGAN CAPITOL CONFIDENTIAL, Nov. 5, 2019; Thumb Wind, *Michigan Wind Farm Map* (visited Dec. 27, 2020), <https://thumbwind.com/michigan-wind-farm-map/>.

<sup>128</sup> Ben Solis, *Energy company nixes planned wind farm east of Muskegon*, M LIVE MICHIGAN, Dec. 24, 2019 <https://www.mlive.com/news/muskegon/2019/12/energy-company-nixes-planned-wind-farm-east-of-muskegon.html>.

<sup>129</sup> Kelly Krager, *Oliver Twp. Planners OK DTE wind park plan*, HURON COUNTY VIEW, AUG. 10, 2015.

<sup>130</sup> Wind Watch, *DTE Puts Branch Wind Farm on Hold* (visited Dec. 12, 2020), <https://www.wind-watch.org/news/2020/08/12/dte-puts-branch-wind-farm-on-hold/>.



Huron Mountains urging against a zoning ordinance amendment that would have allowed project.<sup>131</sup>

- **Beaver Township:** 2018 zoning ordinance passed by the Beaver Township Board of Trustees intentionally prevented DTE Energy from developing its planned wind farm project in the community after residents voiced their concerns about property value, wildlife, proximity to neighboring property lines and physical safety.<sup>132</sup>
- **Clinton County Wind Farm:** in January 2013 Clinton County issued Forest Hills Energy a special use permit to operate a wind farm. However, while the application was pending, three townships within the county enacted wind energy ordinances that effectively blocked the project. The developer sued and a trial court found the ordinances unenforceable because they were not properly enacted under Michigan law; the Michigan Court of Appeals affirmed.<sup>133</sup>

## 24. MINNESOTA

### 24.1 Local Laws/Ordinances

- **Minnetrista:** A yearlong moratorium on the construction of solar projects in agricultural preserve areas was implemented in October 2020 pending a potential revision of the 2015 zoning ordinance.<sup>134</sup>

### 24.2 Contested Projects

- **Minnetrista Solar Farm:** The Minnetrista planning board unanimously recommended that the city council approve this project, which was then met with opposition when

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<sup>131</sup> Benjamin Raven, *Company cancels plans for wind farm with 49 turbines in Michigan's UP*, M LIVE MICHIGAN, Apr. 22, 2019.

<sup>132</sup> Isis Simpson-Mersha, *DTE says township ordinance makes wind farm project 'impossible'*, M LIVE MICHIGAN, May 16, 2018.

<sup>133</sup> *Forest Hill Energy-Fowler Farms, L.L.C. v. Township of Bengal, et al.* (No. 319134 Mich. Ct. Appl. Dec. 4, 2014).

<sup>134</sup> Mike Hughlett, *Company Answering to Wind Farm Noise Complaints in Faribault County*, STAR TRIBUNE, Feb. 17, 2018.

residents became concerned that it would disturb the rural nature of their lifestyle. In October 2020, the city council implemented a yearlong moratorium on solar development in Agricultural preserve areas, preventing the project's construction.<sup>135</sup>

- **Marshall Solar Project:** This 500-acre, 62-MW solar panel complex in southwestern Minnesota faced opposition from local residents, who argued that it was “an assault on the quiet country setting.” The PUC unanimously approved the project in March 2016, rejecting opponents’ concerns.<sup>136</sup>
- **Big Blue Wind Farm:** This 18-turbine, 36-MW wind farm went online in December 2012. After residents complained about noise pollution for years, in 2017 the PUC intervened and discovered that the project’s noise protocol had never been approved. Residents then pushed for the farm to be completely shut down, but the PUC instead ordered the developer to address the problems and issued a warning.<sup>137</sup>

## 25. MISSISSIPPI

### 25.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 25.2 Contested Projects

*No contested projects were found at this time.*

## 26. MISSOURI

### 26.1 Local Laws/Ordinances

- **Buchanan County:** In March 2020, the Buchanan County Commission passed a moratorium on all wind development in the region, citing property devaluation,

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<sup>135</sup> Elizabeth Hustad, *Minnestricta: No Solar Farm Near Whaletail Lake*, THE LAKER PIONEER, Nov. 5, 2020.

<sup>136</sup> Mark Steil, *Controversial solar farm near Marshall gets OK to start construction*, MPR NEWS, Mar. 31, 2016.

<sup>137</sup> Mike Hughlett, *Company Answering to Wind Farm Noise Complaints in Faribault County*, STAR TRIBUNE, Feb. 17, 2018.

population density, and effects on quality of life. The commission also noted that at public hearings, residential testimonies were exclusively anti-wind.<sup>138</sup>

- **Clinton County:** In 2016, Clinton County commissioners passed a moratorium on wind development, which was last renewed in September 2019. The local community is highly divided on the issue.<sup>139</sup>

## 26.2 Contested Projects

- **Osborn Wind Project:** The 200-MW Osborn Wind Project was proposed in Clinton and DeKalb Counties in 2010. Local residents founded the Concerned Citizens for the Future of Clinton and DeKalb Counties group to oppose wind development. Following a number of lawsuits, Next Era and the Clinton County Zoning Commission reached a 2018 settlement agreement in 2018 allowed for the construction of up to 24 turbines.<sup>140</sup>

# 27. MONTANA

## 27.1 Local Laws/Ordinances

*No ordinances were found at this time.*

## 27.2 Contested Projects

- **Crazy Mountain Wind Project:** In 2010, Pattern Energy proposed a 26-turbine project in Sweet Grass County. Four neighboring landowners launched a legal challenge based on their concerns about road usage, impacts on property values, and alleged nuisance. In May 2019, a Montana judge issued a preliminary injunction on construction while the case awaited trial. In July 2019 Pattern announced that the preliminary injunction made

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<sup>138</sup> Clayton Anderson, *County commissioners ban commercial wind energy*, ST. JOSEPH NEWS-PRESS, Mar. 12, 2020.

<sup>139</sup> Brett Adkison, *Commissioners approve wind energy moratorium*, THE CLINTON COUNTY LEADER, Feb. 4, 2016; Emilie Syberg, *Clinton County commissioners keep wind farm moratorium in place*, WBAA, Sept. 16, 2019.

<sup>140</sup> Matt Flener, *New lawsuit filed, one dismissed near Osborn Wind Project*, KMBC NEWS, Jan. 6, 2020; Brett Adkison, *Commissioners approve wind energy moratorium*, THE CLINTON COUNTY LEADER, Feb. 4, 2016; Ray Scherer, *Opposition to wind farms remains steady*, ST. JOSEPH NEWS-PRESS, May. 10, 2016.

it impossible to obtain the necessary financing to complete the project, and abandoned development.<sup>141</sup>

- **Valley County Wind Project:** In 2005, GreenHunter Energy proposed a 500-MW wind farm and transmission line north of Glasgow, Montana. The Montana Wilderness Association, Montana Audubon Society, and the Montana Wilderness Society all came out against the project due to its potential impact on wilderness area and effects on avian wildlife, leading the company to abandon the project.<sup>142</sup>
- **Mission Creek Wind Project:** In 2010, Sagebrush Energy proposed an 11-turbine wind farm east of Livingston, Montana. Local residents formed an opposition group, Friends of Mission Creek, in order to halt the project out of concern for the natural landscape and local populations of golden eagles. The Mission Creek project stalled shortly thereafter.<sup>143</sup>

## 28. NEBRASKA

### 28.1 Local Laws/Ordinances

- **Adams County:** A 2010 ordinance limits utility scale wind turbine height to 400 feet.<sup>144</sup>
- **Dakota County:** In May 2020, the county was considering moratorium on wind farms but pushed back the vote due to coronavirus.<sup>145</sup>

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<sup>141</sup> *Diana's Great Idea, LLC v. Jarrett*, 401 Mont. 1, 6, 471 P.3d 38 (2020); Johnathan Hettinger, *Judge temporarily halts construction on Crazy Mountain Wind project*, LIVINGSTON ENTERPRISE, March 20, 2019; *Neighbors sue to block planned Montana wind farm*, GREAT FALLS TRIBUNE, Oct. 15, 2018.

<sup>142</sup> Associated Press, *Environmentalists blamed for collapse of proposed Glasgow wind farm*, BILLINGS GAZETTE, Sept. 23, 2007.

<sup>143</sup> Daniel Person, *Across southwest Montana, companies plan to ramp up the region's wind industry. It hasn't been a breeze*, BOZEMAN DAILY CHRONICLE, Oct. 24, 2010.

<sup>144</sup> ADAMS COUNTY, NE., Zoning Regulations § 8.04 (August 3, 2010).

<sup>145</sup> Nick Hytrek, *Dakota County tables action on wind farm moratorium*, SIOUX CITY JOURNAL, May 4, 2020.

- **Gage County Wind:** After a three-month moratorium on any new special use permits for wind farms, in September 2020 the county effectively banned wind with a 1-mile setback from non-participating adjacent homes.<sup>146</sup>
- **Gretna City Solar:** In July 2020, Gretna City Council approved a temporary moratorium on solar plants and associated facilities until city codes are updated.<sup>147</sup>
- **Madison County:** In April 2018, the county approved a wind moratorium after local landowners obtained leases for a possible wind farm. The current status is unclear.<sup>148</sup>
- **Stanton County:** In November 2017, the county passed a ban on wind farms and a moratorium on any projects being considered. As of December 2020, the ban is still in place.<sup>149</sup>
- **Webster County Wind:** In 2018, Webster County established a minimum setback of 1000 feet from any occupied buildings on abutting properties.<sup>150</sup>
- **Burt County:** In 2020 the county planning commission passed restrictions requiring wind energy systems up to 500 feet tall to have 1500 foot-setbacks, and systems over 500 feet to have a half mile setback, in response to a proposed wind farm.<sup>151</sup>

## 28.2 Contested Projects

- **Burt County Wind:** Con Edison's proposal to construct 86 wind turbines was met with public opposition due to the proposed turbine height of up to 650 feet tall. In 2020 the county planning commission passed restrictions, discussed above. The project is still awaiting approval.<sup>152</sup>
- **Milligan 1 Wind Farm:** In November 2019, a group of Saline County residents sued to block this 99-turbine, 300-megawatt wind farm, arguing that ownership of the project

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<sup>146</sup> Doug Kennedy, *Gage County Approves Temporary Moratorium on New Wind Farm Applications*, NEWS CHANNEL NEBRASKA, Sept. 9, 2020.

