

## **Section 43. WIND ENERGY GENERATION REGULATIONS**

### **43.01 ENERGY CONVERSION SYSTEMS**

The Wind Energy Generation Regulations is intended to balance the need for clean renewable energy resources with the protection of health, safety, and welfare of the residents of Scotts Bluff County, Nebraska. The County finds these regulations are necessary in order to ensure that all wind energy conversion systems (WECS) are appropriately designed, sited and installed. These regulations pertaining to all wind energy conversion systems are intended to establish reasonable guidelines and restrictions for the installation, maintenance and decommissioning of WECS consistent with federal, state and local laws. Scotts Bluff County recognizes that this is an emerging technology and that modifications and amendments to these regulations may be reviewed and made as technology advances.

These regulations shall be consistent with Nebraska statutes, specifically Neb. Rev. Stat. § 66-913 that allows for counties having zoning or subdivision jurisdiction to include considerations for the encouragement of wind energy use and protection of access to wind energy and all applicable zoning regulations or ordinances in comprehensive development plans. Legislative findings contained in §§ 66-901 to 66-915 are incorporated herein by reference.

### **43.02 TYPES OF WIND CONVERSION SYSTEMS**

**CLASS 1 - Small Wind Energy Conversion System (SWECS)** - A SWECS which is incidental and subordinate to another use of the same parcel. A system is considered a small wind energy system only if it supplies energy for onsite use such as dwellings, accessory structures, small commercial operations, and irrigation/water well equipment. When a parcel on which the system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for onsite use may be sold back to the utility company. To be used in conformance with Nebraska State Statutes 70-2001 through 70-2005, regarding the net metering of distributed generation systems of 25 kilowatts and less. SWECS shall not require a permit, except as required in Section 5.202(4).

**CLASS 2 - Commercial Wind Energy Conversion System (CWECS)** - Under a common or aggregated ownership that includes substations, cables/wire, converters and other building accessories, whose main purpose is to supply electricity to multiple homes, or adjacent commercial entities, individually or separately owned, to be used in conformance with Nebraska Statutes. CWECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the structures and users within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregated project.

**CLASS 3 - Utility Wind Energy Conversion System (UWECS)** - A UWECS is a system under a common or aggregated ownership that includes substations, cables/wire, converters and other building accessories, whose main purpose is to supply electricity to be sold to off-site customers on a wholesale basis. UWECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately

owning one or more of the UWECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregated project.

#### **43.03 APPLICABILITY**

These regulations govern the siting, or enlargement of any Wind Energy Conversion System (WECS) project in Scotts Bluff County. Whenever the provisions of these regulations are found to be inconsistent with state regulations, the regulation imposing the more restrictive standard shall control.

#### **43.04 PREEMPTION OR CONFLICT WITH OTHER LAWS**

Nothing in these regulations is intended to preempt other applicable local, state or federal laws, rules or regulations. In the event of any conflict, the more stringent requirement shall control.

#### **43.05 SEVERABILITY**

If any section or provision of the Scotts Bluff County Wind Energy Regulations, or the application of that section or provision to any person, situation, or circumstance is adjudged invalid for any reason, the adjudication shall not affect any other section or provision of these regulations, or the application of the adjudicated section or provision to any other person, situation, or circumstance. The Scotts Bluff County Commissioners declares that it would have adopted the valid portions and application of these regulations without the invalid part, and to this end the provisions of these regulations are declared to be severable.

#### **43.06 DEFINITIONS**

For purposes of the Zoning Regulations, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number the plural number. The word "shall" is always mandatory, and not merely directory.

**Aggregated Project:** Those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual CSEC within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also included as part of the aggregated project.

**Accessory Wind Energy System:** Systems which are accessory to the principal use on a property and designed to supply energy solely for the principal use.

**Battery Energy Storage System (BESS):** A type of energy storage technology that uses a group of batteries to store electrical energy from a Wind Energy Conversion System for use at times of greater need.

