

KOSSUTH COUNTY ORDINANCE #310 - A

AN ORDINANCE REGULATING THE CONSTRUCTION AND OPERATION OF COMMERCIAL WIND ENERGY CONVERSION SYSTEMS IN KOSSUTH COUNTY, IOWA

Introduction

The purpose and intent of this Ordinance is to provide an orderly process for regulating the development and operation of large-scale wind farm projects in the unincorporated areas of Kossuth County. Because of the significant, long-lasting impacts on the County's residents and infrastructure resulting from such projects, the Kossuth County Board of Supervisors believes that it is in the public's best interest that the Supervisors retain the final authority over the issuance of a WECS Construction Permit.

Section I – Definitions

Commercial Wind Energy Conversion System (“*Commercial WECS*”) shall mean any Wind Energy Conversion System with Turbines having a Total Height greater than 125 feet.

Components shall mean all of the physical facilities comprising a WECS; including Turbines (i.e. – the Tower, nacelle, hub, motor, and blades), Turbine foundations, transformers, crane pads, Feeder Lines, and any accessory buildings and equipment. Components shall include any substations that are constructed in conjunction with a Commercial WECS Project.

Confinement Feeding Operation Building shall have the same meaning as found in Iowa Code §459.102(15).

Feeder Line shall mean any above or below-ground line that carries electrical power from one or more Turbines.

Meteorological (“MET”) Tower shall mean a tower which is erected primarily to measure wind speed and directions, plus other atmospheric/weather data relevant to siting and operating a Wind Energy Conversion System. Meteorological towers do not include towers and equipment used by airports, the Iowa Department of Transportation, or other applications to monitor weather conditions.

Occupied, Non-residential Building shall mean any building (other than a residence) that is regularly occupied by humans, and that is open to the public, sells goods or services, or a public, religious, or other non-profit institution.

Occupied Residence shall mean a building designed for, and actually occupied on a permanent basis as, an abode.

Project Area shall mean the geographic area encompassing all Components of a Commercial WECS Project.

Property Line shall mean the legal boundary between separately-owned real estate parcels, and between privately-owned parcels and publicly-owned land or public right-of-way.

Public Conservation Areas shall mean land owned by County, State or Federal agencies and managed for conservation/preservation purposes, including but not limited to Wildlife Management Areas, Conservation Areas, Parks, Preserves, Wildlife Refuges, and Waterfowl Production Areas. For purposes of this regulation, Public Conservation Areas also include land owned by non-profit conservation organizations and other privately-owned lands upon which permanent conservation easements have been granted to public agencies or non-profit conservation organizations. Public Conservation Areas do not include land enrolled in the Conservation Reserve Program.

Rotor Diameter shall mean the diameter of the circle described by the Turbine’s moving rotor blades.

Total Height shall mean the highest point above ground level reached by a rotor tip or any other part of a Turbine.

Tower shall mean the vertical structure that supports the electrical generator, rotor blades, or meteorological equipment. Reinforced concrete Towers shall not be permitted in Kossuth County.

Tower Height shall mean the total height of a Turbine, exclusive of the rotor blades.

Turbine shall mean any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils, blades, or similar devices to capture the wind.

Wind Energy Conversion System (“WECS”) shall mean an electrical generating project designed as an integrated system the Components of which are installed at the same time (a “*Project*” for purposes of this Ordinance), that operates by converting the kinetic energy of wind into electrical energy to be used on-site or distributed into the electrical grid.

Section II – Permit Application and Review

1. General. Before any construction activities related to a Commercial Wind Energy Conversion System can begin in Kossuth County, a **WECS Construction Permit** must be issued by the County. For purposes of this paragraph, the installation of MET Towers and access roads associated with a Commercial WECS shall not be deemed construction activities requiring a WECS Construction Permit; provided that any such tower or road must be installed in compliance with all other applicable county Ordinances and regulations.
2. Application. The Kossuth County Zoning Administrator’s office will supply a written Application form to be used by any person seeking a WECS Construction Permit. Each Project shall require a separate Application. The Application shall contain:
 - A. The name, address, EIN of the Applicant, as well as the proposed owners or operators of the Project, including the contact information (name, address, telephone and email) of their authorized representatives. The Application shall designate the entity who will be the Permit Holder of the WECS Construction Permit.
 - B. A list of the names and addresses of all property owners (i) located within the Project Area, and (ii) located within 5,280 feet of any Turbine in the Project. Said list shall be verified by the Kossuth County Auditor.