<sup>147</sup> Rachel George, *City Council Digest*, OMAHA WORLD-HERALD, July 28, 2020.

<sup>148</sup> Jerry Guenther, *Madison County approves moratorium on wind farms*, NORFOLK DAILY NEWS, Apr. 4, 2018.

<sup>149</sup> Jerry Guenther, *Wind energy gets some 'blow back,'* NORFOLK DAILY NEWS, Nov. 21, 2017.

<sup>150</sup> WEBSTER COUNTY, NE., Zoning Regulations §609 (September 2018).

<sup>151</sup> *Nebraska wind project runs into opposition by residents*, OK ENERGY TODAY, Feb. 24, 2020.

<sup>152</sup> *Id.*

unlawfully changed hands. The lawsuit was unsuccessful and construction is underway.<sup>153</sup>

- **Kilgore Wind Farm:** In October 2019, Cherry County Board granted a conditional use permit for the Kilgore Wind Project, and a group of local opponents challenged the decision the following month.<sup>154</sup> In August 2020, District Judge Kosizek allowed the suit to proceed.<sup>155</sup>

## 29. NEVADA

### 29.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 29.2 Contested Projects

- **Crescent Peak Wind Energy Project:** In 2018, the Bureau of Land Management rejected an application by Eolus Winds to construct a 248-turbine wind farm on 32,531 acres of public land in Western Nevada. It appears that conservation groups and local tribes successfully lobbied Assistant Secretary Joe Balash to reject the project. This project had the potential to further endanger native animals such as the Mojave Desert Tortoise, golden eagles, and bighorn sheep. Tribal leaders were also outspoken about the project's consequences on the visibility of their sacred Spirit Mountain (Avi Kwa' Ame) and the degradation of their ancestral lands.<sup>156</sup>
- **Spring Valley Wind Farm:** Spring Valley Wind Farm began operating in August 2012 nearly a decade after the project was first proposed. In 2011, conservationists and biologists filed suit against the Bureau of Land Management, arguing that the agency

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<sup>153</sup> Matt Olberding, *Group sues to stop Saline County wind farm*, LINCOLN JOURNAL STAR, Nov. 11, 2019; Milligan 1 Wind, *Construction Updates* (visited Dec. 21, 2020), <https://www.milligan1wind.com/construction-updates/>.

<sup>154</sup> Todd Von Kampen, *Fresh gusts in Sandhills wind-energy project fight*, THE NORTH PLATTE TELEGRAPH, Dec. 7, 2019.

<sup>155</sup> Todd Von Kampen, *Group continues legal battle to reverse Cherry County's endorsement of Kilgore-area wind farm*, THE NORTH PLATTE TELEGRAPH, Sept. 17, 2020.

<sup>156</sup> Scott Streater, *BLM rejects massive Nev. Wind Project*, GOVERNOR'S WIND ENERGY COALITION, Dec. 4, 2018; Dr. Donald Allen Deever, *Freedom of Information Act Document Reveals Who Shut Down Massive Wind Farm in Southern Nevada*, SIERRA NEVADA ALLY, Dec. 8, 2018.

had conducted an insufficient environmental review before approving the project and that the approval conflicted with standing protections for Native American heritage sites. In particular, they sought to defend populations of Mexican free tailed bats. However, the suit was settled in 2012 and construction began within the year.<sup>157</sup>

## 30. NEW HAMPSHIRE

### 30.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 30.2 Contested Projects

- **West Portsmouth:** In 2018 a 10-MW solar farm in Concord was rejected by the local zoning board because it had too much “impervious surface” for a residential open-space zoning lot. The developer, NextEra Energy, argued that state law required that renewable energy project not be “unreasonably limited by use of municipal zoning powers or by the unreasonable interpretation of such powers.” Rehearing was denied.<sup>158</sup>
- **Antrim Wind project:** In 2017, the state’s Site Evaluation Committee (SEC) green-lighted the 29-MW Antrim wind farm. Project opponents who were concerned about wildlife and visual impacts, noise, and property values appealed the decision to the New Hampshire State Supreme Court, which rejected their challenge.<sup>159</sup>
- **Wild Meadows wind power project:** This 75.9-MW, 23-turbine proposed wind project was abandoned following opposition from local groups including the Appalachian Mountain Club.<sup>160</sup>

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<sup>157</sup> Henry Brean, *Wind Energy Project Gearing Up After Lawsuit Settled*, LAS VEGAS REVIEW-JOURNAL, Apr. 17, 2012.

<sup>158</sup> Caitlin Andrews, *Concord zoning board to hear massive solar farm proposal*, CONCORD MONITOR, Feb. 6, 2018; Caitlin Andrews, *West Portsmouth Street solar project denied rehearing*, CONCORD MONITOR, Jun. 6, 2018.

<sup>159</sup> Paul Cuno-Booth, *State’s high court shoots down appeal against Antrim Wind; project can go forward*, THE KEENE SENTINEL, May 12, 2018.

<sup>160</sup> Allie Morris, *Ibiredrola abandons Wild Meadows wind farm, raising questions about future of wind power in N.H.*, CONCORD MONITOR, May 29, 2014.

- **Granite Reliable Wind Farm:** A 99-MW wind farm consisting of 33 wind turbines was proposed near Groveton in 2010. Opponents, including the Appalachian Mountain Club, claimed that the development might impact sensitive high-elevation forest, and local area residents feared that the project would threaten jobs at a nearby biomass plant. However, they never filed legal challenges against the project, which was ultimately built as originally planned.<sup>161</sup>

## 31. NEW JERSEY

### 31.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 31.2 Contested Projects

- ***Clean Water Action v. Jackson Township:*** In 2017, a New Jersey Superior Court dismissed a challenge to municipal approvals for a 21-MW solar array on 67 acres owned by Six Flags Theme Parks, Inc. at its theme park in Jackson Township in Ocean County. The plaintiffs alleged that land use ordinances that permitted the solar array conflicted with the Jackson Township’s Master Plan. The court noted that the solar array would meet substantially all of the Six Flags theme park’s energy needs and reduce reliance on carbon-emitting sources of power. The court found that the ordinances were substantially consistent with the objectives and goals of the Master Plan.<sup>162</sup>
- **Brandon:** After a 2.2-MW solar project was proposed on a farm in Brandon, in July 2020 residents expressed concern about converting agricultural land into a solar array and the potential to depreciate property values. The developer has not yet submitted a plan to the PUC for a certificate of public good.<sup>163</sup>

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<sup>161</sup> U.S. Chamber of Commerce, *Progress Denied: The Potential Economic Impact of Permitting Challenges Facing Proposed Energy Projects* (visited Dec. 14, 2020), <https://www.uschamber.com/report/progress-denied-the-potential-economic-impact-of-permitting-challenges-facing-proposed-energy>; Dept. of Energy, *Granite Reliable* (visited Dec. 29, 2020), <https://www.energy.gov/lpo/granite-reliable>.

<sup>162</sup> *Clean Water Action v. Jackson Township*, L-001251-15 (N.J. Super. Ct., June 19, 2017).

<sup>163</sup> Keith Whitcomb, *Rutland solar project seeks to resolve legal issues*, THE RUTLAND HERALD, Jul. 1, 2020.



- **Bedminster:** Residents in Bedminster opposed a solar array on a 132-acre farm, arguing that the proposed location of the project would ruin the rural landscape. The solar developer withdrew its proposal in 2016.<sup>164</sup>

## 32. NEW MEXICO

### 32.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 32.2 Contested Projects

- **Buena Vista Solar Plant:** NextEra Energy Resources has proposed this 100-MW project in Otero County on New Mexico State Trust land with an expected completion date of May 2022. A County Commissioner has opposed the project, citing the “impact it could have on the region’s oil and gas industry.” The project was presented to the Otero County Commission in July 2020 and its future remains up in the air.<sup>165</sup>
- **Las Cruces:** El Paso Electric applied to build a 2-MW community solar project in April 2018. The project was controversial, with opponents claiming that it would be too expensive and supporters arguing that it would provide community solar to low-income residents. In November 2018, the New Mexico Public Regulation Commission granted a motion by Santa-Fe based advocacy group New Energy Economy to deny the project.<sup>166</sup>

## 33. NEW YORK

### 33.1 State Policy

In 2020 New York enacted the Accelerated Renewable Energy Growth and Community Benefit Act to expedite the siting of renewable energy facilities. Under the new law—enacted

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<sup>164</sup> Dave Hutchinson, *Bedminster solar power plant plan officially scrapped*, NJ.COM, Mar. 8, 2016.

<sup>165</sup> *NextEra Energy Proposing New Solar Farm in New Mexico*, OK ENERGY TODAY, July 27, 2020.