**Capacity:** The amount of electricity produced by the Wind Energy Conversion System measured in kilowatts (kW) or megawatts (MW).

**Commercial Wind Energy Conversion Systems (CWECS):** A system designed to supply energy for multiple homes, or adjacent commercial entities, individually or separately owned, on the distribution grid.

**FAA:** The Federal Aviation Administration, or its duly designated and authorized successor agency.

✦ **Fall Zone:** The area, defined as the furthest distance from the tower base, in which a tower will collapse in the event of a structural failure.

**Feeder Line:** Any power line that carries electrical power from one or more wind collectors or individual transformers associated with individual wind energy collection to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems serving the WECS.

**Financial Assurance:** The reasonable assurance, at the discretion of the Scotts Bluff County Commissioners, from a credit worthy party that the costs associated with but not limited to, construction, maintenance, consequences from abandonment, or a failure to properly execute closure or post-closure care will be recoverable from any applicant, owner or operator under these regulations.

✦ **Height Hub:** The height above grade of the fixed portion of the tower, including the generation unit measured to the hub or center point of the rotor blade diameter.

✦ **Height, Total System:** The height above the grade of the system, including the generating unit and the measured highest vertical extension of any rotor blades or rotors of the WECS.

**Meteorological Tower:** For the purposes of wind energy conversion systems, meteorological towers are those which are erected primarily to measure wind speed and direction plus other data relevant to locating a CWECS. Meteorological towers do not include towers and equipment uses by airports, the Nebraska Department of Transportation or other similar applications to monitor weather conditions.

**Nebraska Game & Parks Commission:** The commission responsible for the stewardship of the states' fish, wildlife, parks and other resources.

**Non-participating Property:** Any property that is not the subject of an agreement with the Wind Energy Conversion System Owner or Operator.

**Participating Property:** Any property that is under lease or other property agreement with the Wind Energy Conversion System Owner or Operator.

**Professional Engineer:** A qualified individual who is licensed as a professional engineer in the State of Nebraska.

**Permit:** Any document or approval issued by the Commissioners which authorizes a WECS Project, including substations, in Scotts Bluff County.

✦ **Rotor Diameter:** The diameter of the circle created by the outer most point of the rotor blades of the windmill.

✦ **Shadow Flicker:** The strobe effect that occurs when the sun is horizontal to the rotor blades, which causes repetitive intermittent shadows that can affect people on near-by properties.

**Small Wind Energy Conversion System (SWECS):** A small wind energy system designed to supply energy for onsite use, such as dwellings, accessory structures, and irrigation/water well equipment.

**Substation:** Any electrical facility utilized to convert electricity produced by a CWECS for interconnection with high voltage transmission lines.

✦ **Total Height:** The distance measured from the ground level to the rotor blade tip when extended vertically to its highest rotation point.

**Tower:** The vertical component of a WECS that elevates the WTG and attached blades above the ground.

**Transmission Line:** The electrical power lines that are high voltage transmission lines carrying electricity over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

**U.S. Fish and Wildlife Service:** The Bureau of the Department of the Interior that works to conserve, protect and enhance fish, wildlife and plants and their habitats.

**Utility Commercial Wind Energy Conversion System (UWECS):** A system designed to supply energy

to off-site customers on a wholesale basis.

**WECS Project:** The WECS and associated support facilities including, but not limited to: roads, substations, wind array, operation and maintenance buildings, and other appurtenant equipment as specified in the siting approval application, including the project area as defined by the Owner.

**Wind Turbine Generator (WTG):** The component of a wind energy system that transforms mechanical energy from the wind into electrical energy.

**Yard, Front:** A yard extending from the front lot line of the WECS and adjoining a public street or road to the front of the WECS between side lot lines.

**Yard, Rear:** A yard extending between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot to the nearest point of the WECS.

**Yard, Side:** A yard between the WECS and the side lot line measured horizontally at right angles to the side lot line from the side lot line to the nearest point required minimum open space between the property line and the WECS.

