

ZONING REGULATIONS
of
PRATT COUNTY, KANSAS

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Model Code
prepared by the
PRATT COUNTY PLANNING BOARD

Technical Assistance by

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Wichita, Kansas**

in Association with

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Wichita, Kansas**

and

County Planning Administrator

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COMMERCIAL WIND ENERGY PROJECT (CWEP) CRITERIA AND CONDITIONS FOR A SPECIAL USE APPLICATION*

A. Intent.

The criteria and conditions herein address major issues associated with an application for a special use for a proposed CWEP; however, other issues may arise with respect to a specific proposed CWEP. These criteria and conditions are not intended to regulate the installation of the smaller individual private wind energy conversion systems. (See Section 6-100B and Section 2-102 for definition of HEIGHT, MAXIMUM.)

B. Key Issues.

Key issues relating to a CWEP which shall be considered in the assessment of any CWEP Special Use Application are:

- Land Use
- Visual Impact
- Noise
- Bird migration / strikes
- Endangered Species
- Soil Erosion
- Water Quality
- Infrastructure
- Aviation / Lighting
- Electromagnetic Interference
- Reception Interference
- Cultural Heritage
- Native Vegetation / Weeds
- Cumulative Impact
- Wildlife Habitat
- Public Health and Safety
- Decommissioning / Restoration
- Financial Surety Agreement

C. Area to be included and signature requirements.

Any CWEP Special Use shall encompass the entire perimeter of the proposed CWEP and all supporting improvements and infrastructure. One application, with the signature(s) of the owners of record of real property, shall be required for all the land area located within the perimeter of the Special Use. The signature of an agent of a property owner shall be sufficient if accompanied by proof of the agent's authority to sign on their behalf.

* See Section 4-101B18 in the A-1 Agricultural District for a CWEP as a Special Use.

With respect to a CWEP Special Use application, a notice of a Planning Board hearing shall be provided to all the owners of record of real property located within one mile of the boundaries of the CWEP. (See Section 11-100D1 for Notice of Hearing.) This notice provision does not define or affect the area with respect to which a valid protest petition can impose a supermajority voting requirement.

D. Design Requirements for CWEP Special Use.

Any Special Use for a CWEP shall be subject to the following design requirements without regard to whether such requirements are specifically listed in any resolution approving a Special Use:

1. Turbine Location Requirements:

- a. No turbines shall be located closer than 1.1 times the total height of the turbine from a public road right of way.
- b. No turbines shall be located closer than 500 feet from lot lines of any property not included in the Special Use without the express written permission of all owners of any such property filed with the Special Use application.
- c. No turbine shall be located closer than 2,500 feet from an active residential building except that all owners of any residential building can grant express written permission for the placement of a turbine at a shorter distance of not less than 1,000 feet, if such permission is filed with the Special Use application.
- d. Turbines shall be located no closer than 1.1 times the total turbine height from an accessory structure. Total turbine height is defined as the height of the structure supporting the turbine, plus the height of the rotor blade at its highest point, measured from the elevation of the ground surface at the base of the tower.

2. Noise standards.

The maximum sound level permitted for a CWEP at any time shall not exceed 60 decibels (A-weighted) measured at five feet above ground level at the boundary of the Special Use property and shall not exceed 50 decibels (C-weighted) if it is determined that a pure tone noise is generated by the project. Turbines shall be moved or modified or removed (and decommissioned) from service if necessary to comply with this condition.

3. Turbine Access Roads Requirements:

- a. Applicant shall construct the smallest number of turbine access roads necessary.
- b. Access roads shall be low profile roads so farming equipment can cross them.
- c. Where an access road is to cross a stream or drainage way, it shall be designed and constructed so runoff from the upper portions of the watershed can readily flow to the lower portions of the watershed, and Applicant must follow the regulations pertaining to building a structure in a floodplain zone of the Federal Emergency Management Agency and the Floodplain Management Regulations of these Zoning Regulations.

4. Communication and Power Collection Lines.

Communication lines and power collection lines are to be installed underground in the area covered by the Special Use and located under or at the edge of turbine access roads. Above-ground transmission lines **may be** used in public rights of way or easements. If, however, there is documented evidence by the Applicant that there are unusual existing or potential circumstances in the area which may justify above-ground construction for such installations, or the location of lines other than under or at the edge of turbine access roads, the Special Use may approve modifications of the above standards to mitigate such concerns. Such modifications shall be effective only when specifically described in a condition attached to the approval of the Special Use.