<sup>166</sup> Blake Gumprecht, *PRC rejects solar community project for Dona Ana County*, LAS CRUCES SUN NEWS, Nov. 2, 2018.

because the existing process for permitting wind and solar energy projects was extremely slow—developers can seek expedited approval from the state for renewable energy facilities that are 25 MW or greater.<sup>167</sup>

### 33.2 Local Laws/Ordinances

- **Westerlo:** In August of 2019, Westerlo voted unanimously to enact a yearlong moratorium on commercial solar arrays, commercial wind turbines, and the energy-storage systems that could be used to collect energy in these systems.<sup>168</sup>
- **Porter:** In January 2020, the town of Porter approved a moratorium on certain solar energy system lasting six months for certain systems, despite community opposition.<sup>169</sup>
- **Worth:** The Worth town board passed a law in April 2019 severely restricting wind farm construction. Many residents came out to protest the new law, but were met with opposition.<sup>170</sup>
- **Somerset:** In January 2018 the Somerset town board unanimously passed a law that effectively banned industrial wind turbines in the town. The new zoning amendments ban structures over 150 feet tall, allow wind only in industrial zones, prohibit wind turbines that sell their electricity off-site, and require turbines to be at least a mile away from buildings.<sup>171</sup>
- **Seneca:** Local Law No. 6 of 2014 requires that all major solar systems have a surface area of less than 4000 square feet, have a building permit, be located in a side or rear yard, and prevent reflective glare onto any inhabited buildings, properties, or roads.<sup>172</sup>

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<sup>167</sup> See N.Y. EXEC. LAW § 94-c(1).

<sup>168</sup> In *Westerlo's 'perfect storm,' solar moratorium enacted*, THE ALTAMONT ENTERPRISE, Aug. 8, 2019.

<sup>169</sup> Staff, *Porter approves moratorium on solar energy*, LEWINSTON-PORTER SENTINEL, Jan. 23, 2020.

<sup>170</sup> Emily Griffin, *Worth residents criticize town officials for wind law they don't remember passing*, WWNY-TV, Jun. 19, 2019.

<sup>171</sup> Thomas J. Prohaska, *Somerset passes tougher anti-wind turbine laws*, THE BUFFALO NEWS, Jan. 30, 2018.

<sup>172</sup> SENECA, N.Y., Code § X-92 (2014).

- **Coxsackie:** In 2019 the Town of Coxsackie enacted an ordinance restricting solar development in commercial and industrial zones. The ordinance effectively blocks two proposed projects (including Flint Mine Solar, discussed on p. 42), though the state can override the local law in the statewide Article 10 proceedings on those projects.<sup>173</sup>
- **Duanesburg:** In January 2020, Duanesburg adopted a six-month moratorium on large-scale commercial solar energy development in order to consider changes to a 2016 solar law and amid opposition to a proposed Eden Renewables project.<sup>174</sup>
- **Cliffton Park:** In January 2021, Clifton Park Town Board approved a six-month moratorium on ground-mounted solar facilities producing more than 25 KW of capacity. The moratorium is intended to allow time to study the recent approval of multiple solar facilities and offer recommendations for the future.<sup>175</sup>

### 33.3 Contested Projects

- **Cassadaga Wind Project:** The opposition organization Concerned Citizens of Cassadaga Wind Project intervened in the statewide Article 10 proceeding, in which the developer sought a Certificate of Environmental compatibility and public need, but ultimately the project was approved by the Siting Board in January 2018.<sup>176</sup>
- **Black Oak Wind Farm:** Outside Ithaca, this community wind project—which once had near unanimous local support—was held up and ultimately canceled due to local opposition.<sup>177</sup>
- **Lighthouse Wind:** The Somerset Town Board passed restrictions that would bar this project, though under the Article 10 process, the state could override those restrictions.<sup>178</sup>

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<sup>173</sup> See *Friends of Flint Mine Solar v. Town Board of Coxsackie*, No. 19-0216 (N.Y. Sup. Ct. Sept. 13, 2019) at 12.

<sup>174</sup> Stephen Williams, *Duanesburg adopts solar moratorium*, THE DAILY GAZETTE, Jan. 10, 2020.

<sup>175</sup> Glenn Griffith, *Town approves moratorium on solar projects*, COMMUNITY NEWS, Jan. 15, 2021.

<sup>176</sup> Windpower Engineering and Development, *New York Siting Board approves 126-MW Cassadaga wind farm* (visited Dec. 15, 2020), <https://www.windpowerengineering.com/new-york-siting-board-approves-126-mw-cassadaga-wind-farm/>.

<sup>177</sup> Natural Gas Now, *The Black Oak Wind Farm Is a Black Mark on the Solutions Project* (visited Dec. 15, 2020), <https://naturalgasnow.org/the-black-oak-wind-farm-is-a-black-mark-on-the-solutions-project/>.

<sup>178</sup> *Somerset Town Board approves anti-wind zoning laws*, LOCKPORT UNION SUN & JOURNAL, Jan. 29, 2018.

In July 2020, however, the project was effectively ended as its last meteorological tower was removed.<sup>179</sup>

- **Mad River Wind Farm:** This is a 350-MW wind farm proposed by Atlantic Wind LLC that would be constructed in the Tug Hill region of upstate New York. The Tug Hill Tomorrow Land Trust has opposed the project due to its potential environmental and ecological impacts. Some residents of Worth, the town where the project is set to be constructed, are angry at their town board for passing a law severely restricting wind farm construction, which they say was passed in secret, and which town board members claim to “not remember passing.”<sup>180</sup>
- **Dryden Solar:** Willow Glen Cemetery brought a lawsuit against the town of Dryden challenging the procedure that Dryden town officials followed in their assessment of a solar array proposed next to the cemetery. In 2017 a New York Supreme Court dismissed this petition, and the project was successfully completed.<sup>181</sup>
- **Oneida Solar:** Residents of Oneida sued the city in August 2015 over a proposed 2.8-MW solar farm that would be built on 13 acres of city-owned land. They challenged the process the city followed in approving the power agreement for the project, and argued that they were not adequately informed about plans to use the land. A Madison County judge rejected the petition as untimely.<sup>182</sup>
- **Richfield Wind:** Neighbors who said they would be negatively affected by a 18.4-MW wind farm in Ridgefield sued the planning board in 2015 for approving the project. A State Supreme Court ruled for the plaintiffs, but an appellate judge reversed the decision.<sup>183</sup>

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<sup>179</sup> Thomas J. Prohaska, *Tower removal confirms demise of Somerset wind project, supervisor says*, THE BUFFALO NEWS, Jul. 22, 2020.

<sup>180</sup> TUG HILL TOMORROW LAND TRUST, MAD RIVER WIND FARM IMPACT ASSESSMENT STUDY IN THE TUG HILL REGION OF NEW YORK STATE (Apr. 2018); Emily Griffin, *Worth Residents Criticize Town Officials for Wind Law They Don't Remember Passing*, WWNY-TV, Jun. 19, 2019.

<sup>181</sup> *Matter of Willow Glen Cemetary Ass'n v. Dryden Town Bd.*, 2017 NY Slip Op 32676(U), EF2017-0208 (Oct. 27, 2017).

<sup>182</sup> John Brewer, *Judge Dismisses Oneida City Solar Farm Lawsuit*, THE ONEIDA DISPATCH, Apr. 27, 2016.

<sup>183</sup> Joe Mahoney, *Appeals court puts Richfield wind farm back on track*, THE DAILY STAR, May 22, 2015.

- **Orangeville wind:** An organization called Clear Skies Over Orangeville brought two lawsuits against the town of Orangeville regarding wind farms in the area. The first claimed several town board members had signed contracts with a project developer and the second suit claimed the project would violate the town's noise ordinance. A New York State Supreme Court judge dismissed both cases in 2018.<sup>184</sup>
- **Cape Vincent Wind Project:** This British Petroleum project, begun in 2005, had stalled due to local opposition, but was restarted under the state permitting process. Opposition was primarily voiced by summer residents. Ultimately the project was abandoned due to BP's changing economic priorities.<sup>185</sup>
- **Flint Mine Solar:** A 100-MW solar project proposed for Coxsackie and Athens, in Greene County, is opposed by the Town of Coxsackie despite support by local residents. In 2019 Coxsackie passed an ordinance that would block the project (discussed on p. 39), though the state Siting Board can override the ordinance. The Town is opposing the project in the statewide Article 10 proceeding in which the developer is seeking a certificate of environmental compatibility and public need.<sup>186</sup>
- **EWT Community Wind:** In November 2020 the Town of Portland adopted a wind energy ordinance that threatens a community-scale distributed generation wind project.<sup>187</sup>
- **Eden Renewables, Duanesburg:** In December 2019, resident Lynne Bruning and Susan Biggs filed a lawsuit to annul the town of Duanesburg Planning Board's approval of a

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<sup>184</sup> Tim Fenster, *In the shadow of giants: Some say noise, vibrations from Orangeville Wind Farm are unbearable*, LOCKPORT JOURNAL, Feb. 12, 2018.

<sup>185</sup> Marcus Wolf, *Opponents applaud withdrawal, backers lament*, WATERTOWN DAILY TIMES, Feb. 12, 2019.

<sup>186</sup> See *Friends of Flint Mine Solar v. Town Board of Coxsackie*, No. 19-0216 (N.Y. Sup. Ct. Sept. 13, 2019) at 12; Application of Flint Mine Solar LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10, 18-F-0087 (N.Y.P.S.C.), Public Statement Hearing Transcript, Oct. 22, 2020 at 6pm, available at <https://on.ny.gov/3lrBLJE>, <https://on.ny.gov/32EhUzI>.