**43.07 Class 2 - Commercial Wind Energy Conversion System (CWECS) -** A CWECS under a common or aggregated ownership that includes substations, cables/wire, convertors and other building accessories, whose main purpose is to supply electricity to on and off-site customers. CWECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the CWECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity, but are also part of the aggregated project.

**General Site and Design Standards:**

1. Minimum Yard Requirements:

A. No structure shall be placed within the high-water mark of waterways in designated district, as identified by the Flood Insurance Rate Map (FIRM) as Special Flood Hazard Areas. unless the base or footings to such structure are a least one (1) foot above such base flood elevation.

B. Setbacks:

From Public Road: CWECS wind array shall maintain a minimum setback distance from any public road of at least three hundred (300) feet measured from the county road right-of-way.

From Electrical Transmission Lines: CWECS shall maintain a minimum distance of 1.25 times the total height from any electrical transmission lines.

From Participating Property: No setback is required between an adjacent property participating in the same aggregate project, except that no tower shall be located closer than 1.25 times the total height from a building or structure.

From Non-Participating Property: CWECS shall maintain a minimum distance of 1.25 times the total height from property lines.

From Non-Participating Existing Dwelling: CWECS shall maintain a setback of ½ mile or 2.5 times (whichever is greater) the total height from the location of any wind tower to a dwelling.

State and National Parks: CWECS wind array shall maintain a minimum setback of 2 miles from the property line of State or National Park or historical site, as defined in the Scotts Bluff County Comprehensive Plan.

- C. Waiver of setback requirements: setback requirements may be waived by agreement between adjoining landowners provide that:
- a) Said agreement for waiver is made in writing;
  - b) Said agreement is presented to the Zoning Administrator upon application for conditional use permit; and
  - c) Said agreement shall be recorded in the Scotts Bluff County Register of Deeds Office, indexed to the affected properties.
2. Structures shall meet applicable industry structural codes, including the American Clean Power Associates, shall be neutral in color (white or gray) and shall not be used to display advertising.
  3. All ground mounted electrical and control equipment must be labeled and secured to prevent unauthorized access.
  4. The owner of a CWECS shall minimize and mitigate any interference with electromagnetic communications, such as radio, telephone, internet or television signals caused by the facility.
  5. Construction sites must be designed to minimize environmental impacts, and an earthworks plan must be submitted with the application.
  6. Each CWECS system application shall have a decommissioning plan outlining the means, procedure and costs of removing all related support infrastructure. This plan must be submitted with the application, and state all equipment, support structures, electrical equipment and fences will be removed upon discontinuance of the system's operation within one (1) year.
  7. The CWECS shall comply with any and/or all State and Federal regulations, if applicable.
  8. The Scotts Bluff County Planning Commission and Scotts Bluff County Board of Commissioners may impose other requirements, prior to approval, as deemed necessary.
  9. Each Multiple User or Commercial WECS must have an E911 address.
  10. The noise produced by commercial wind energy conversion systems shall not exceed fifty (50) decibels as measured at the closest dwelling unit. Noise level may be exceeded during short term events such as utility outages and/or severe wind storms.
  11. Structures for the CWECS project must provide a structural analysis, stamped by a licensed engineer registered in the State of Nebraska.

12. A detailed description of the potential shadow-flicker producing features of each of the proposed wind turbines at the proposed site, including an analysis of conditions that may cause shadow flicker, the methodology used to evaluate shadow flicker, and the manufacturer's technical documentation relating to shadow flicker. Calculations shall be from each proposed wind turbine at the proposed site to each occupied dwelling. Calculations shall be based on Scottsbluff-Gering National Climate Data Source. Shadow flicker on any occupied structure on a property shall not exceed thirty (30) minutes per day and thirty (30) hours per year.