- C. A Development Plan (“*Plan*”) for the Project, which Plan shall contain aerial photographs of the entire proposed Project Area, showing the approximate proposed location of the Turbines, private access roads, Feeder Lines, Substations and all other Components of the Project. The Plan shall show Property Lines and setback distances under Section III below, as well as all public roads and public drainage district facilities (i.e. – ditches and underground tiles) in the Project Area. The Plan shall also identify any other Turbines, communication antennae, and airports (including private airstrips) located within five (5) miles of the Project Area; and all lakes, permanent water courses and Public Conservation Areas within three (3) miles of the Project Area boundaries. In providing the above information, the Plan shall use a GPS coordinate system that is compatible with the County’s geographical information and data systems. The Plan shall also include a mailing address for the owner of each communication antennae identified.
- D. Project details, including the name of the Project, and the anticipated number, type, generating capacity, Tower Height, and rotor diameter of the Turbines. The final number, type, generating capacity, Tower Height, and rotor diameter must be provided in the Final Development Plan.
- E. Documentation of Applicant’s legal control over the private property necessary for the Project, signed by the property owner. Such legal control must vest in the Permit Holder of the WECS Construction Permit at the time of its issuance.
- F. A description of the public roads anticipated to be used during all phases of construction, as well as for access to material storage sites and staging areas. As set forth in Section V below, before construction commences on a Project, all public road and public drainage district crossings must be provided to the County Engineer, and approved for compliance with the County’s Road Use and Public Drainage System Protection Agreements.
- G. A permit fee equal to \$1,000.00 for each Turbine in the Project, to be paid upon approval of the WECS Construction Permit by the Board pursuant to Paragraph 8 below.

- H. Any FAA, FCC, or other state or federal permits or approvals that are necessary for the Project. Applicant shall submit a copy of the actual permit application, or proof that the permit has been filed with the appropriate agency.
- I. Evidence in the form of a report prepared by a qualified third-party acceptable to the Board that the Project will not materially interfere with any existing commercial and/or public safety communication systems including radio, telephone, internet, GPS, microwave, or television signals.
- J. A report prepared by a qualified third-party using the most current modeling software available establishing that no Occupied Residence will experience more than thirty (30) hours per year, or more than thirty (30) minutes per day, of shadow flicker from the centroid of the Occupied Residence based on a “real world” or “adjusted case” assessment modeling. The report must show the locations and estimated amount of shadow flicker to be experienced at all Occupied Residences as a result of the individual Turbines in the Project.

The owner of an Occupied Residence may waive the shadow flicker limits established above, which waiver must be in a written instrument signed by all owners and included with the Application.

- K. A Decommissioning Plan pursuant to Section IV paragraph 2 below.
- L. Such additional information as the County may request due to the unique circumstances with the Project. Applicants are encouraged to have on-going discussions with the County Zoning Administrator and Engineer during preparation of the Application.

3. County Review. Applications shall be filed with the Kossuth County Zoning Administrator. The Zoning Administrator shall promptly provide a copy of the Application to the Supervisors. The Zoning Administrator shall have thirty (30) days to review a completed Application and provide comments to Applicant.

4. Notice of Filing. No later than ten (10) days after filing the Application, the Applicant shall provide a notice of the filing in substantially the following form:

PUBLIC NOTICE

Notice is hereby given that (name of applicant) has filed an Application with Kossuth County to build a commercial windfarm to be located in (list Township names and section numbers). The windfarm is projected to have _____ individual turbines that will be _____ feet high and each generate _____ ,kw of electricity. The Application is currently being reviewed by the County. There will be a separate notice of the public hearing on the project.

The Notice of Filing shall be:

a.) published by the Auditor once for two consecutive weeks in one or more newspapers, as defined in section 618.3, published in and having general circulation in Kossuth County, which has been identified as the following currently existing newspapers: Kossuth County Advance, Algona Reminder, Bancroft Register, Buffalo Center Tribune, Swea City Herald, and West Bend Journal; and

b.) mailed by the Auditor to each landowner identified in the Application pursuant to paragraph 2. B. above, and to each City located within one (1) mile of the Project Area; and

c.) mailed by the Auditor to the owners of the Public Conservation Areas and all communication and other antenna identified in the Application.

All costs of mailing and publication shall be paid by Applicant to the Auditor in advance.

5. Public Hearing. Upon completion of the County's review of the Application, the County shall set a public hearing to be held no later than thirty (30) days after the County review period. Representatives of the Permit Holder who are familiar with all aspects of the Project must be present at the public hearing.