<sup>187</sup> See *NY Directwind Portland LLC, et al. v. Town of Portland* (Chautauqua Cty. Sup. Ct., Index No. EK120210000236).

solar project by Eden Renewables.<sup>188</sup> An appellate court ruled for the board in November 2020.<sup>189</sup>

- **South Fork Wind Farm:** A cable to connect New York's first offshore wind farm to the grid has faced opposition by local opponents, including a group called Citizens for the Preservation of Wainscott, who have opposed the project before the New York Public Service Commission.<sup>190</sup> In January 2021, Citizens for the Preservation of Wainscott filed a lawsuit against East Hampton Town Board for approving an easement allowing the cable to land on Wainscott Beach and town-owned roads.<sup>191</sup> The Public Service Commission granted the cable a key permit in March 2021.<sup>192</sup>

## 34. NORTH CAROLINA

### 34.1 Local Laws/Ordinances

- **Hertford County:** Hertford County Commissioners unanimously approved a temporary solar moratorium in October 2020. The moratorium was enacted in response to local opposition to the proposal for development of a nearby solar farm.<sup>193</sup>
- **Rowan County:** In October 2019, Rowan County commissioners instituted a moratorium on large solar farms, set to expire in April 2020. It has since been extended twice; the most recent extension was granted on October 5, 2020. It is set to expire on April 6, 2021.<sup>194</sup>

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<sup>188</sup> Pete DeMola, *Town of Duanesburg delays vote on PILOT solar deal as questions percolate*, THE DAILY GAZETTE, Dec. 30, 2019.

<sup>189</sup> *Biggs v. Eden Renewables, LLC*, 188 A.D.3d 1544 (3d Dept. 2020).

<sup>190</sup> Beth Young, *State Agencies Support South Fork Wind Farm as Wainscott Fumes*, EAST END BEACON, Oct. 13, 2020.

<sup>191</sup> Christopher Walsh, *Group Sues to Block Wind Farm Cable in Wainscott*, THE EAST HAMPTON STAR, Feb. 2, 2021.

<sup>192</sup> Beth Young, *Public Service Commission Approves Wind Farm Cable Landing*, EAST END BEACON, March 18, 2021.

<sup>193</sup> Cal Bryant, *Moratorium slows start-up of Hertford Co. solar farms*, ROANOKE CHOWAN NEWS-HERALD, Oct. 6, 2020.

<sup>194</sup> Ben Stansell, *Planning board talks through new rules for solar farms*, SALISBURY POST, Oct. 27, 2020.

- **Woodland:** In response to the opposition to the construction of Strata Solar Company's proposed project in 2015, the Woodland Town Council approved a complete solar moratorium.<sup>195</sup>

## 34.2 Contested Projects

- **Maroon Solar:** On November 16, 2020, the Culpeper County Planning Commission unanimously recommended against granting a conditional use permit for the Maroon Solar project. Strata Solar had proposed to construct a 1700-acre, 149-MW project on rural farmland. Citizens for Responsible Solar, with many other historical, conservation and environmental groups, argued against the project, arguing that it would be too close to sensitive riverine resources and "significant confederate Civil War history." A petition against the project got 1,400 signatures.<sup>196</sup>
- **Shady Grove Solar Farm:** Yadkin County denied a conditional use permit for the Shady Grove Solar farm in October 2020. The farm, a joint venture between Silver Creek Energy and Pine Gate Renewables, was proposed to produce 22 MW on 285 acres. Residents expressed concerns to the board regarding flooding from deforestation, water quality impacts, tourism, and if the project had enough research and planning in its proposal.<sup>197</sup>
- **Woodland:** In 2015, the Woodland Town Council rejected a proposal to rezone a section of farmland, effectively blocking a 5-MW solar farm proposed by Strata Solar Company. Residents organized against the project, expressing unfounded fears about cancer and

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<sup>195</sup> Max Blau, *How a North Carolina village came to believe that solar farms were "killing the town"*, THE GUARDIAN, Dec. 21, 2015.

<sup>196</sup> Allison Brophy Champion, *Too big: Culpeper County planners deny Maroon Solar permit*, CULPEPER STAR-EXPONENT, Nov. 17, 2020.

<sup>197</sup> Kitsey Burns Harrison, *Conditional use permit denied for solar farm near Smithtown*, YADKIN RIPPLE, Oct. 13, 2020.

other impacts. Residents asserted that “solar farms would suck up all the energy from the sun and businesses would not come to Woodland.”<sup>198</sup>

## 35. NORTH DAKOTA

### 35.1 Local Laws/Ordinances

- **Mercer County:** In May 2020, Mercer County enacted a moratorium on wind development applications in order to block the Garrison Butte Wind Farm. The county plans to maintain this moratorium for at least two years to allow local officials to develop more comprehensive regulations for local wind projects.<sup>199</sup>
- **McLean County:** In May 2020, McLean County banned the construction of new transmission lines for wind energy, effectively enacting a moratorium on new wind projects. In August 2020, McLean County also introduced a 2-year moratorium on solar development.<sup>200</sup>

### 35.2 Contested Projects

- **Garrison Butte Wind Farm:** In 2018, Capital Power proposed a 152-MW wind farm in Mercer County. At a public hearing for the project, local residents expressed concern over the “attack on coal,” an industry that employs many residents. The Mercer County Commission passed a moratorium on wind development in order to block the project. A similar coalition appeared at the public hearing over the moratorium’s extension; local group Faces of North Dakota Coal submitted a pro-coal letter to the commission with 500 local signatures. The project developer has expressed interest in moving the project elsewhere.<sup>201</sup>

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<sup>198</sup> Max Blau, *How a North Carolina village came to believe that solar farms were “killing the town”*, THE GUARDIAN, Dec. 21, 2015.

<sup>199</sup> Amy R. Sisk, *Mercer County to keep wind moratorium in place*, THE BISMARCK TRIBUNE, July 16, 2020.

<sup>200</sup> Jeffrey Tomich, *How a coal plant closure created wind bans and grid limbo*, E&E NEWS REPORTER, July 24, 2020; Mike McFeely, *McFeely: ‘Betting on Einstein,’ North Dakota coal county bans solar*, GRAND FORKS HERALD, Aug. 17, 2020.

<sup>201</sup> Amy R. Sisk, *Tension over renewables in coal county on display at wind moratorium hearing*, THE BISMARCK TRIBUNE, July 1, 2020.



- **Burleigh-Emmons Wind Farm:** PNE Wind proposed a 70-turbine wind farm in Burleigh County near Morton Township. The issue became highly divisive in the local community, leading to a recall vote for Burleigh County officials who supported the project. Opponents began an anti-wind non-profit, North Dakota Visionkeepers, to block the project. The Burleigh County Planning and Zoning Commission denied both standard and special use permits for the project. The new project owner, Burke Wind, intends to move the project to Emmons or Logan counties.<sup>202</sup>
- **Charlie Creek Wind Farm:** In 2016, Orion Renewable Energy Ground submitted a zoning application for a 383-MW project in Billings County. During the public hearing for this project, local residents expressed concerns over property devaluation, effects on local tourism, and impacts on the visual landscape. In particular, residents were concerned about turbine visibility from the Painted Canyon Visitor Center at Theodore Roosevelt National Park. The Billings County Commissioners denied the permit.<sup>203</sup>
- **Brady Wind Farm:** In 2015, Dickinson Wind applied for a conditional use permit to construct an 87-turbine facility in Stark County. Over 150 community members attended the public hearing, which lasted 15 hours. Many residents opposed the project, primarily fearing visual impacts on the landscape. The opposition formed a formal group to challenge the project before the PSC, which denied the permit.<sup>204</sup>
- **Great River Energy Wind Project:** In May 2020, Great River Energy announced that it would shut down the Coal Creek Station in Underwood, North Dakota in order to replace the coal facility with new wind projects. It currently manages a 436-mile transmission line that can move 1,100 MW of power across the Midwest. However, in

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<sup>202</sup> Wind Watch, *Southern Burleigh County wind farm project officially dead* (visited Dec. 27, 2020) <https://www.wind-watch.org/news/2019/05/23/southern-burleigh-county-wind-farm-project-officially-dead/>; Jack Dura, *Wind farm controversy drives likely first township recall in North Dakota*, GRAND FORKS HERALD, Aug. 20, 2019; John Hageman, *As wind grows in North Dakota, so does opposition*, THE BISMARCK TRIBUNE, Sept. 12, 2019.

<sup>203</sup> Kalsey Stults, *Wind farm application rejected by Billings County Commission*, THE BISMARCK TRIBUNE, Nov. 15, 2016.

<sup>204</sup> Allyssa Dickert, *Hearing on proposed wind farm in Stark County causes controversy*, KFYR-TV, Mar. 31, 2016; Amy R. Sisk, *PSC rejects permit for wind farm over lighting issues*, THE BISMARCK TRIBUNE, Mar. 4, 2020.

order to defend the coal industry and block this project, McLean County passed a zoning amendment that prohibits the construction of any new wind farm transmission lines.<sup>205</sup>

## 36. OHIO

### 36.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 36.2 Contested Projects

- **Timber Road IV Wind Farm:** In February 2019 the Ohio Power Siting Board granted approval for the construction of this 125.1-MW wind farm in Paulding County. The wind farm was proposed to include 37 turbines, but it was scaled down to 31 due to opposition by local property owners.<sup>206</sup>
- **Emerson Creek Wind Farm:** Apex Clean Energy has proposed this 300-MW wind farm in Huron and Erie Counties, which has faced opposition by the Seneca Creek Anti-Wind Union and individual residents. In the proceeding before the Ohio Power Siting Board—which is still open—local residents raised concerns including water contamination, safety, wildlife and reliability.<sup>207</sup>
- **Republic Wind Farm:** Apex Clean Energy has proposed this project with up to 47 turbines and a generating capacity of up to 200 MW in Seneca and Sandusky Counties. There has been significant opposition from local residents, including before the Ohio Power Siting Board, which has yet to issue a ruling.<sup>208</sup>
- **Icebreaker Wind Farm – Lake Erie:** Planning is currently underway to build the United States’ first freshwater wind farm on Lake Erie, with a capacity of 20.7 MW. The Ohio

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<sup>205</sup> Tomich, *supra* note 180.

<sup>206</sup> Tom Henry, *Planned Timber Road IV Wind Farm In Paulding County Could Power 36,000 Homes*, THE TOLEDO BLADE, March 7, 2019.