**43.08 Class 3 - Utility Wind Energy Conversion System (UWECS)** - A UWECS which has a common or aggregated ownership that includes substations, cables/wire, converters and other building accessories, whose main purpose is to supply electricity to be sold to off-site customers on a wholesale basis. UWECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the UWECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity, but are also part of the aggregated project.

**General Site and Design Standards:**

I. Minimum Yard Requirements:

A. No structure shall be placed within the high-water mark of waterways in designated district, as identified by the Flood Insurance Rate Map (FIRM) as Special Flood Hazard Areas, unless the base or footings to such structure are a least one (1) foot above such base flood elevation.

B. Setbacks:

From Public Road: UWECS wind array shall maintain a minimum setback distance from any public road of at least 300 feet measured from the county road right-of-way.

From Electrical Transmission Lines: UWECS shall maintain a minimum distance of 1.25 times the total height from any electrical transmission lines.

From Participating Property: No setback is required between an adjacent property participating in the same aggregate project, except that no tower shall be located closer than 1.25 times the total height from a building or structure.

From Non-Participating Property: UWECS shall maintain a minimum distance of 1.25 times the total height from property lines.

From Non-Participating Existing Dwelling: UWECS shall maintain a setback of ½ mile or 2.5 times (whichever is greater) the total height from the location of any wind tower to a dwelling.

State and National Parks: UWECS wind array shall maintain a minimum setback of 2 miles from the property line of State or National Park or historical site, as defined in the Scotts Bluff County Comprehensive Plan.

- C. Waiver of Set-back Requirements: Set-back requirements may be waived by agreement between adjoining landowners provide that:
- a) Said agreement for waiver is made in writing;
  - b) Said agreement is presented to the Zoning Administrator upon application for conditional use permit; and
  - c) Said agreement shall be recorded in the Scotts Bluff County Register of Deeds Office, indexed to the affected properties.
2. Structures shall meet applicable industry structural codes, including the American Clean Power Associates, shall be neutral in color (white or gray) and shall not be used to display advertising.
  3. All ground mounted electrical and control equipment must be labeled and secured to prevent unauthorized access.
  4. The owner of a UWECS shall minimize and mitigate any interference with electromagnetic communications, such as radio, telephone, internet or television signals caused by the facility.
  5. Construction sites must be designed to minimize environmental impacts, and an earthworks plan must be submitted with the application.
  6. Each UWECS system application shall have a decommissioning plan outlining the means, procedure and costs of removing all related support infrastructure. This plan must be submitted with the application, and state all equipment, support structures, electrical equipment and fences will be removed upon discontinuance of the system's operation within one (1) year.
  7. The UWECS shall comply with any and/or all State and Federal regulations, if applicable.
  8. The Scotts Bluff County Planning Commission and Scotts Bluff County Board of Commissioners may impose other requirements, prior to approval, as deemed necessary.
  9. Each UWECS must have an E911 address.
  10. The noise produced by utility wind energy conversion systems shall not exceed fifty (50) decibels as measured at the closest dwelling unit. Noise level may be exceeded during short term events such as utility outages and/or severe wind storms.
  11. Structures for the UWECS project must provide a structural analysis, stamped by a licensed engineer registered in the State of Nebraska.
  12. A detailed description of the potential shadow-flicker producing features of each of the proposed wind turbines at the proposed site, including an analysis of conditions that may cause shadow flicker, the methodology used to evaluate shadow flicker, and the manufacturer's technical documentation relating to shadow flicker. Calculations shall be from each proposed wind turbine at the proposed site to each occupied dwelling. Calculations shall be based on Scottsbluff-Gering National Climate Data Source. Shadow flicker on any occupied structure on a property shall not exceed thirty (30) minutes per day and thirty (30) hours per year.

