

## ARTICLE IV – COMMERCIAL SOLAR OR WIND ENERGY PROJECT – REGULATIONS

**SECTION 1. PURPOSE OF REGULATIONS:** It is the purpose of these Regulations to:

1. Assist the applicant and relevant authorities.
2. Provide details of the Commercial Solar or Wind Energy Project (CSWEP).
3. Provide information so individuals may gain an understanding of the CSWEP.
4. Provide a basis for public discussion and informed comment on the CSWEP.
5. Identify significant environmental, social, and economic effects related to the CSWEP.
6. Provide a background on which decision makers will consider the project.

**SECTION 2. INTENT OF REGULATIONS:** It is the intent of these Regulations:

1. To address major issues associated with the project; however, they are not all inclusive. Issues not listed may be deemed significant and issues may emerge as significant (studies, public input) during the course of review.
2. These regulations are not intended to restrict installation of small “home” systems.
3. 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, as the general reader finds it easier to understand.
4. Close consultation with the Director of Planning and Zoning 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 Board of County Commissioners.
5. These requirements specify the maps, information surveys, and studies that must be submitted as part of the Conditional Use Permit (CUP) application. Sumner County may adjust the standards for future projects based on the results of monitoring avian collisions; the success or failure or remedial actions required in the decommissioning process; and with the changing technology in solar and wind generated electricity.
6. If approved, one CUP shall be issued for the perimeter of the proposed CSWEP. One application, with landowner’s signature(s), shall be required for each parcel of land located within the perimeter of the CUP. An Authorized Agent form is acceptable.

**SECTION 3. KEY ISSUES:** Key Issues relating to CSWEP’s, identified to date, are listed below. These issues include, but are not limited to:

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| 1. Land Use.                 | 11. Aviation/FAA.  |
| 2. Visual Impact.            | 12. Reception Interference.  |
| 3. Noise.                    | 13. Cultural Heritage.   |
| 4. Bird migration/strikes.   | 14. Native Vegetation/Weeds.                                       |
| 5. Endangered Species.       | 15. Cumulative Impact.   |
| 6. Wildlife Habitat.         | 16. Company experience, reputation, and financial ability.         |
| 7. Soil Erosion.             | 17. Removal/Reclamation.   |
| 8. Water Quality.            | 18. Electric – Magnetic fields associated with transmission lines. |
| 9. Public Health and Safety. | 19. Bond agreement.  |
| 10. Infrastructure.          |  |

**SECTION 4. CONDITIONS REQUIRED FOR APPROVAL:** The conditions required for approval shall include, but not limited to:

1. Strict conformance to all performance standards as detailed in Article VIII of the Sumner County Zoning Regulations.
2. No turbines shall be located closer than 500 feet or the total height of the turbine plus 50 feet, whichever is greater, from public roads. No turbines shall be located closer than 500 feet or the total height of the turbine plus 50 feet, whichever is greater, from property lines of any property not included in the CUP. No turbine shall be located closer than 1000 feet from a residential structure. Turbines shall be located no closer than the total height of the turbine plus 50 feet from a common agricultural/residential accessory structure.
3. Applicant shall be held liable for any damage to county/township roads or rights-of-way resulting from tower construction, deconstruction, and/or maintenance activity.
4. Lowest point of rotor blades shall be at least 80 feet above ground level at the base of the tower.
5. If lubricants and/or hazardous materials are needed to be located on the premises in connection with the CSWEP, said materials shall be kept and transported in accordance with all state and federal regulations.
6. There shall be no lights on towers other than those required by the Federal Aviation Administration (FAA). This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment.
7. At the end of all projects useful life, equipment shall be removed from the site and the foundations shall be removed to a depth of four (4) feet below the ground surface. Land shall be restored to pre-permit conditions, either productive top soil or re-seeded in native grasses. Access roads shall be removed. The requirement to remove access roads shall not apply to roads in existence before the CSWEP application was filed. The landowner may choose to have access roads left intact.
8. Structures for wind turbines shall be self-supporting tubular towers painted a neutral color such as a white or pale gray. No lattice structure shall be used. No logos or advertisements are allowed on these structures. Each turbine shall be marked with a visible identification number located no higher than fifteen (15) feet above ground level.
9. Applicant shall take reasonable measures to correct deficiencies in radio and television reception in or near the project area shown to be caused by the project. CSWEP shall operate in conformance with the Federal Communications Commission (FCC) regulations.
10. Applicant shall take reasonable measures such as planting trees, installing awnings, etc. to mitigate special adverse visual impacts such as reflections, shadow flicker, and blade glint affecting residences within or immediately adjacent to the project area, unless turbine is 1,000 feet or more away from a residence.
11. Sedgwick County Code Enforcement shall conduct all necessary inspections on each turbine. Inspections shall include, but not limited to; foundation, structural assembly, mechanical, and electrical. Documentation regarding each approved inspection shall be submitted to the Planning Director.