<sup>207</sup> Michael Harrington, *Proposed Wind Farm Divides Community*, THE SANDUSKY REGISTER, Aug. 21, 2020; *In Re Fireland Winds*, 18-1607-EL-BGN, Brief of Local Residents (O.P.S.B. Nov. 20, 2020).

<sup>208</sup> Daniel Carson, *Republic Wind Farm Opponents Cite Safety Concerns During Hearing*, The News Messenger, THE NEWS MESSENGER, Sep. 13, 2019.

Power Siting Board initially issued a certificate that would have limited nighttime operation of the turbines, effectively killing the project financially, but has since reversed course on that restriction. The Power Siting Board still needs to approve the developer's plans to address environmental issues including bird migration patterns to eventual decommission.<sup>209</sup>

- **Seneca Wind:** A 212-MW wind turbine project proposed by Seneca County by sPower was suspended by the company in January 2020 in response to opposition from groups such as the Seneca County Anti-Wind Union and a resolution passed by the Seneca County commissions that effectively zoned out the project.<sup>210</sup>

## 37. OKLAHOMA

### 37.1 Local Laws/Ordinances

- **El Reno:** A 2011 ordinance sets restrictions on wind turbine towers, including a prohibition on casting a shadow on non-participating landowners' properties.<sup>211</sup>
- **Yukon:** A 1995 ordinance sets height limit at 100 feet, and rotor length limit of 36 feet in diameter. In residential areas, the wind energy must be in the rear yard.<sup>212</sup>
- **Owasso:** A 2019 ordinance sets a height limit for properties of different sizes, with a maximum of 100 feet tall for a property over 5 acres. Turbines must be set back from the roadway and any inhabited structure more than 1.5x the height of the wind turbine.<sup>213</sup>

### 37.2 Contested Projects

- **Wind Catcher Project:** This project was planned to be the largest wind farm in the United States with 2000 megawatts. The project faced opposition from Americans For Prosperity, funded by the Koch Brothers, and the Windfall Coalition, which was co-

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<sup>209</sup> Jeremy Pelzer, *Plans For Lake Erie Wind Farm Clear A Major Hurdle As Poison Pill Restriction Is Lifted*, CLEVELAND.COM, Sep. 17, 2020.

<sup>210</sup> Vicki Johnson, *Seneca Wind Project is Suspended*, THE ADVERTISER-TRIBUNE, Jan. 22, 2020.

<sup>211</sup> EL RENO, OAK., CODE § 361-30 (2011).

<sup>212</sup> YUKON, OAK., CODE § 6-204-173 (1995).

<sup>213</sup> OWASSO, OAK., CODE § 17-2 (2019).

founded by Harold Hamm, a shale oil developer. As discussed, the Texas PUC denied approval for the project. Arkansas and Louisiana approved the project, but Oklahoma regulators never reached a decision because Texas rejected the project.<sup>214</sup>

## 38. OREGON

### 38.1 State Policy

Legislative amendments enacted on May 23, 2019 restrict the construction of solar facilities on certain categories of farmland.<sup>215</sup>

### 38.2 Local Laws/Ordinances

*No ordinances were found at this time.*

### 38.3 Contested Projects

- **Summit Ridge Wind:** Based in Wasco County, the Summit Ridge Wind project began construction near the Columbia River Gorge in August 2020. Conservation group Friends of the Columbia Gorge (FOTCG ) has opposed this project on the grounds that it will harm bald and golden eagle populations and the scenic beauty of the river gorge area. In 2017, the Oregon Supreme Court gave FOTCG a victory, holding that the state failed follow procedural requirements when adopting new rules, and thereby rendering the rules invalid. However, the project later received approval and began construction in August 2020.<sup>216</sup>

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<sup>214</sup> Dan Gearino, *AEP Cancels Nations's Largest Wind Farm: 3 Challenges Wind Catcher Faced*, INSIDE CLIMATE NEWS, Jul. 30, 2018.

<sup>215</sup> Renewable Law, *Oregon's DLCD Finalizes Solar Siting Rules* (visited Nov. 8, 2020), <https://www.lawofrenewableenergy.com/2019/07/articles/solar/oregons-dlcd-finalizes-solar-siting-rules/>.

<sup>216</sup> *Friends of the Columbia Gorge v. Energy Facility Siting Council*, 366 Or. 78, 456 P.3d 635 (2020); Jake Thomas, *Oregon Supreme Court Ruling Could Alter Energy Projects*, THE PORTLAND TRIBUNE, Jan. 19 2020; Caleb Lundquist, *Summit Ridge project on hold; Wind farm near Deschutes River hits opposition, technical challenges*, THE DALLES CHRONICLE, June 29, 2019; Oregon Department of Energy, *Summit Ridge Wind Farm* (visited Dec. 21, 2020), <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/SRW.aspx>.

- **Obsidian Solar Center:** This 200-MW project has been met with opposition by local residents who argue that the construction of the solar facility will dislocate populations of sage grouse, deer, and elk, and will cause long-term erosion on fragile, dusty land. Local opponents have initiated a Contested Case Proceeding before the Oregon Department of Energy, which is ongoing as of December 2020.<sup>217</sup>
- **Clackamas County Solar Projects:**
  - In 2018, the group 1,000 Friends of Oregon and farmland conservationists opposed a 73-acre solar project in Clackamas County, which will also house an apiary. The Land Use Board of Appeals ruled in favor of the solar project, considering bee-farming to be an agricultural use.<sup>218</sup>
  - Pacific Northwest Solar LLC sought to construct an 80-acre solar farm on a parcel zoned under Exclusive Farm Use (EFU). Project opponents argued that the glare from the panels would “impair” the residential use of the surrounding properties. After Clackamas County approved the project, the opponents appealed to the Oregon Land Use Board of Appeals, where the original decision was upheld in April 2019.<sup>219</sup>
- **Origis Energy Solar Project:** Jackson County originally approved an 80-acre solar panel facility on EFU land outside of Medford. The group 1,000 Friends of Oregon appealed this decision to the Oregon Land Use Board of Appeals, which invalidated the original permit, concluding that it did not meet the criteria to circumvent farmland protection law.<sup>220</sup>

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<sup>217</sup> Oregon Department of Energy, *Obsidian Solar Center*, (visited Dec. 21, 2020), <https://www.oregon.gov/energy/facilities-safety/facilities/Pages/OSC.aspx>.

<sup>218</sup> Mateusz Perkowski, *Beehive solar project draws new opposition*, THE PORTLAND TRIBUNE, June 8, 2018.

<sup>219</sup> *York et al. v. Clackamas County*, LUBA No. 2018-145 (Or. Land Use Bd. of Appeals, Apr. 10, 2019).

<sup>220</sup> Jamie Parfitt, *Appeals Court Flips Jackson County Approval of Solar Farm*, KDRV, June 4, 2018.

## 39. PENNSYLVANIA

### 39.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 39.2 Contested Projects

- **Atlantic Wind:** In 2016, PPM Atlantic Renewables, renamed Atlantic Wind, proposed the construction of 37 wind turbines on lands owned by the Bethlehem Municipal Authority. The proposal was approved by the local zoning board, but to assuage local opposition, Atlantic Wind reduced the number of proposed turbines to 28 in January 2019.<sup>221</sup>

## 40. RHODE ISLAND

### 40.1 Local Laws/Ordinances

- **North Kingstown:** In 2011, the town placed a six-month moratorium on wind turbines after a dispute over a resident-owned wind turbine in the town.<sup>222</sup>

### 40.2 Contested Projects

- **North Kingstown:** A Colorado based company, Turning Point Energy, proposed a 32.7-MW array that would cover roughly 567 acres of vacant, heavily wooded land and land zoned as “Very Low Density Residential.” In 2018 community members opposed the project at local meetings due to concerns about deforestation and potential harm to wetlands. In 2019 the project was canceled.<sup>223</sup>

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<sup>221</sup> Kurt Bresswein, *Wind energy proposal scaled back in Bethlehem watershed*, LEHIGHVALLEYLIVE.COM, Feb. 8, 2018.

<sup>222</sup> Chris Church, *NK Green wind turbine lawsuit dismissed*, THE INDEPENDENT, Aug. 20, 2015.

<sup>223</sup> Jacob Marrocco, *Massive turnout delays discussion of solar proposal in NK*, THE INDEPENDENT, Mar. 24, 2018; Alex Kuffner, *R.I. celebrates start of largest ‘community solar’ project, in North Smithfield*, PROVIDENCE JOURNAL, Nov. 13, 2019.

- **North Smithfield wind:** Green Development, a Rhode Island-based wind company that operates several wind farms throughout the state, planned to build a project in North Smithfield and faced opposition for a number of years. Residents complained at town meetings about alleged potential health impacts after hearing from people living by other Green Development farms. However, the project was eventually approved in June 2020.<sup>224</sup>
- **Tiverton solar:** This TurningPointEnergy project would use 68 acres in Tiverton for a 9-MW solar plant. A local councilwoman voiced has opposition to the project, but it is still in the early stages.<sup>225</sup>
- **Gold Meadow Farm Solar:** A landowner next to a proposed solar site mounted a two-pronged challenge to the project, in a Superior Court lawsuit and in an administrative appeal of a decision by the city Plan Commission to approve a master development plan and a preliminary development plan for the solar farm. The project ultimately moved forward in fall 2017.<sup>226</sup>
- **Block Island:** Though ultimately successful as the first offshore wind project in the United States, the wind farm was met with significant opposition from community members. The Rhode Island Manufacturers Association filed a lawsuit in 2015 against the Block Island project, arguing that utility National Grid's deal to purchase power from the wind farm violated federal law and would result in a significant increase to their electric bills. A federal district court found that the statute of limitations had run on the plaintiff's claim and dismissed the lawsuit.<sup>227</sup>

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<sup>224</sup> Lauren Clem, *Wind turbine plan has residents up in arms*, THE VALLEY BREEZE, Apr. 24, 2019; EcoRI News, *North Smithfield Approves R.I.'s Largest Solar Facility* (visited Dec. 13, 2020),

<https://www.ecori.org/renewable-energy/2020/6/22/north-smithfield-approves-ris-largest-solar-farm>.