6. Notice of Public Hearing. Notice of the time and place of the public hearing shall be published and mailed by the Auditor in the same manner as the Notice of Filing in 4 above. The costs of such publication and mailing shall be paid by the Applicant to the Auditor in advance.

7. Final Submission. No later than sixty (60) days following the public hearing, Applicant shall submit a Final Development Plan ("**FDP**") to the Zoning Administrator showing the final location of all Turbines and other Components comprising the Project (using a GPS coordinate system that is compatible with the County's data system). The FDP shall establish the Project's compliance with this Ordinance.

8. Approval by Board of Supervisors. Within thirty (30) days following the submission of the FDP by the Applicant, the Board of Supervisors shall review it for completeness and compliance with this Ordinance; and, if same is in compliance, approve the Application by Resolution. The Resolution shall direct the Zoning Administrator to issue a WECS Construction Permit.

9. Modifications. The location of Components may be modified from the FDP when necessary to address exigencies encountered during construction, subject to the following limitations:

(i) any such modification shall remain subject to all setbacks and other requirements set forth in this Ordinance and the Ancillary Agreements; and

(ii) the location of Turbines and Project substations can only be modified from the FDP with approval of the Zoning Administrator if the proposed relocation is 300 feet or less; or, for such modifications exceeding 300 feet, with the approval of the Board of Supervisors. Approval of a Turbine or Project substation modification by the Zoning Administrator or the Board of Supervisors shall be deemed an approved amendment to the FDP and also automatically amend the WECS Construction Permit; and

(iii) within 30 days from the completion of the Project, the Permit Holder shall revise the FDP to show the exact “as-built” coordinates for all Components, including any modifications. [Failure to timely provide such coordinates shall be a material violation of this Ordinance.]

Section III – Siting and Design Standards

1. Setbacks.

All Turbines and Project substations shall observe the following setbacks: [Note – all measurements shall be from the center point of the Tower (or from the nearest above-ground non-fence structure at a substation site) to the nearest point on any Occupied Residence, Occupied Non-residential Building, or Confinement Feeding Operation Building; or to the nearest Property Line of any other Protected Area.]

A.

<u>Protected Area</u>	<u>Set Back Requirement</u>
Adjacent Property Lines	600 feet or 110% of the Total Height whichever is greater
Occupied Residence	1,600 feet
Occupied, Non-residential Building	1,600 feet
Confinement Feeding Operation Building	600 feet or 110% of the Total Height whichever is greater
Public Road Right-of-Way	600 feet or 110% of the Total Height whichever is greater
Public Drainage District Right-of-Way	
Open Ditch	300 feet
Tile (centerline)	100 feet
Public Conservation Area	600 feet or 110% of the Total Height whichever is greater
Cemetery	1,200 feet
City Limits	1,600 feet from the Corporate Limits

B. Public and Private Airports.

- i. Notice of Intent to Construct a WECS Project. Prior to the submission of a WECS Construction Permit Application, a person may file a **Notice of Intent to Construct (“Notice”)** with the Kossuth County Zoning Administrator. The Notice shall include the following:
 1. The name, address, and telephone number of the Applicant and its authorized representative(s).
 2. A map of the Project Boundary.
 - a. The Project Boundary shall be defined as the outermost perimeter of the Project;
 - b. The map shall also visually depict a three (3) mile setback from the Project Boundary; and
 - c. The map shall identify any public or private-use airports as defined herein within five (5) miles of the Project Boundary.
 3. An estimated commencement of construction date and the estimated length of construction.
 4. Evidence of legal control of at least seventy-five percent (75%) of the land within the project boundary. Evidence sufficient to satisfy this requirement includes publicly recorded memorandum of an easement or option agreement or written approval from the owner of the property that the Applicant may seek a WECS Construction Permit for their property.
- ii. County Review and Right to Amend. Upon receiving a filed Notice, the Kossuth County Zoning Administrator shall have a period of thirty (30) days to review the filing.

1. If the Zoning Administrator determines that the notice lacks the required information provided in Section III(1)(B), then the Zoning Administrator shall provide the Applicant's authorized representative written notice of the deficiency. The Applicant shall then have the opportunity to refile the Notice within forty-five (45) days. If an Applicant refiles its Notice pursuant to this subsection, the initial filing date shall be deemed to be the effective date of the Notice.
2. A Notice may be amended no more than four (4) times so long as it complies with the required information within Section III(1)(B), above, and the amended Notice shall be considered effective as of the date of the initial filing with the Kossuth County Zoning Administrator.
3. An Applicant may assign the rights and privileges of its Notice without the approval of the County so long as the assignee is a parent or wholly owned affiliate of the Applicant.
4. A Notice shall be effective for a period of three (3) years from the date of the initial filing with the Kossuth County Zoning Administrator.

iii. Airport Setbacks.