5. Minimum Blade Clearance.

Lowest point of the rotor blades shall be at least 85 feet above ground level at the base of the tower.

6. Turbine Tower Design.

Structures for wind turbines shall be self-supporting tubular towers painted a non-reflective neutral color such as a white or pale gray. No lattice-type structure or other designs that would provide perches for avian predators shall be used. To promote visual uniformity, the rotors, nacelles and towers in an array should appear similar. No logos or advertisements are allowed on these structures. Each turbine shall be marked with a visible identification number located no higher than 15 feet above ground level.

7. Turbine Tower Lighting.

There shall be no lights on the towers other than those required by the minimum standards of the Federal Aviation Administration (FAA). Lighting shall consist of dual lighting equipment with daytime white lights and nighttime red lights only.

No high intensity or nighttime strobes shall be permitted. These restrictions shall not apply to infrared heating devices used to protect the wind monitoring equipment.

E. Contents of CWEP Development Plan.

Every application for a Special Use for a CWEP shall be accompanied by a complete Development Plan containing all elements described in these criteria and conditions. No application for a Special Use may be set for hearing, and no public hearing shall be held, unless the Applicant has filed a complete Development Plan. A Special Use shall be valid only for construction in conformity with an approved Development Plan.

The Development Plan shall be written in a style that is easily understood by the general reader. Technical terminology shall be avoided as much as possible. Detailed technical data, statistics and supplementary information required to support the main text is to be included as appendices. All sources of information are to be referenced, and must be current. Information presented as maps, diagrams or plans is preferred.

Close consultation with the Zoning Administrator during preparation of the Development Plan is highly recommended. More than one draft may be required before it is considered suitable for presentation to the Planning Board.

A Development Plan shall, at a minimum, contain the following information:

1. A general introduction to the project including a description of the anticipated timeline of construction, whether the project will be or may be built in phases and the nature of those phases; the total acreage included in the project; and the names and current addresses of all people who have provided easements, leases, licenses or other permission with respect to property in connection with the project together with a legal description of the land. Name, address and phone number of the Applicant and for any contact person shall be disclosed along with an overview of the company providing relevant information regarding qualifications and experience in commercial wind energy development and environmental management.
2. Topographical map with contours at intervals of 20 feet at a 1:2,000 scale showing the locations of the following features: (U.S.G.S. scale.)
 - a. Lot lines for each parcel under separate ownership included in the Special Use area and within one mile of its boundaries together with a key identifying the owners of each parcel.
 - b. All residential buildings within one mile of the proposed CWEP boundaries, designating those known to be occupied.

- c. All public roads within the CWEP area and within one mile of its boundaries. The access points to the public roads to be used for both the construction and the operation phase of the project shall be designated.
 - d. All structures; utility lines; pipelines; rights-of-way of record; oil and gas wells, facilities and storage batteries; existing driveways and field service roads; and water impoundments, creeks and rivers in the area covered by the Special Use application.
 - e. All airports within nine miles of the project boundaries. (See Section 2-102 for definition of AIRPORT.)
 - f. Proposed setbacks of all turbines and other structures from the boundary lines.
 - g. Boundaries of any 100-year floodplain as identified on the Federal Insurance Administration's maps of the County.
 - h. All turbines, transformers, substations and connecting power lines for the project.
 - i. All structures to be used as part of the operation of the project (including the dimensions of such structures).
 - j. All roads to be constructed within the project both for construction and for operation and all fences, walls, gates and landscaping proposed to be installed.
3. A complete description of the Applicant or developer's current status with respect to:
- a. Securing a power purchase agreement, including the duration of any such agreement or proposed agreement;
 - b. Securing the right to tie into the power grid for the purposes of marketing the power to be generated from the project, including, to the extent known, the upgrades and improvements required with the County, including their location.
 - c. The selection of wind turbines to be located on the site including specifications for each model being considered. The Special Use shall not be valid for the placement of turbines that exceed the height of, or produce more noise than, those disclosed in the Development Plan.
4. Independent third-party studies assessing the following aspects of the project site, include an inventory, identification of potential impacts from the CWEP construction or operation, and possible mitigation measures:

- a. The capacity of roads, bridges and culverts over which equipment for the CWEP will travel during the construction phase to withstand the expected traffic.
- b. Archaeological sites and sites of historical significance. An archeological reconnaissance survey within the site that will be impacted by the construction or operation of the CWEP shall be provided to the State Historic Preservation Office (SHPO) to determine if cultural resources are present. Any unrecorded cultural resources that are found shall be evaluated for integrity and potential listing on the State Historic Site Survey and/or the National Register of Historic Places. Undocumented resources that are eligible for listing on the National Register of Historic Places shall be avoided. All archaeological investigations shall meet the SHPO standards and guidelines.
- c. Endangered, threatened or target-list species.
- d. Avian impacts, including impacts on both nesting and migrating birds.
- e. Wetlands and other biologically sensitive areas within the site.