<sup>225</sup> Marcia Pobzeznik, *68-acre solar installation proposed in Tiverton*, THE HERALD NEWS, May 15, 2018.

<sup>226</sup> Gregory Smith, *Cranston landowner sues over solar farm zoning change*, PROVIDENCE JOURNAL, May 11, 2016

<sup>227</sup> AP News, *Lawsuit over nation's 1<sup>st</sup> offshore wind farm is dismissed* (visited Dec. 15, 2020),

<https://apnews.com/article/f87ef045d1c847228146699babe513f6>.

## 41. SOUTH CAROLINA

### 41.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 41.2 Contested Projects

- **Southern Current:** In Horry County, Southern Current, a Charleston-based solar farm developer, has submitted a proposal for the construction of three solar farms that would generate up to 138 MW. Local residents are currently organizing in opposition to the proposal, expressing concerns regarding decommissioning, environmental hazards and the usage of Cadmium Telluride. However, it does not appear that opponents have taken legal action. The project is expected to be approved in early 2021.<sup>228</sup>

## 42. SOUTH DAKOTA

### 42.1 Local Laws/Ordinances

- **Lincoln County:** In 2017, the county enacted new zoning laws that require 2640-foot setbacks from all habitable dwellings. This led to the cancellation of a 1,000-MW turbine project by Dakota Power Community Wind.<sup>229</sup>
- **Hughes County:** In August 2019, the Hughes County Commission amended its zoning ordinance to increase setbacks from all wind turbines. The revised ordinance requires a setback of a half-mile setback or 4.9 times the height of the tower. This may be reduced to 1,400 feet with a waiver from the landowner.<sup>230</sup>

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<sup>228</sup> Dale Shoemaker, *Another solar farm for Horry County? Here's the status of the Southern Current deal*, MYRTLE BEACH ONLINE, Oct. 13, 2020; J. Dale Shoemaker, *Solar farm planned for 2021 can power 26,000 homes – and fund Horry's rural civic arena*, MYRTLE BEACH ONLINE, Dec. 21, 2020; J. Dale Shoemaker, *Solar farm planned for 2021 can power 26,000 homes – and fund Horry's rural civic arena*, MYRTLE BEACH ONLINE, Dec. 21, 2020.

<sup>229</sup> John Hult, *Lincoln County votes downwind backers*, ARGUS LEADER, July 18, 2017; John Hult, *Developers ditch wind power easements in Lincoln County*, ARGUS LEADER, Nov. 30, 2017.

<sup>230</sup> Local News, *Hughes County Commission amends requirements for wind towers*, HUB CITY RADIO, Aug. 18, 2020.



- **Letcher Township:** In 2016, the Letcher Township Board of Supervisors passed an ordinance to increase setbacks to one mile for all turbines 75 feet or taller. It requires 1,500-foot setbacks from participants or from the property line of the nearest neighbors.<sup>231</sup>

## 42.2 Contested Projects

- **Dakota Power Community Wind Project:** In 2014, the DPCW proposed a 1,000-MW turbine wind project in rural Lincoln County. Local residents founded a non-profit, We-Care-SD, to advocate for stricter setbacks. The Lincoln County Board of Commissioners increased the setback requirement to a half-mile. In 2017, DPCW relinquished its land easements and withdrew from the project.<sup>232</sup>
- **Davison County Wind Project:** In 2016, Juhl Energy proposed a 9-11-turbine wind project near Mitchell in Davison County. The general population was split in support and opposition of the project; however, the majority of the closest neighbors to the project opposed it. As such, the Davison County Commission denied Juhl Energy's permits.<sup>233</sup>
- **Letcher Township Wind Project:** In 2016, Juhl Energy proposed a 9-11-turbine wind project near Letcher Township (previously denied by Davison County). 50 of the 77 residents of Letcher Township opposed the project in an open letter. Shortly thereafter, the Board of Supervisors voted to increase setbacks to 1 mile from non-participating homeowners. This blocked the project entirely.<sup>234</sup>
- **Crocker Wind Farm:** In 2017, Geronimo Energy proposed a 400-MW wind project in Clark County. Public hearings on the project highlighted significant opposition from local residents. The Clark County Commission approved the project, but simultaneously

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<sup>231</sup> Evan Hendershot, *Letcher Township establishes one-mile wind tower setback*, THE DAILY REPUBLIC, June 10, 2016.

<sup>232</sup> Leah Cover, *The Lincoln County Wind Debate: A Background*, SDPB RADIO, July 24, 2017; John Hult, *Developers ditch wind power easements in Lincoln County*, ARGUS LEADER, Nov. 30, 2017.

<sup>233</sup> Evan C. Hendershot, *Wind farm denied in Davison County*, MITCHELL REPUBLIC, Feb. 9, 2016.

<sup>234</sup> *Id.*

increased setback requirements from 2000 feet to 3960 feet. Geronimo Energy challenged the setback requirements in court, and a judge ruled in favor of the commission. South Dakota's PSC initially denied a permit due to the legal uncertainty of the project, but later granted a permit in 2018.<sup>235</sup>

## 43. TENNESSEE

### 43.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 43.2 Contested Projects

- **Mason County:** In May 2014, NextEra Energy Resources and Duke Energy Renewables announced their intent to discontinue pursuing the construction of a wind farm in Mason County. The project had been in development since 2011. The companies explained that they were concerned with the County's proposals for restrictive wind setbacks as well as the overall unpopularity of the project.<sup>236</sup>

## 44. TEXAS

### 44.1 Local Laws/Ordinances

- **Midlothian:** Enacted in June 2020, a local ordinance restricts wind systems to one per lot of land, or two if the land is three or more acres, and limits maximum height to 80 feet without a special use permit.<sup>237</sup>

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<sup>235</sup> The Acoustic Ecology Institute, *SD County learns that 2,000 ft setbacks not quite enough* (visited Dec. 21, 2020), <https://www.aeinews.org/category/wind-turbines/>; J.T. Fey, *Clark County wind project hits snag*, THE PUBLIC OPINION, Aug. 14, 2017; Michelle Froese, *South Dakota PUC grants construction permit for 400-MW Crocker Wind Farm*, WIND POWER ENGINEERING & DEVELOPMENT, June 11, 2018.

<sup>236</sup> Wind Action, *Second Wind Energy Project Discontinued* (visited Dec. 28, 2020), <http://www.windaction.org/posts/40469-second-wind-energy-project-discontinued#.X6sDIJNKhQI>; *Second Company Discontinues NKY Wind Energy Project*, WLWT NEWS, MAY 25, 2014.

<sup>237</sup> MIDLOTHIAN, TX., ORD. 2019-20 § 2, (Apr. 9, 2019).

- **Kingsville:** Enacted in August 2020, this ordinance limits height to either 10 feet above building height in the zoning district or 45 feet, whichever is less, and limits noise to 45dB at all times and ambient noises to the closest amount emitted from 9am-9pm for a school, hospital, or place of worship.<sup>238</sup>
- **Burleson:** This June 2020 ordinance requires that turbines on a parcel of more than 5 acres be no more than 120 feet tall, and turbines on a parcel of less than 5 acres be no more than 60 feet tall. Setbacks must be double the height of the system and at least 1000 feet from all interstate and state rights-of-way. Only one wind energy system can be on tracts of land smaller than 5 acres. On larger tracts of land, only one system per 5 acres is permitted. Regardless, there must be 1000 feet between systems. The law also sets noise limits of 40 dB at adjacent residential property lines or 60 dB at any other zoning district property line.<sup>239</sup>
- **Grand Prairie:** Enacted August 3, 2020, this ordinance requires a Specific Use permit and a minimum of two acres per land area for small wind systems.<sup>240</sup>
- **Brownsville:** Enacted July 9, 2020:
  - Wind: this ordinance sets a height limit of 120 feet for turbines in non-residential zones. In residential zones the height limits is 70 feet.<sup>241</sup>
  - Solar: this ordinance limits ground-mounted solar installations to side or rear yard. Medium and large-scale ground mounted systems are not allowed in dwelling use districts and require a site plan review in retail and commercial districts.<sup>242</sup>
- **Waller:** An ordinance enacted in October 2020 prohibits wind energy systems in the city except along certain routes; in those areas, a 45-foot height limit applies.<sup>243</sup>
- **Benbrook:** Updated April 29, 2020:

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<sup>238</sup> KINGSVILLE, TX., ORD. 2014-24, § I (Apr. 23, 2014).

<sup>239</sup> BURLESON, TX., ORD. NO. B-796-10, § 1(11-104), (Oct. 18, 2010).

<sup>240</sup> GRAND PRAIRIE, TX., ORD. NO. 10941-2020, (August 3, 2020).

<sup>241</sup> BROWNSVILLE, TX., ORD. NO. 2010-1518 § 1, (Apr. 6, 2010).

<sup>242</sup> BROWNSVILLE, TX., ORD. NO. 2017-1518-A, § 1, (Apr. 18, 2017).

<sup>243</sup> WALLER, TX., ORD. NO. 481 § 4, (October 18, 2010).