1. The following landing areas shall be considered for purposes of this ordinance Airports if, prior to the initial filing date of the Notice, are in operation or to which a sponsor has a valid Certificate of Site Approval as set forth in Iowa Administrative Code Rules 761-720.4 and 761-720.5:
 - a. a public-use airport as defined in Iowa Code Sections 329.1(1) and Iowa Administrative Code Rule 761-720.2; or
 - b. a private-use airport as defined in Iowa Code Section 329.1(1) and Iowa Administrative Code Rule 761-720.2 that had: (i) obtained all necessary local, state, and federal approvals to construct and operate as a private-use airport; and (ii) received an airport identification assignment from the Federal Aviation Administration ("FAA") pursuant to Federal Aviation Regulations Part 157.
2. The setback distance for Airports shall be governed by the rules and regulations of the Federal Aviation Administration ("FAA") and/or any laws or rules of the State of Iowa that are applicable. An Applicant shall not construct a Turbine in violation thereof.
3. If the setback restriction is due to a valid Certificate of Site Approval, then the airport shall be in operation within the initial validation period (2 years) or it shall no longer be considered an Airport subject to the setback within Section III(1)(B)(iii).
4. First in Time, First in Right. An Applicant's filed Notice that pre-dates a valid Certificate of Site Approval shall not be subject to the setback within this Section III(1)(B)(iii).
5. It is the express intention of the Board of Supervisors to allow for the future expansion and construction of both public and private airports and WECS Projects within the county while providing for the protection of the lives and property of

users of both public and private airports and of occupants of land and other persons in its vicinity.

2. Setback Waivers. The above setbacks may be reduced as follows:
 - Adjacent Property Line and Confinement Feeding Operation Building – to 0 (zero) feet
 - Private-use airport – to 1,600 feet
 - All other Protected Areas – to 600 feet

PROVIDED, a waiver shall not alter any other non-waived set-back requirement.

To effectuate such a waiver, the Applicant must provide the Zoning Administrator with a recordable instrument signed by all owner(s) (or the controlling governmental entity) of the affected Protected Area that specifically identifies the nature and extent of the waiver. All waivers must be approved by the Board of Supervisors for compliance with this Ordinance; and upon such approval, shall be recorded in the office of the Kossuth County Recorder.

3. Height, Spacing, Production and Number Limitations.
 - (i) The Total Height of any Turbine shall not exceed 600 feet.
 - (ii) No Turbine within a Project shall be located more than 2 miles from the next closest Turbine in that same Project.
 - (iii) There shall be no Turbine constructed or erected that, if by doing so, causes the total name-plate production in Kossuth County, Iowa, to exceed 700 megawatts.
 - (iv) No Project shall have more than 250 total Turbines.
4. Color and finish. All Turbines and Towers that are part of a commercial WECS shall be white or grey. Finishes shall be matte or non-reflective.
5. Lighting. Lighting, including lighting intensity and frequency of strobes, shall adhere to but not exceed requirements established by the FAA permits and regulations. Red strobe lights shall be used during nighttime illumination to reduce impacts on neighboring uses and migratory birds. Red pulsating incandescent lights are not permitted.
6. Signage. All Turbine sites shall be required to have individual 911 rural address signs at each access road. All other signs except those required for safety and directional purposes (or otherwise authorized by the County) shall be prohibited in the Project Area.

Section IV – Discontinuance/Decommissioning

1. A Component of a Commercial WECS shall be considered a “discontinued use” (i) after one continuous year of being non-operational (unless a plan is approved by the County outlining the steps and schedule for returning the Component to service); or (ii) upon revocation of the WECS Construction Permit. Once declared to be a discontinued use, the Components shall be subject to removal pursuant to this Section.

2. Each Project shall have Decommissioning Plan approved by the Board of Supervisors. Such Plan shall contain:
 - a.) A description of the Project Components, and a sequence and description of the activities required to remove same in compliance with this Section.

 - b.) A report prepared by a qualified third-party (to be approved by the Board in advance) setting forth the procedures and estimated net cost associated with the removal of the Components (other than Feeder Lines) to a depth of 48 inches and the accompanying restoration of the surface.