All expenses shall be the responsibility of the Applicant or holder of the CUP. Sumner 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.

All inspections shall be conducted in accordance with Sumner County and Sedgwick County Code Enforcement inspection policy.

12. Transfer of CUP: Applicant shall advise the Board of County Commissioners and the director of Planning and Zoning, in writing, of a transfer of ownership. All new CUP holders shall be required to meet the same conditions as the original Applicant. The new CUP holder shall also meet the surety/bond escrow requirements to insure the CSWEP is decommissioned and removed to CUP specifications at the end of the projects useful lifespan or in case of abandonment.

**SECTION 5. CONTENTS OF THE CSWEP DEVELOPMENT PLAN:** Shall be submitted at the time of Application for a Conditional Use.

1. Introduction: This section shall provide information on the following:
  - a. Name of the project.
  - b. Phases of construction (if applicable).
  - c. Two (2) maps showing project location and vicinity. One at 1:100,000 scale, and one at 1:2,000 scale (USGS Scale).
  - d. Name and address of the developer, and a statement from the developer providing relevant information regarding:
    - (1) An overview of the company.
    - (2) Qualifications and experience in Commercial Solar or Wind Energy development.
    - (3) Environmental management history of the company.
    - (4) Financial information regarding the applicant's ability to construct, operate, and maintain the CSWEP.
    - (5) Financial information regarding applicant's ability to meet decommissioning escrow-bond requirements.
    - (6) (Note to Applicant: K.S.A. 45-221, Section 33 exempts financial information submitted by contractors in qualification statements from being open to the public).
  - e. Relevant background information on the project, including a general overview of the project location, timeframe and project life, phases of development, and possibilities for future expansion.
  - f. An examination of feasible, alternative locations for the project and reasons for the choice of this location over alternative locations.
  - g. Environmental guidelines and industry codes of practice that will be followed if approved.
  - h. An inventory of existing wildlife, endangered species, wetlands, and other biologically sensitive areas within the site.
  - i. Archeological reconnaissance survey within the site that will be impacted by the construction or operation of the CSWEP. Survey shall only be required to be conducted if state or federal monies are received for the project. Only the area of the project that is disturbed by construction is required to be surveyed.
  - j. *What percentage of the State of Kansas Renewable Portfolio Standards (RPS) does this project supply? (Not applicable at this point in time)*
2. Site Plans: A Site Plan with the following specifications shall be submitted:
  - a. Scale of 1" = 2000'.
  - b. Scale and north point (up).
  - c. Name / address of land owner and land developer.
  - d. Boundaries of site: Boundary of property and boundary of area affected by the CUP.
  - e. Topography with contours at intervals of 20'.
  - f. Adjoining streets; Location of nearby railroads and airports.
  - g. Transmission lines.
  - h. Houses within 1000' of the site boundary.
  - i. Acreage of site; point(s) of access to the project.
  - j. General location of turbines, electric collector and feeder lines, electrical equipment, maintenance roads, and other associated facilities.
  - k. Boundaries of the 100-year floodplain as identified on the Federal Insurance Administration's "Flood Hazard Boundary Maps" of Sumner County, Kansas.
  - l. Also show the location of any underground pipelines and other utility easements.