#### **43.09 Public Forum**

The owner/operator, for any WECS conditional use permit, shall conduct a public forum at a location in Scotts Bluff County, prior to submitting an application to the County, for a conditional use permit. Owner/operator shall provide notice of the public forum in all newspapers published within Scotts Bluff County. In addition, the Owner/Operator shall issue a press release to all print, television, and radio media to provide additional notice to the public. Such notice shall be mailed to all property owners within 2 miles of the proposed WECS site location. The notice shall include a request that property owners notify any tenants who have communication towers or equipment on their land of the public forum. The owner/operator shall provide information to the public at the forum concerning the location, nature and scope of the project, and how the owner/operator shall meet and comply with the requirements set forth in Sections 42.10, 42.11, 42.12 and 42.13 of these regulations.

#### **43.10 Application Requirements for Class 2 and Class 3 Wind Projects:**

The owner and operator applying for a conditional use permit for construction of a renewable energy project shall file an application with the Scotts Bluff County Zoning Administrator. The application shall include the name(s) of all property owner(s) of record; the name of the project operator; and the legal description and parcel numbers of the affected project area. The application shall be signed by all parties listed on the application.

The application shall also include the following documents:

- A. A narrative describing the proposed project including an overview of the project; proposed total rated capacity; identification of the operator/owner, including identification of any additional owners in the chain of ownership; disclosure of any foreign entity or affiliated foreign government ownership connected with the project; and disclosure of the source of financing for the project and whether any source of financing is from foreign entities or affiliated foreign governments.
- B. A survey map illustrating the following:
  1. Property lines, dimensions, acreage encompassed and contours with appropriate intervals for site evaluation;
  2. Location and elevation of all components of the proposed project;
  3. Location of any overhead or underground utility lines on the property;
  4. Location of all known communications towers within two (2) miles of the proposed project;
  5. Access roads;
- C. Provide a copy of all preliminary lease agreements, contracts, and similar related documents for each Participating Property, along with a copy of any agreement with real estate brokers representing the applicant concerning the acquisition and negotiation of any lease agreements, contracts or similar documents.
- D. Provide a map illustrating all: existing and proposed transmission lines to the utility interconnection; adjacent ownership; land uses; existing residences; schools; churches; federal, state, county or local parks; recognized historic or heritage sites; identified wildlife

preserves or habitat areas to a distance of 5,280 ft (one- mile).

- E. Results of consultation regarding potential interference with existing communication facilities within the CWECS/UWECS project area.
- F. Applicant shall identify potential effects in terms of constraints or benefits the wind energy facility may place on 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:
  - 1. Existing or proposed tourist or recreation activities;
  - 2. Residential activities;
  - 3. Industrial activities;
  - 4. Agricultural activities;
  - 5. Commercial activities.
- G. Application shall meet all requirements of NDEE, NRCS and NRD Districts in the project area. Soil erosion, sediment control and storm water runoff plan shall address what types of erosion control measures will be used during each phase of the project It shall identify plans for:
  - 1. Grading;
  - 2. Construction and drainage of access roads;
  - 3. Design features to control dust;
  - 4. Design features to maintain downstream water quality;
  - 5. Re-vegetation to ensure slope stability;
  - 6. Restoring the site after temporary project activities;
  - 7. Disposal or storage of excavated materials;
  - 8. Protecting exposed soil;
  - 9. Stabilizing restored material and removal of silt fences or barriers when the area is stabilized;
  - 10. Maintenance of erosion controls throughout the life of the project; and
  - 11. Must present an acceptable weed or vegetation plan at the time of permit.
- H. Applicant shall provide information regarding flora and fauna of the proposed project area including:
  - 1. Officially listed threatened or endangered species;
  - 2. Critical habitat and habitat conditions;
  - 3. An avian study based on the U.S. Fish and Wildlife Service.
- I. A pre-construction noise study shall be conducted; and shall include all property within one (1) mile (5,280 ft) of the site. The protocol methodology and modeling shall be included in the study. The complete results and full study report shall be submitted to the Scotts Bluff County Planning Department for review at the time of the application.
- J. Standard drawings of the structural components of the project equipment.