5. General Construction Document Requirements:

- a. A general description of major components of the turbines and on-site facilities including wind turbine specifications, transmission lines and accessory facilities such as control rooms, transformers, substations, maintenance facilities, underground infrastructure and interior access roads. The number, location, capacity and dimensions of the turbines shall also be included.
- b. A description and general schedule of major construction activities for the turbines, transmission lines and accessory structures related to the CWEP.
- c. An outline of any proposed site preparation involving removal of vegetation and restoration of the site due to construction.
- d. The volume and designated route for traffic generated during the construction phase, including oversized and heavy equipment.

6. Soil Erosion, Sediment Control and Storm Water Runoff Plan.

- a. Applicant shall submit a Soil Erosion, Sediment Control and Storm Water Runoff Plan which shall identify effects of the CWEP (especially during construction) on surface water and surface water runoff along with any mitigation measures, and address erosion-prone areas and what types of erosion control measures will be used during each phase of the project. It shall identify plans for:

- i. Grading.
 - ii. Revegetation to ensure slope stability.
 - iii. Construction and drainage of access roads and turbine pads.
 - iv. Restoring the site after temporary project activities.
 - v. Design features to maintain downstream water quality.
- b. The Soil Erosion, Sediment Control and Storm Water Runoff Plan shall also set out the proposed practices (which shall, unless disapproved, become part of the Special Use approval) regarding:
- i. Disposal or storage of excavated materials.
 - ii. Protecting exposed soil.
 - iii. Stabilizing restored material and removal of silt fences or barriers when the area is stabilized.
 - iv. Maintenance of erosion controls throughout the life of the project.

7. Fire Safety Plan.

- a. The Development Plan shall include a Fire Safety Plan identifying the potential fire risk associated with the project, including both prescribed burning and non-prescribed burning (natural or accidental). This shall address fire originating within the site, fire escaping from the site and the potential effects of fire originating from outside the site. "Prescribed Burning" is defined as the controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental (weather) conditions in accordance with a written prescription that is designed to confine the fire to a predetermined area and to accomplish planned land management objectives; and conforms to the standards established by the Kansas State University Research and Extension office in Pratt.
- b. The Fire Safety Plan shall address high angle rescue and all provisions for fire suppression, fire and emergency medical response to be provided by the applicant both during construction and during operation of the project. The Fire Safety Plan shall identify what equipment not presently owned by the public fire department or other first responder may be needed to respond to emergencies at the project both during construction and during operation of the project.

8. Ground water resources.

Applicant must identify any risks to the ground water aquifer in connection with the construction of a CWEP project and all mitigation measures the applicant proposes to utilize to mitigate such risks.

9. Air Quality.

Applicant shall submit a plan to control dust on turbine access roads, especially during construction.

10. Land Use and Development.

Applicant shall identify potential constraints or benefits the CWEP may place on the current or future use of the land within the project site and the surrounding area. The extent of any limitations due to public health and safety risks shall be specifically addressed, and, the effects on the following activities shall also be addressed:

- a. Existing or proposed tourist or recreation activities.
- b. Agricultural activities.
- c. Local and regional tourism.
- d. Residential activities.
- e. Commercial activities.
- f. Industrial activities.

11. Monitoring and Review Programs.

The Development Plan shall provide any monitoring, review and reporting program for each part of the project. Details shall include any pre-construction monitoring/studies, sites to be sampled, the sampling procedures, the parameters to be analyzed, frequency of sampling and reporting. A Site Plan showing sampling locations is required.

12. Bibliography.

The Development Plan shall contain a bibliography of the authorities consulted, and documents relied on in completing the Development Plan.

13. Appendices.

All detailed technical information that supports the Development Plan should be included in appendices. The most important features of the appendices shall be included in the main body of the Development Plan.