3. Mitigation Measures: Applicant shall address the following potential environmental effects and shall provide plans to mitigate each:
  - a. Overview of existing environment: Information shall include information regarding:
    - (1) Flora – vegetation species, threatened species (officially listed), critical habitat and habitat conditions for each species.
    - (2) Fauna – species, habitat assessment, threatened species (officially listed), migratory species, critical habitat and habitat conditions for each species.
    - (3) Geoconservation – sites of geoconservation significance listed on the state/national database.
    - (4) Flood zones.
  - b. Site Clearance:
    - (1) Applicant shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation, and maintenance of the CSWEP.
    - (2) Applicant shall minimize the removal of trees and shall not remove groves of trees or hedgerows (shelter belts) without approval of the affected landowner.
    - (3) Applicant shall separate and protect topsoil from subsoil.
    - (4) On cultivated land, Applicant shall minimize compaction of the land during all phases of the CSWEP's life. Compaction shall be confined to as small an area as practical.
    - (5) 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.
  - c. Roads:
    - (1) Public Roads:
      - (a) Applicant shall identify all state, county, and township roads that will be used for the CSWEP and shall notify the governing body having jurisdiction over the roads (County Road and Bridge Department) to determine if said body needs to inspect the roads prior to their use. Where practical, existing roadways shall be used for all activities associated with the CSWEP.
      - (b) Applicant and governing body having jurisdiction over said roads shall enter into a road agreement for maintenance and repair of roads subject to the extra wear and tear due to transportation of equipment and turbine components.
      - (c) Applicant shall be held liable for any damage to state, county, and township roads or rights-of way resulting from tower construction, deconstruction, and/or maintenance activity.
      - (d) Applicant shall not be held responsible to maintain or repair a road to a condition better than what existed before Applicant began using it for CSWEP purposes.
    - (2) Turbine Access Roads:
      - (a) Applicant shall construct the smallest number of turbine access roads it can.
      - (b) Access roads shall be low profile roads so farming equipment can cross them. 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.
      - (c) Where an access road is to cross a stream or drainage way, Applicant must follow FEMA and the Kansas Department of Agriculture – Division of Water Resources regulations pertaining to building a structure in a flood zone.
  - d. Soil Erosion, Sediment Control, and Storm Water Runoff:
    - (1) Applicant shall develop a Soil Erosion, Sediment Control, and Storm Water Runoff Plan.
    - (2) Plan shall address what types of erosion control measures will be used during each phase of the project. It shall identify plans for:
      - (a) Grading.
      - (b) Construction and drainage of access roads and turbine pads.

- (c) Necessary soil information.
    - (d) Design features to maintain downstream water quality.
    - (e) Revegetation to ensure slope stability.
    - (f) Restoring the site after temporary project activities.
  - (3) Soil Erosion, Sediment Control, and Storm Water Runoff Plan shall also include practices regarding:
    - (a) Disposal or storage of extracted materials.
    - (b) Protecting exposed soil.
    - (c) Stabilizing restored material and removal of silt fences or barriers when the area is stabilized.
    - (d) Maintenance of erosion controls throughout the life of the project.
- e. 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 removed on a daily basis.
- f. Fire Safety :
  - (1) Applicant shall identify the potential fire risk associated with the project, including both prescribed burning and non-prescribed burning (natural or accidental). This shall include fire within the site, escape from the site and the effects of fire originating from outside the site. Also address high angle rescue.
  - (2) It is important to be aware of the fact that PRESCRIBED BURNING, or field burning is a common practice in this area. Mitigation plans are to show how the towers and equipment are protected from fire within the site and from fire originating from outside the site.
  - (3) 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:
    - (a) Is designed to confine the fire to a predetermined area and to accomplish planned land management objectives.
    - (b) Conforms to the standards established by the Natural Resources Conservation Service Office – Sumner County.
- g. Water:
  - (1) Surface Water: Applicant shall identify effects of the CSWEP (especially during constructions) and methods to be used to mitigate these effects, if any.
  - (2) Ground Water: Applicant must demonstrate that the CSWEP is consistent with the objectives and requirements of all relevant water management policies of the county including:
    - (a) Protection of the quality and quantity of the areas ground water resources.
    - (b) Maintenance of existing ground water quality.
- h. Air Quality:
  - (1) Applicant shall submit a plan to control dust on turbine access roads, especially during construction.
  - (2) Applicant shall also address the direct and indirect effects of the CSWEP on greenhouse gases and ozone depleting substances over the life span of the project.
- i. Land Use and Development: Applicant shall identify potential effects in terms of constraints or benefits the CSWEP may place on the current or future use of 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 be addressed:
  - (1) Existing or proposed tourist or recreation activities.
  - (2) Residential activities.
  - (3) Industrial activities.
  - (4) Agricultural activities.
  - (5) Local and Regional tourism.
  - (6) Commercial activities.