- Wind: the ordinance prohibits all utility grid energy systems, sets a sound limit of 50 dB in daytime and 25 dB at night, and provides that turbine height cannot exceed the maximum building height in the zoning district plus 5 feet.
- Solar: provides that solar must be in addition to a secondary structure, and cannot be in the front yard.<sup>244</sup>
- **McKinney:** Updated November 2020, this ordinance bans WECS in residential and multiple-family zoning districts and, in the industrial district, sets a height limit of 150 feet and a setback requirement of 1.5 times turbine height.<sup>245</sup>
- **Weatherford:** Enacted in December 2013, this ordinance sets a maximum turbine height of 66 feet.<sup>246</sup>
- **Nolanville:** This May 2012 ordinance prohibits leasing land or establishing wind units for commercial sale of wind energy within city limits.<sup>247</sup>
- **Ovilla:** This ordinance passed in June 2010 sets a noise limit of 40 dB during the day and 30 dB at night at the “most offending” property line.<sup>248</sup>
- **Denison:** This March 2020 zoning ordinance allows wind turbines only for accessory use and creates setback of 2 times tower height from all property lines, and 1.5 times distance from buildings on the property.<sup>249</sup>
- **Garland:** An ordinance adopted May 2015 provides that wind structures may only exist as secondary use and must be located in the rear yard.<sup>250</sup>
- **Balch Springs:** This 2019 ordinance prohibits utility grid wind energy systems larger than 20 kw within the city and sets a height limit of 70 feet.<sup>251</sup>

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<sup>244</sup> BENBROOK, TX., CODE § 17.84.130 (Jul. 6, 2013).

<sup>245</sup> MCKINNEY, TX., CODE § 146-140 (Aug. 20, 2019).

<sup>246</sup> WEATHERFORD, TX., CODE § 12-5-8 (Dec. 10, 2013).

<sup>247</sup> NOLANVILLE, TX., ORD. 6051-12, § 620.1 (2013).

<sup>248</sup> OVILLA, TX., ORD. § 42 (June 14, 2010).

<sup>249</sup> DENISON, TX., CODE § 28.56 (March 2020).

<sup>250</sup> GARLAND, TX., DEVELOPMENT CODE § 2.70 (May 19, 2015).

<sup>251</sup> BALCH SPRINGS, TX., ORDINANCE 3189-19 §7 (Apr. 8, 2019).

## 44.2 Contested Projects

- **Clay County Wind Project:** John Greer, a Dallas oil investor, spearheaded the fight against two large wind farms in Clay County, Texas. Innergex Renewable Energy Inc. formally canceled the project in June 2018 after Clay County Against Wind Farms held informational sessions against wind energy in Henrietta, Texas.<sup>252</sup>
- **Ranchland Wind Project:** In May 2020, a group of residents and landowners called upon the county commissioners of Callahan and Eastland Counties to reject requests for tax abatements associated with this proposed wind energy project.<sup>253</sup>
- **Wind Catcher Project:** The Texas PUC denied a permit for this proposed wind located in Oklahoma and Texas to service Arkansas, Louisiana, Oklahoma, and Texas. Texas Industrial Energy Consumers—a group backed by ExxonMobil and Valero Energy—had challenged the project before the PUC. In July 2018 the project was canceled.<sup>254</sup>
- **Engie Solar Project:** French energy company Engie is in the process of leasing acreage from landowners in Dike, Texas, with the intent of installing solar panels, but a local resident has sued the company to stop the project due to concerns about increased runoff to nearby parcels of land and the release of carbon dioxide stored in trees that would need to be cleared for the project.<sup>255</sup>

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<sup>252</sup> Christopher Collins, *Inside the Coordinated Attack on a North Texas Wind Farm*, TEXAS OBSERVER, Sept. 18, 2018.

<sup>253</sup> Juliette Fairley, *Residents, landowners oppose wind project in Callahan, Eastland Counties*, TEXAS BUSINESS COALITION, May 11, 2020.

<sup>254</sup> Dave Anderson, *Attacks on wind and solar power by the coal and gas industries*, ENERGY AND POLICY, (Feb. 19, 2019).

<sup>255</sup> Mary Beth Gahan, *A battle of green against green in this Texas community*, WASHINGTON POST, Aug. 2, 2021.

## 45. UTAH

### 45.1 Local Laws/Ordinances

- **Hyrum:** A moratorium on new solar power installation was enacted in March 2017 to re-examine the fee structure given large amount of applications for residential solar construction. The moratorium was unanimously approved by the City Council and lasted for six months.<sup>256</sup>

### 45.2 Contested Projects

- **Fairfield:** NextEra Energy Resources is proposing two 160-megawatt solar projects in Fairfield. Nearby residents have expressed concern about opening up of undeveloped land, the costs of the project, and low revenue projections from the project's construction. After a series of public hearings in summer 2020, the project's future remains up in the air.<sup>257</sup>
- **Sigurd Solar:** Despite local opposition, in 2010, the Sigurd solar plant was successfully constructed in Sevier County.<sup>258</sup>

## 46. VERMONT

### 46.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 46.2 Contested Projects

- **Apple Hill and Willow Road Solar:** Both projects have been opposed by area residents and Vermonters for Clean Environment, and have yet to receive a certificate from the

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<sup>256</sup> Clayton Gefre, *Hyrum places moratorium on new solar power installation to re-examine fee structure*, HERALD JOURNAL NEWS, Mar. 18, 2017

<sup>257</sup> Brian Maffly, *Big solar farms could dominate the future of a Utah hamlet trying to preserve its small-town feel*, THE SALT LAKE TRIBUNE, Oct 19, 2020.

<sup>258</sup> Manu Tayal, *DESRI Closes Financing of 80 MW Sigurd Solar Project in Utah*, SAUR ENERGY INTERNATIONAL, Jun. 15, 2020.

PUC. In June 2020 the PUC issued a temporary restraining order blocking tree removal and other activities on the sites for the two projects.<sup>259</sup>

- **Kingdom Community Wind Project:** Energize Vermont and several individuals appealed the Public Service Board’s affirmance of a permit issued to the Kingdom Community Wind Project on the ground that it did not meet the operational-phase storm water management plan. In 2013 the Vermont Supreme Court found “no clear and convincing error” and affirmed the Board’s decision.<sup>260</sup>
- **New Haven solar projects:** In 2017 the Vermont Supreme Court rejected a visual nuisance lawsuit by neighbors of two solar projects proposed in New Haven. The court concluded that aesthetic harm alone cannot form the basis of a private nuisance claim.<sup>261</sup>
- **Dairy Air Wind Project:** After much opposition to the Dairy Air Wind Farm, the developer asked state regulators to dismiss the petition, and In March 2021, the petition was dismissed with prejudice so that the case cannot be refiled or reopened.<sup>262</sup>

## 47. VIRGINIA

### 47.1 Local Laws/Ordinances

- **Botetourt County:** A turbine height limit of 550 feet provided by a zoning ordinance initially prevented the construction of the Rocky Forge Wind Farm. Despite local opposition, the County Board of Supervisors approved the project in February 2020 after the ordinance was amended.<sup>263</sup>

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<sup>259</sup> Jim Therrien, *Work on Apple Hill solar site halted by regulators*, BENNINGTON BANNER, Jun. 28, 2020.

<sup>260</sup> *In re ANR Permits in Lowell Mountain Wind Project*, 196 Vt. 467, 98 A.3d 16 (2014).

<sup>261</sup> Victoria Westgate, *Vermont Supreme Court Rejects Argument for Visual Nuisance of Solar Project*, DUNKIEL SAUNDERS, Jan. 18, 2017.

<sup>262</sup> Robin Smith, *Holland hopeful Dairy Air Wind is ‘dead’*, THE CALEDONIAN RECORD, Mar. 5, 2020; *Vermont regulators end last active petition for wind project*, ASSOCIATED PRESS NEWS, Mar. 24, 2020.

<sup>263</sup> Shayne Dwyer, *Proposed Botetourt County Wind Farm Needs New Approval as Plans Change to Make Turbines Taller*, WSLS, Feb. 11, 2020.

## 47.2 Contested Projects

- **Spotsylvania County:** sPower received state and local approval for a 6,350-acre wind farm in 2019 and started construction in 2020.<sup>264</sup> A local group called Concerned Citizens of Spotsylvania County has opposed the project and had urged the local board to block it.<sup>265</sup>
- **Powhatan County:** In March 2019, an application for a solar project was withdrawn after the Powhatan County Board of Supervisors partially voted against the project, following community opposition.<sup>266</sup>
- **Strata Solar Farm:** Despite some minor opposition from local residents, the 20-MW solar facility at Hill Pleasant Farm in James City County secured a recommendation for approval from the Planning Commission and then approval by the Board of Supervisors in Fall 2019.<sup>267</sup>
- **Cricket Solar:** BayWa's proposed solar facility, Cricket Solar, faced opposition from local groups such as Citizens for Responsible Solar because of the historic nature of the project area, which would have included the historic site of the Battle of Morton's Ford in the Civil War. Three weeks after submitting revised plans, in August 2019, BayWa withdrew its application because of concerns over the cost-effectiveness of the project and its impact on nearby wetlands.<sup>268</sup>

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<sup>264</sup> Michael Bates, *sPower Closes on Spotsylvania Solar Energy Center Financing*, SOLAR INDUSTRY MAGAZINE, Jul. 27, 2020.

<sup>265</sup> Facebook, *Concerned Citizens of Spotsylvania County Private Group* (visited Dec. 27, 2020) <https://www.facebook.com/groups/2102659356643728/>.

<sup>266</sup> Laura McFarland, *Solar Farm Withdraws Application After Board Denies Appeal*, RICHMOND TIMES-DISPATCH, Mar. 13, 2019.

<sup>267</sup> Sara Fearing, *Solar farm proposed for Hill Pleasant Farm gains feedback*, WY DAILY, Aug. 22, 2019.

<sup>268</sup> Hannah Natanson, *Culpeper solar farm called off after pushback*, THE FREE LANCE-STAR, Sept. 11, 2019.