F. Prerequisites to Construction Under an Approved Special Use.

1. Zoning Permit.

No construction under an approved Special Use may commence until a Zoning Permit is approved by the Zoning Administrator.

2. Power Purchase Agreement (PPA).

Approval of a Special Use does not authorize construction of the project until the Applicant has obtained a Power Purchase Agreement (PPA) for the electricity to be generated by the CWEP. The Applicant shall advise the Zoning Administrator when it obtains a PPA and shall provide such documentation confirming said agreement.

Unless an alternate timeline is determined as a condition attached to the approved Special Use on a case by case basis, the PPA must be obtained within one year of the date of publication of the Resolution effectuating the Special Use. This one-year period may be extended up to six months upon written request by the Applicant and approval by the Governing Body. In the event the Applicant does not obtain a PPA within the 12- to 18-month time span, the Resolution effectuating the Special Use shall automatically become null and void.

A Zoning Permit shall be approved only after the Administrator receives documentation confirming the PPA and all conditions pertaining to a CWEP have been satisfied.

3. Deconstruction bond.

A bond for complying with Section J herein must be approved and accepted by the Governing Body before any Zoning Permit is approved for construction to begin.

4. Road agreement.

Transportation routes used for construction shall be coordinated with the Supervisor of the County Road and Bridge Department. Applicant shall be held liable for any damage to County roads or rights of way resulting from tower construction, deconstruction and/or maintenance activity. A Road Agreement by which the developer or operator of the CWEP assumes financial responsibility for infrastructure improvements needed for construction and repair for infrastructure

damages caused by construction must be approved by the Governing Body before any Zoning Permit is approved for construction to begin.

G. Construction Requirements.

1. A licensed professional structural engineer or certified structural engineering firm selected by the Applicant shall conduct all inspections on each turbine with respect to the foundation, structural assembly, mechanical and electrical aspects of turbine construction. Documentation regarding each approved inspection shall be submitted to the Zoning Administrator before the next step of construction begins and prior to any operation of an individual turbine.

All expenses of such engineer or engineering firm shall be the responsibility of the Applicant or holder of the Special Use. Pratt County, its officers, agents and employees shall be held harmless from any and all claims, costs, liabilities, damages or expenses, including costs of suits and fees and expenses for legal services on account of any damages claimed by any third party, including such claims by agents or employees of said third party, arising from any approval or non-approval of any inspection.

2. Site Clearance:
 - a. Applicant shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the CWEP.
 - b. Applicant shall minimize the removal of trees and shall not remove groves of trees or hedgerows (shelter belts) without approval of the affected property owner.
 - c. On cultivated land, Applicant shall minimize compaction of the land during all phases of the CWEP's life. Compaction shall be confined to as small an area as practical.
 - d. During site clearance and construction, silt fences and other temporary erosion controls shall be installed and left in place until new native vegetation covers the bare ground around the turbines.
3. Prior to the start of, and continuously throughout construction and site restoration, Applicant shall designate a field representative responsible for overseeing compliance with the conditions of the Special Use. Such representative shall be accessible by telephone during normal business hours. Address, phone number and emergency phone number shall be provided to the Zoning Administrator and 911 Emergency service and shall be available to residents, officials and other interested persons. Applicant is required to notify the Administrator and 911 Emergency service of any change of the designated representative.

4. Cleanup.

Applicant shall remove all waste and scrap that is the product of construction, operation, restoration and maintenance from the site and properly dispose of it upon completion of each task. Bottles, paper and other litter deposited by site personnel shall be contained or removed on a daily basis.

5. Applicant shall inform all employees, contractors and others involved in the construction of the CWEP of the conditions of the Special Use.

H. Operational Requirements for CWEP Special Uses.

The following operational requirements shall be conditions to all CWEP Special Uses without respect to whether such conditions are expressly stated in the approval of the Special Use.

1. Lubricants and/or hazardous materials located on the premises shall be kept and transported in accordance with all state and federal regulations.

2. Applicant shall take reasonable measures such as planting trees, installing awnings, etc. to mitigate specific adverse visual impacts such as reflections, shadow flicker and blade glint affecting residences within or immediately adjacent to the project area.

3. Applicant shall not operate the CWEP and its associated facilities so as to cause microwave, television, radio, telecommunications or navigation interference. The CWEP shall operate in conformity with all applicable Federal Communications Commission (FCC) regulations. In the event the CWEP and its associated facilities or its operations cause such interference in or near the project, Applicant shall take timely measures necessary to correct the problem.