- K. Certification by a registered licensed Engineer in the State of Nebraska that shows:
  - 1. There is a substantial need for the proposed use of greater than one hundred (100) KW;
  - 2. All applicable local, state, and federal building, structural and electrical codes will be followed;
  - 3. The site is feasible for a wind project; and can be successfully operated in the climate conditions found in Scotts Bluff County;
  - 4. The design and safety of the proposed project equipment to withstand weather related events.
  
- L. A report concerning the conduct, notice, information and questions addressed at the public forum required in Section 42.09.
  
- M. Provide proof of compliance with Nebraska Power Review Board statutory requirements (Section 70-1014.02) for a privately developed renewable energy facility.
  
- N. In the event any of the foregoing requirements cannot be submitted at the time of the application due to external stake holder constraints or project timing requirements, those elements of the application may be submitted at a later date. The applicant shall provide written explanation for why the information cannot be provided with the application. This information may be included as a condition for approval of the application by the County Board and the information shall be submitted to the County Zoning Administrator prior to issuance of a building permit that shall be required before any work can begin at the site location.

**43.11 Construction and Operations (Class 3 Only)**

- A. All public roads to be used for the purpose of transporting project substation materials, cement or equipment for construction, operation or maintenance of the project systems shall be identified and applicable weight and size permits from the impacted road authority(ies) shall be obtained prior to construction. A pre-construction survey must be conducted with the appropriate jurisdictions to determine existing road conditions. This survey shall be provided by the applicant in consultation with the Scotts Bluff County Highway Department. Those included are Applicant(s); Land Owner(s); Highway Superintendent(s) and Zoning Administrator(s). The survey shall include photographs and a written agreement to document the conditions of the public roads and facilities. All expenses of the survey shall be the Applicant's responsibility.
  
- B. Prior to the commencement of construction, the Applicant shall enter into an agreement with the Scotts Bluff County Highway Department regarding use of county roads during construction. The agreement shall include traffic routes, time of year use, staging areas and any other physical sites related to the project. All roads shall be constructed and maintained to allow access, at all times, by any emergency service vehicles. The project owner shall be responsible for immediate repair of damage to public roads and drainage systems stemming from construction, operation or maintenance of the project. Any violation of the agreement will incur an assessment against the Applicant for damages as determined by the Applicant and the Board of Commissioners. If the parties do not agree on the assessment, the matter shall be submitted to binding arbitration at Applicant's cost.

- C. Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants shall be removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations.
- D. The social and economic reporting requirements shall include the following and any mitigation measures to address adverse social and economic impacts:
  - 1. The estimated amount of property, sales and other taxes to be generated by the project in Scotts Bluff County and outside of Scotts Bluff County.
  - 2. Estimated local expenditures of construction materials in Scotts Bluff County.
  - 3. The estimated number of construction jobs and estimated construction payroll.  
Estimated number of local construction job opportunities.
  - 4. The estimate of the construction workforce spending in Scotts Bluff County.
  - 5. The estimated number of federal, state and local government jobs affected and added as a result of the WECS project.
  - 6. The estimated number of permanent jobs and estimated continuing payroll.
- E. Blades or generators damaged for any reason, must be removed and properly recycled to a specific location identified in the decommissioning recycling plan. Removed damaged blades or generators will be handled per EPA Regulations RCRA subtitle C and D and must not be allowed to be stored on the grounds unprotected from lead or other heavy metals seepage.
- F. Designated and declared weeds shall be controlled on permitted sites during the life of the operation and through completion of decommission. This shall be maintained to the satisfaction of the Scotts Bluff County Weed Control Authority.
- G. Design and construct structures for battery use with adequate spacing to prevent fires in one structure from affecting adjoint structures as approved by the State Fire Marshall.

#### **43.12 Safety Measures**

- A. Each project shall be equipped with both manual and automatic controls to limit the power so it does not exceed the design limits.
- B. Project location shall include no signs for advertising of any kind, except for one sign not to exceed 32 square feet posted near the entrance to the facility, and except for signs required by regulatory code. The facility entrance sign shall contain the following information:
  - 1. Warning - high voltage;
  - 2. Operator's name;
  - 3. Emergency phone number.
- C. Each project shall be properly grounded to safely sustain natural lightning strikes in conformance with the National Electric Code.