## 48. WASHINGTON

### 48.1 Local Laws/Ordinances

*No ordinances were found at this time.*

### 48.2 Contested Projects

- **Columbia Solar Project (Ellensburg):** Tusso Energy requested applied to the State Energy Facility Site Evaluation Council (EFSEC) to construct 200 acres of solar panels across five parcels of private property. Neighbors of the property owners started a nonprofit, Save Our Farms, advocate against the project. In early 2017, the Kittitas County Commission established a temporary moratorium that prohibited “major alternative energy projects” in order to block the project; the EFSEC overrode the County and approved the project in 2018.<sup>269</sup>
- **Horse Heaven Wind Farm:** Scout Clean Energy has proposed to build a 600 MW-wind project on 24 miles of ridgeline near Benson City, Washington.<sup>270</sup> The project is opposed by local residents who fear changes to the local skyline, potential impacts on outdoor recreation and tourism, and the project decommission process. These opponents have formed a local group, Save Our Ridges, to mount political opposition. The Bonneville Power Administration has granted initial approval to the project; it is unclear whether Save Our Ridges intends to take legal action.<sup>271</sup>
- **Skykomish Hydroelectric Dam:** A hydroelectric dam project on the Skykomish River near Index was abandoned in 2018. Local residents had opposed its construction on the ground that diversion from the falls would diminish opportunities for outdoor recreation in the region.<sup>272</sup>

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<sup>269</sup> Hal Bernton, *Solar panels on farmland? In Central Washington, that stirs a fight*, THE SEATTLE TIMES, Apr. 27, 2018.

<sup>270</sup> TCAJOB Staff, *Colorado firm plans 600-megawatt Horse Heaven Wind Farm*, TRI-CITIES AREA JOURNAL OF BUSINESS, May 2020.

<sup>271</sup> Barry Bush, *Tri-Citians must stand up to wind turbine plan (Guest Opinion)*, TRI-CITY HERALD, Mar. 10, 2020.

<sup>272</sup> Bellamy Pailthorp, *No Hydropower At Sunset Falls: Controversial Skykomish River Project Canceled*, KNKX, Apr. 10, 2018

## 49. WEST VIRGINIA

### 49.1 Local Laws/Ordinances

- **Jefferson County:** The Jefferson County Commission is currently considering an amendment to the Zoning Ordinance that would allow “for by-right development of industrial solar energy facilities on any property in a Rural or Residential Growth Zone District,” thus increasing incentives for solar development in the County. Despite this, concerns arose surrounding ecological impacts of solar development. The County Commission has yet to pass the amendment due to opposition.<sup>273</sup>

### 49.2 Contested Projects

- **Beech Ridge Wind Farm:** The Beech Ridge Wind Farm is a 100-MW wind farm in Greenbrier County that was successfully constructed in 2009. The project was met with extensive local opposition when it was proposed in 2005, delaying construction. Opponents including Mountain Communities for Responsible Energy unsuccessfully challenged the project before the PSC, and then in court.<sup>274</sup>
- **Nedpower Mount Storm:** In 2005, landowners in Grant County filed a nuisance suit to enjoin the construction and operation of a wind power project planned by Shell WindEnergy, Inc. and NedPower. The circuit court dismissed the suit, holding that the “state public service commission’s approval of the project pursuant to statute deprived the court of jurisdiction to enjoin the project under the common law.” The decision was reversed on appeal by the West Virginia Supreme Court in June 2007.<sup>275</sup>

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<sup>273</sup> Tim Cook, *A bright idea: Solar farms considered for agriculturally zoned land*, SPIRIT OF JEFFERSON, Mar. 11, 2020.

<sup>274</sup> Wind Watch, *West Virginia* (visited Dec. 28, 2020), <https://www.wind-watch.org/documents/category/locations/americas/us/west-virginia/>; *Appalachian Power seeks to acquire Beech Ridge wind farm*, MOUNTAIN MESSENGER, July 7, 2017; Brad McElhinny, *AEP aims to acquire 2 wind facilities*, THE REGISTER-HERALD, Jul. 6, 2017.

<sup>275</sup> Steve Baron, *New Meets Old: Wind Turbines and The Common Law of Nuisance*, 2008 Wind Energy Inst. 17 (Univ. of Tex. Sch. of Law Continuing Legal Educ.).

- **Mount Storm Wind Farm:** In Grant County, this 264-MW wind farm faced opposition from residents concerned about birds and home value depreciation, but was eventually approved in May 2002 by the PSC, following some delay.<sup>276</sup>
- **Raleigh County Solar Farm:** Despite local opposition, The Raleigh County Zoning Commission approved this project with construction set to begin in 2021.<sup>277</sup>

## 50. WISCONSIN

### 50.1 Local Laws/Ordinances

- **Manitowoc County:** In 2013 the Manitowoc County Board passed a restrictive wind ordinance that ended the Beautiful Hill Wind Farm Project, which had faced opposition.<sup>278</sup>
- **Union County:** An ordinance requiring turbine setbacks of a half-mile from existing homes was enacted in 2007.<sup>279</sup>

### 50.2 Contested Projects

- **Sugar River Wind Project:** After Green County approved this 65-MW project, a group of 56 residents petitioned to the decision to the PSC to overturn the approval, arguing that the project will reduce property values and affect their health. The PSC voted 3-0 to deny the petition in June 2020.<sup>280</sup>
- **Ledge Wind Energy Center Project:** After the Brown County Citizens for Responsible Wind Energy mobilized against this proposed 100-turbine, 150-MW wind farm, the project was canceled in March 2011.<sup>281</sup>

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<sup>276</sup> Mortenson, *Mount Storm Wind Farm Phase I and II* (visited Dec. 28, 2020), <https://www.mortenson.com/wind/projects/mount-storm-wind-farm-phase-i-and-ii>.

<sup>277</sup> Maria Sellers, *Zoning Commission votes on Raleigh County Solar farm*, WVVA, Nov. 11, 2020.

<sup>278</sup> Wind Watch, *Country Board Adopts Wind Farm Ordinances* (visited Dec. 28, 2020), <https://www.wind-watch.org/news/2013/03/22/country-board-adopts-wind-farm-ordinances/>.

<sup>279</sup> *The War Over Wind*, ISTHMUS, Sep. 10, 2009.

<sup>280</sup> Chris Hubbuch, *PSC Denies Request to Block Green County Wind Farm*, WISCONSIN STATE JOURNAL, Jun. 11, 2020

<sup>281</sup> Kansas Energy, *Wind Projects Wisconsin* (visited Dec. 27, 2020), [http://www.kansasenergy.org/wind\\_projects\\_WI.htm#Epic](http://www.kansasenergy.org/wind_projects_WI.htm#Epic).

- **Beautiful Hill Wind Farm Project:** Residents expressed concerns regarding “setbacks, low-frequency noise, location, and issues with the process” surrounding this proposed seven-turbine project. In 2013 the Manitowoc County Board passed a wind ordinance that effectively killed the project.<sup>282</sup>
- **Highland Wind Farm:** For almost the past 10 years, residents of the town of Forest have been organizing against the Highland Wind Farm. After the PSC granted a permit for the project, the town appealed the decision, and a Wisconsin court dismissed the case in a decision that was upheld by an appellate court. In June 2019, the Wisconsin Supreme Court declined to hear the town’s appeal. The project is expected to begin construction in 2021.<sup>283</sup>

## 51. WYOMING

### 51.1 Local Laws/Ordinances

*No local ordinances were found at this time.*

### 51.2 Contested Projects

- **Rail Tie Wind Project:** ConnectGen Energy has proposed a 504-MW wind farm on public and private land in Albany County. Locals have urged the county planning and zoning commission to place a moratorium on wind development in order to block the project. Residents are primarily concerned about the potential for aesthetic changes to the classic western landscape, effects on local wildlife, and the potential for turbines to contaminate groundwater during the installation of their foundations. Although the moratorium movement did not succeed, the commission has proceeded with small regulatory changes to better align county and state law. ConnectGen has also faced

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<sup>282</sup> Wind Watch, Country Board Adopts Wind Farm Ordinances (visited Dec. 28, 2020), <https://www.wind-watch.org/news/2013/03/22/county-board-adopts-wind-farm-ordinances/>.

<sup>283</sup> Forest Wind Truth, *Highland Wind Project Timeline: Town of Forest, WI* (visited Dec. 28, 2020), <https://forestwindtruth.org/wp-content/uploads/2019/08/Highland-Wind-Project-Timeline-Town-of-Forest-WI-V1.pdf>; Chris Hubbuch, *Winds of Change Future Uncertain for Contested Wind Farm but Developers Returning to Wisconsin*, WISCONSIN STATE JOURNAL, Nov. 7, 2019.

setbacks as the State Board of Land Commissioners denied the use of state land for the project.<sup>284</sup>

- **Pioneer Wind Parks I and II:** In 2011, Wasatch Wind proposed a 66-turbine wind farm in Converse County. The project was opposed by local residents who formed an organization to take legal action, the Northern Laramie Range Alliance (NLRA). This group feared the wind farm's impacts on local scenery, recreation, property value, and the Laramie Range wilderness. NLRA sought to introduce zoning regulations that would prohibit wind development above an elevation of 6,000 feet; when this failed, the group appealed state permit decisions and eventually took a case to the Wyoming Supreme Court. Although these efforts failed, Converse County did enact slightly stricter wind regulation. Construction was completed in 2016.<sup>285</sup>

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<sup>284</sup> Mary Rucinski, *Albany County residents ask for moratorium on wind projects*, GILLETTE NEWS RECORD, Feb., 17, 2020; Camille Erikson, *Albany County declines to recommend sweeping wind energy regulations, for now*, CASPER STAR TRIBUNE, Jul. 13, 2020.

<sup>285</sup> *N. Laramie Range Found. v. Converse Cnty. Bd. of Cnty. Comm'rs*, 2012 WY 158, ¶ 10, 290 P.3d 1063, 1070 (Wyo. 2012); Stephanie Joyce, *Controversial Wind Project Gets New Owner*, WYOMING PUBLIC MEDIA, Sept. 1, 2015; Clean Grid Alliance, *Project Map* (visited Dec. 20, 2020), <https://cleangridalliance.org/our-work/projects>.