- j. Electromagnetic Interference:
    - (1) Applicant shall not operate the CSWEP and its associated facilities so as to cause microwave, television, radio, telecommunications or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law.
    - (2) In the event the CSWEP and its associated facilities or its operations cause such interference, Applicant shall take timely measures necessary to correct the problem.
4. Decommissioning/Restoration/Abandonment:
- a. Applicant shall submit a Decommissioning Plan describing the manner in which the CSWEP will be dismantled and removed from the site at the end of its useful life. All aboveground components of the CSWEP shall be removed. Foundations shall be removed to four (4) feet below ground level. Remainder of foundation may be left intact. Access roads shall be removed to the owner's satisfaction.
  - b. Applicant shall submit documentation showing financial capability to carry out the decommissioning and restoration requirements.
  - c. Applicant shall submit an Escrow Account/Surety Bond/Insurance Policy in an amount approved by the Board of County Commissioners as reasonably necessary to restore the site to its pre-CSWEP topography and topsoil quality. The purpose of this account/bond/policy is to assure removal of all improvements subject to the CUP at the end of the projects life, or in the event of abandonment of the CSWEP.
  - d. Abandonment shall include any one (1) year period following delivery by certified mail of written notice of abandonment to the owner of record when a completed solar or wind project does not produce any electric energy and there is no demonstrated plan to restore the equipment to operating condition.
  - e. Upon termination of the aforesaid one (1) year period, abatement shall proceed as set forth in the Sumner County Regulations. The Board of County Commissioners may require Applicant (Holder of the CUP) to decommission any abandoned turbine.
  - f. At the end of the CSWEP's useful life, or if CSWEP is abandoned, the site shall be restored in accordance with the requirements of this condition within eighteen (18) months.
5. Monitoring and Review: This section shall provide an outline of monitoring review and reporting program for each part of the project. Details shall include any pre-construction monitoring/studies, sites to be sampled, sampling procedures, the parameters to be analyzed, and the frequency of sampling and reporting. A site plan showing locations is required.
6. Extraordinary Events:
- a. Within 48 hours of an occurrence, the Applicant shall notify the Director of Planning and Zoning of any extraordinary event. Extraordinary events include:
    - (1) Tower collapse.
    - (2) Turbine failure.
    - (3) Thrown/broken blade or hub.
    - (4) Collector/feeder line failure.
    - (5) Injured worker or citizen.
    - (6) Kills of threatened or endangered species.
    - (7) Discovery of an unexpectedly large number of dead birds of any variety on site.
  - b. In the event of extraordinary migratory or endangered avian mortality the Applicant shall, within 30 days of the occurrence submit a report to the Director of Planning and Zoning, to the Kansas Department of Parks and Wildlife, and to the U.S. Fish and Wildlife Service describing the cause of the occurrences and the steps taken to avoid future occurrences.
7. References: This section shall provide details of authorities consulted, reference documents, etc.
8. Appendices: All detailed technical information that supports the DP should be included in appendices.

9. The most important features of the appendices shall be included in the main body of the Development Proposal.

**SECTION 6: ZONING CERTIFICATE APPLICATION REQUIREMENTS:**

1. General Construction Document Requirements: Applicant shall provide:
  - a. General: General description of major components and onsite facilities. Wind turbine specifications, transmission line 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. Construction: (On-Site)
    - (1) 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 CUP. Said representative shall be accessible by telephone during normal business hours. Address, phone number, and emergency phone number shall be provided to the Planning and Zoning Department and 911 and shall be available to residents, officials, and other interested persons. Applicant is required to notify Planning and Zoning and 911 should they change their designated representative.
    - (2) A description and general schedule of major construction activities for the turbines, transmission lines and common accessory structures related to CSWEP's.
    - (3) An outline of any proposed site preparation involving removing of vegetation and restoration of the site due to construction.
    - (4) The volume and designated route for traffic generated during the construction phase, including oversized and heavy equipment.
    - (5) Applicant shall inform all employees, contractors and others involved in the construction of the CSWEP of the terms and conditions of the CUP.
    - (6) If environmental conditions not previously identified are discovered during the construction, the applicant shall have the right to move or relocate a turbine site, only if the discovery would, by law, prevent such use.
  - c. Construction: (Off-Site) Any new infrastructure or off site accessory structures required for the project to progress shall be described, including the following:
    - (1) Requirements for new transportation infrastructure and/or upgraded, realigned or new road.
    - (2) Changes to electrical substations.
    - (3) Changes to existing power transmission systems, including any upgrades to existing transmission lines.
    - (4) Requirements for the realignment of other utilities affected by the project.
  - d. Operation and Maintenance:
    - (1) Operation and maintenance requirements (including frequency of maintenance activities) for the turbines and transmission lines.
    - (2) Width of transmission line easements required, and any restrictions necessary on land use, development and access within said easement.
  - e. A site plan is required to be submitted showing the location of all underground communication lines, underground power collection lines and above ground transmission lines that are to be installed. Above ground transmission lines may be used only in public rights-of-way or easements.
  - f. Applicant shall apply for a Zoning Certificate prior to the construction of each turbine.
  - g. A surety bond, for decommissioning purposes, must be approved and accepted before any Zoning Certificates are issued for construction to begin.