4. Extraordinary Event Response.

Upon an occurrence of an extraordinary event, the Applicant shall notify the Zoning Administrator of any extraordinary event. Extraordinary events include tower collapse, turbine failure, kills of threatened or endangered species, thrown/broken blade or hub, collector-feeder line failure, discovery of an unexpectedly large number of dead birds of any variety on site, or injured person.

In the event of extraordinary avian mortality, the Applicant shall within 30 days of the occurrence submit a report to the Administrator, the Kansas Department of Wildlife, Parks and Tourism or its successor, and the U.S. Fish and Wildlife Service describing the cause of the occurrences and the steps taken to avoid future occurrences.

5. Decommissioning.

Decommissioning shall occur in compliance with the Decommissioning Plan.

6. Non-Liability for Prescribed Burning.

No party with an interest in the Special Use shall hold liable an owner, lessee or occupant of agricultural land for property damage to CWEP-related equipment caused by or resulting from prescribed burning conducted on the land owned by, leased by or occupied by the person if the prescribed burning is conducted under the procedures established by the Kansas State University Research and Extension office in Pratt.

I. Decommissioning / Restoration / Abandonment.

1. Decommissioning Plan.

Applicant shall submit a Decommissioning Plan with the application for a CWEP Special Use. Compliance with the Decommissioning Plan shall be a condition of the Special Use whether or not explicitly listed in any document reflecting the approval. The Decommissioning Plan shall describe the manner in which the CWEP improvements will be dismantled and removed from the site within 18 months of the abandonment or the end of useful life of the CWEP or of such improvement and shall require the removal of all above-ground components of the CWEP. Foundations shall be removed to the satisfaction of the property owner(s) and the area removed filled with soil which is reasonably similar in quality to that of the original excavation. Access roads shall be removed to the property owner's satisfaction.

2. Abandonment.

The CWEP or any wind turbine shall be deemed abandoned at the end of a one-year period following the mailing by certified mail of written notice of abandonment to the owner of record, sent when a completed wind turbine does not produce electric energy for distribution and there is no demonstrated plan to restore the equipment to operating condition. The Governing Body may require Applicant or holder of Special Use to decommission any abandoned turbine or may undertake such decommissioning with the proceeds of the escrow account, surety bond, or insurance policy, or otherwise at the expense of the last approved holder of the Special Use.

J. Financial Agreement.

Prior to the commencement of construction, Applicant shall submit an escrow account, a surety bond, or an insurance policy (referred to herein as "bond" regardless of the type of arrangement) in an amount approved by the Governing Body, in the amount reasonably necessary to fund the implementation of the Decommissioning Plan, payable to Pratt

County. The holder of a CWEP Special Use shall maintain the bond until the Decommissioning Plan has been completely performed and any damages to public roads caused by the decommissioning paid. The account, bond or policy shall be available to the Governing Body in the event of an abandonment of the project or a failure to comply with the Decommissioning Plan or pay for damage to public roads caused by decommissioning activities. The bond shall not be revocable without 30 days advance notice to Pratt County and, in the event it is not replaced within 20 days of such notice, the County shall immediately receive the proceeds of the bond, to be used for decommissioning purposes. Nothing in the financial agreement or otherwise shall impose any liability or duty whatsoever on Pratt County or any of its agencies, including, but not limited to any liability to undertake decommissioning or for taxes, wages or any other employee benefits for any person or entity.

K. Transfer of Special Use.

Special Use shall not be transferred from one party to a different party without approval of the Governing Body. If the Special Use is to be transferred, the current holder of the Special Use shall inform the second party of the decommissioning funding requirements and all other requirements of the Special Use. The second party or new holder of the Special Use shall meet the escrow account, surety bond, or insurance policy requirements for decommissioning and all other requirements of the Special Use. A transfer request shall be submitted to the Zoning Administrator who shall assess the current compliance of the CWEP with the conditions of the Special Use and other applicable law. If the Zoning Administrator determines the CWEP is in compliance, the transfer application shall be forwarded to the Governing Body for action. A transfer fee of \$100.00 per turbine shall be paid to the County. The Governing Body shall approve the transfer application if it finds that the requirements of this section have been satisfied.

L. Variance.

Variances are available to a CWEP through the Board of Zoning Appeals with respect to the requirements herein to the full extent authorized by Section 10-107C of the regulations.