- D. The project operator shall maintain a current insurance policy which will cover liability, installation, operation and any possible damage or injury that might result from the failure of any part or parts of the generation and transmission facility. The amount of said policy shall be established as a condition of approval. The equipment shall be warranted against any system failures reasonably expected in severe weather operation. Operator shall name Scotts Bluff County as an additional interest as part of the facility insurance policy. County shall receive notice if the operator terminates or revises insurance coverage.
  
- E. An Emergency Operations Plan (EOP) must be placed on file and kept current with Scotts Bluff County Zoning Administrator, Region 22 Emergency Management, and Fire and Rescue Department(s) within the project jurisdiction. The plan shall include an all-hazards planning approach, based on an emergency incident or disaster of any magnitude or geographic size that may cause disruption to the function of project equipment and include contacts for notification. A preliminary EOP, as agreed upon with the applicable agencies mentioned in Section 42.16, shall be provided with the conditional use permit application
  
- F. Upon completion of the CWECS/UWECS project the Applicant shall meet with local Fire and Rescue jurisdiction to review the Emergency Operations Plan.

#### **43.13 DISCONTINUATION AND DECOMMISSIONING PLAN**

At the expense of the permittee, a gross estimate for the decommissioning costs of this approved Wind Facility, including any estimated resale and salvage value, shall be prepared by a Nebraska licensed professional engineer. Such plan shall include the means, procedure, and costs of removing Wind Facility components.

The estimated decommissioning cost shall be guaranteed in one of the following forms of financial security: surety bond; a letter of credit from a financial institution reasonably acceptable to the County which shall be irrevocable unless replaced with cash or other form of security reasonably acceptable to County. The operator of the Wind Facility shall maintain the financial security thereafter for as long as the Wind Facility is in existence, or upon discontinuance, decommissioning, and/or abandonment of the Wind Facility. Such financial security shall be payable to Scotts Bluff County, and shall be updated every five (5) years, commencing from the date of acceptance and approval of the security by the County Board, to cover the costs associated with the updated decommissioning cost estimates. All future decommissioning cost estimates shall be prepared by a Nebraska licensed professional engineer. Failure of permittee to update the guarantee as provided above within sixty (60) days of the professional engineer's determination of future decommissioning costs shall be an automatic revocation of the Conditional Use Permit. and the County may then collect on the financial security and the County or a designated third party thereof may enter the property to physically remove the installation.

For purposes of this instrument, discontinuance, decommissioning, and/or abandonment shall mean the Wind Facility, after being commissioned as defined by Neb. Rev. Stat. § 77-6202(1), has ceased energy production for twelve (12) consecutive months. At the end of such twelve (12) month period, the operator shall have twelve (12) months to complete decommissioning of the Wind Facility. If the operator of the Wind Facility fails to remove the installation in accordance with the requirements of this instrument, or within twelve (12) months following discontinuance, decommissioning, and/or

abandonment, the County may collect the financial security and the County, or a designated third party thereof, may enter the property to physically remove the installation. Exception: The operator provides substantial evidence, updated every six (6) months after initial submission of evidence, to the County Board for approval of the intent to maintain and reinstate the operation of that facility.

For the purposes of this instrument, the term decommissioning costs shall mean all costs associated with the dismantlement, recycling, and safe disposal of facility components and site reclamation activities, including but not limited to the following elements: (a) All gross labor, equipment, transportation, and disposal costs associated with the removal of Wind Facility from the facility site; (b) All decommissioning activity management, site supervision, site safety costs; (c) Any other costs, including administrative costs associated with the decommissioning and reclamation of the facility site, and shall account for inflation, cost and value changes, and advances in decommissioning technologies and approaches.