- h. Transportation routes used for construction shall be coordinated with the County Road and Bridge Department. A road agreement must be approved before any Zoning Certificates are issued for construction to begin.

**SECTION 7. BOND AGREEMENT:** The following information is to be addressed on the bond:

1. Bond Requirement:
  - a. Applicant shall obtain a surety bond naming Sumner County, Kansas, as payee in a form acceptable to the Board of County Commissioners. Applicant shall maintain said bond through the lifespan of the CSWEP. Bondholder shall provide the County annual notification of bond status. Bondholder shall provide the County 30-days written notice of any cancellation thereof.
  - b. In the event the Applicant or CUP holder is in non-compliance or default due to non-payment, the County shall have the right to call said bond and use it for decommissioning purposes. Should there be any remaining balance; the County shall have the right to withhold refund payment until the decommissioning process is completed to the County's satisfaction.
2. Liability on Termination or Expiration:
  - a. In the event of termination of this CUP for any reason, the CUP holder shall remain liable to the County for any expense incurred by the County that is above and beyond what is covered by the surety bond, escrow account, and/or insurance policy.
  - b. The CUP holder shall remain liable to the County for any unspent funds, the expenditure or use of the funds in a manner or for a purpose not authorized by this agreement and/or damages as a result of any breach of this agreement by the CUP holder.
  - c. The County shall have the right, at any time prior or subsequent to any remedies, including seeking injunctive or other equitable relief, to enforce the provisions of this agreement and/or recover funds, which are unspent, expended or used in an unauthorized manner, or for an unauthorized purpose and/or damages sustained by the County as a result of any breach of this agreement by the CUP holder.
3. Non-Liability: Nothing in this agreement or otherwise shall impose any liability or duty whatsoever on Sumner County or any of its agencies, including, but not limited to any liability for taxes, wages, or any other employee benefits for any person or entity. Contractors, suppliers, or consultants accepting and relying on documents, materials, and other information from the Applicant or CUP holder will do so on their own responsibility and at their risk.

**SECTION 8. ADMINISTRATION AND ENFORCEMENT:** It shall be the duty of the Sumner County Director of Planning and Zoning to administer and enforce the requirements prescribed in these Regulations. Applications for permits and variances shall be made to the Director upon a form published for that purpose. Applications required by these Regulations submitted to the Director shall be promptly considered and granted or denied. Application for appeals or variances shall be forthwith transmitted by the Director.

**SECTION 9. APPEALS:**

1. Any person aggrieved, or any taxpayer affected, by any decision of the Director of Planning and Zoning made in the administration of these Regulations may appeal to the Sumner County Board of County Commissioners.
2. All appeals hereunder must be taken within the time provided by the Sumner County Board of County Commissioners, by filing with the Planning and Zoning Director a notice of appeal specifying the grounds thereof. The Planning and Zoning Director shall forthwith transmit to the Sumner County Board of County Commissioners all papers constituting the record upon which the action appealed from was taken.

3. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Planning and Zoning Director certifies to the Sumner County Board of County Commissioners, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would in the opinion of the Planning and Zoning Director cause imminent peril to life or property. In such case, proceedings shall not be stayed except by the order of the Sumner County Board of County Commissioners on notice to the Planning and Zoning Director and on due cause shown.
4. The Sumner County Board of County Commissioners shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.
5. The Sumner County Board of County Commissioners may, in conformity with the provisions of this Regulation, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as may be appropriate under the circumstances.

**SECTION 10. JUDICIAL REVIEW:** Within 30 days any person aggrieved by any decision of the Sumner County Board of County Commissioners, pursuant to this Regulation may maintain an action in District Court.

**SECTION 11. PENALTIES FOR VIOLATION:** Penalties shall be the same as established for violations of the County's Zoning Regulations.

**SECTION 12. CONFLICTING REGULATIONS:** Where there exists a conflict between any of the regulations or limitations prescribed in these Regulations any other regulations applicable to the same area, whether the conflict is with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

**SECTION 13. SEVERABILITY:** If any section; clause; provision; or portion of this resolution is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this resolution shall not be affected thereby.

Cg 28 Resolution #2011-36

Cg 41 Resolution #2012-31