 - c.) Cash, an irrevocable letter of credit, or a performance bond running in favor of the County in an amount no less than the total estimated net removal/restoration costs as determined by said report. Said security must be in place at the time the Project is completed, and must remain in effect until decommissioning is completed. No such security shall be cancelable without notice to the Zoning Administrator. Each year, the Permit Holder shall provide proof that such security is in effect at the same time as the annual report to the assessor is made for purposes of the real estate tax assessment.

 - d.) The report prepared under b.) above shall be updated and provided to the County (i) at least every five (5) years, and (ii) upon any proposed transfer of the WECS Construction Permit. Should any update indicate a change in the decommissioning costs, the security required under c.) above shall be adjusted accordingly.

 - e.) No transfer/assignment of the WECS Construction Permit shall be effective without a corresponding transfer/assignment of the obligations and financial security required under the Decommissioning Plan, as approved by the Board of Supervisors.

Section V – Ancillary Agreements/Procedures

Issuance of a WECS Construction Permit is strictly conditioned on the Applicant executing the following:

1. Kossuth County Road Use and Repair Agreement
2. Kossuth County Public Drainage System Protection Agreement
3. An Emergency Response Plan provided by Applicant and approved by the Board of Supervisors. Said Plan shall contain response procedures to be followed in the event of a fire, collapse, personal injury, or other emergency at a Project. The Plan shall contain 24 hour emergency contact information for the Project

Section VI – Effect and Transferability of WECS Construction Permit

1. No construction activities on a Project may begin until a WECS Construction Permit has been issued, except as permitted in Section II paragraph 1.

2. Any material violation of any provision of this Ordinance that remains uncured after thirty (30) days' written notice from the County to the Permit Holder shall be grounds for revocation of the WECS Construction Permit.

3. If construction on the Project has not begun within 18 months from the date of issuance of the WECS Construction Permit, the WECS Construction Permit shall be automatically revoked without further action by the County. In such event, no work on the Project may take place unless and until a new WECS Construction Permit is issued, and any portion of the Project then completed shall be deemed a discontinued use.

4. Only the holder of the WECS Construction Permit (the "**Permit Holder**") shall own the Project, and such holder shall be the entity responsible for observing all requirements of this Ordinance. The Permit Holder shall be responsible to maintain all Components of the Commercial WECS in good repair, and in compliance with this Ordinance and the Ancillary Agreements listed in Section V above.

5. No WECS Construction Permit shall be transferred or assigned, voluntarily or involuntarily, without the written approval of the Kossuth County Board of Supervisors, which consent may be withheld unless and until the Board is satisfied that a proposed transferee has the financial and operational responsibility to assume all obligations required of the Permit Holder under this Ordinance and the Ancillary Agreements listed in Section V above. Requests for approval of a WECS Construction Permit transfer shall be directed to the Zoning Administrator.

Section VII – Miscellaneous

1. CONDEMNATION WAIVER. ISSUANCE OF A WECS CONSTRUCTION PERMIT SHALL BE CONDITIONED ON THE PERMIT HOLDER'S ENFORCEABLE PROMISE, SUPPORTED BY THE CONSIDERATION OF THE ISSUANCE OF THE WECS CONSTRUCTION PERMIT, THAT THE PERMIT HOLDER SHALL NEVER USE, OR SEEK TO USE, EMINENT DOMAIN TO ACQUIRE ANY REAL PROPERTY INTERESTS TO CONSTRUCT OR OPERATE THE PROJECT.

2. In any action brought by the County against the Permit Holder of a WECS Construction Permit to enforce the provisions of this Ordinance, the County shall be entitled to recover its reasonable attorney fees and court costs as may be awarded by the decision-making tribunal.

Section VIII – Severability Clause

If any of the provisions of this Ordinance are for any reason illegal or void, then the lawful provisions of this Ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the Ordinance contained no illegal or void provisions.

Section IX – Repealer

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section X - Date of Effect

This Ordinance shall become effective upon its passage by the Board at three meetings and published as required by Iowa Code §331.302(8).

Adopted and passed by the Kossuth County Board of Supervisors on this 14 day of August, 2018.

Kossuth County Board Of Supervisors

Don McGregor (Voted No) Don Besch
Don McGregor, Chairperson Don Besch

Roger Tjarks Jack Plathe (Nay)
Roger Tjarks Jack Plathe

Pam Wymore
Pam Wymore

ATTEST:

Amber Garman, by JAH
Amber Garman, Kossuth County Auditor

- First Reading: July 17, 2018
- Second Reading July 24, 2018
- Third Reading July 31, 2018
- Published Swea City Journal: August 8, 2018
- Published Bancroft Herald: August 8, 2018
- Published Kossuth County Advance: August 9, 2018