For the purposes of this instrument, the term Wind Facility components shall mean all equipment, infrastructure, fences, landscaping, etc., including but not limited to the following components: wind panels and collectors; battery energy storage systems; substations; switchyards, generators, transmission lines, and electrical wiring; cabling; conduit; racking; facility roads and fencing; and any other related supporting infrastructure to a minimum depth of three (3) feet. Such components shall not include any public utility infrastructure.

Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

#### **43.14 NOTIFICATION OF CHANGES PENDING REVIEW**

The applicant shall immediately notify the Commissioners of changes to any of the information contained in the application while it is pending review and consideration by the county. Changes to include any new or additional company involvements with all contact points as required in this regulation.

#### **43.15 FEES FOR APPLICATION**

A. **CLASS 2:** Scotts Bluff County, upon receipt of an application under these regulations for the permitting of a wind energy facility, shall charge the applicant a non-refundable fee of \$1000.00, plus \$5.00 per kilowatt. Scotts Bluff County shall charge the applicant these permit fees to cover the anticipated administrative costs of processing and considering the application, conducting public hearings, issuing a permit and overseeing compliance with the permit conditions and requirements. If the costs exceed the principal non-refundable fee, additional fees may be charged and collected. These costs shall include fees incurred by the County for consultants and engineers to review the application and related documents

B. **CLASS 3:** Scotts Bluff County, upon receipt of an application under these regulations for the permitting of a wind energy facility, shall charge the applicant a non-refundable fee of \$5000.00, plus \$50.00 per megawatt. Scotts Bluff County shall charge the applicant these permit fees to cover the anticipated administrative costs of processing and considering the application, conducting public hearings, issuing a permit and overseeing compliance with the permit conditions and

requirements. If the costs exceed the principal non-refundable fee, additional fees may be charged and collected. These costs shall include fees incurred by the County for consultants and engineers to review the application and related documents.

#### **43.16 COORDINATION WITH LOCAL FIRE DEPARTMENTS**

The applicant, facility owner or operator shall submit to the local fire departments and/or the Scotts Bluff County Emergency Management Coordinator and County Sheriff as required by Neb. Rev. Stat. §§81-829.36 to 81-829.75, a copy of the site plan.

- a. Upon request by any local fire department, Fire Marshal and/or the Scotts Bluff County Emergency Management Coordinator, the facility owner or operator shall cooperate with the relevant agency to develop an emergency response plan in the event of fire in/around the facility.
- b. The facility owner/operator, at their expense, shall organize and present a yearly emergency response plan review for emergency responders which may include a physical walk through of the facility.
- c. The facility will allow access to Local Fire Districts and the Fire Marshal to inspect the fuel load within the facility when requested, and agrees to remediate any concerns with abundant fuel loads found during the walk through.
- d. The facility owner/operator will notify the local Fire Department, Fire Marshal, County Sheriff and Emergency Management Coordinator when changes to the site are made that may impede emergency response, i.e. change in manning or physical access controls, addition of batteries, change in ground maintenance or emergency response plans, addition of hazardous waste, etc.
- e. The facility owner/operator shall work with local responders to ensure they have adequate equipment, training and supplies to respond to any hazards that are introduced during the operation of the facility.
- f. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

#### **43.17 FEDERAL, STATE AND LOCAL REQUIREMENTS**

Project facilities shall be constructed to meet, and be maintained in compliance with all federal, state and local requirements. Written statements providing proof that the Project is in full compliance with these relevant requirements shall be provided to the Scotts Bluff County Zoning Office with the application.

If an issue arises at any time during the review, approval, or development process, which relates to compliance of federal, state and/or local requirements, the applicant, at the discretion of the County Commissioners may request additional studies, reports, maps and/or graphic depictions prepared by a professional qualified engineer acceptable to both party's in the relevant discipline detailing the issues, characteristics, special features, potential impact, and correction measures. Nothing in these regulations is intended to preempt other applicable federal, state and/or local laws and regulations.

##### **A. Federal Aviation Administration (FAA)**

Any applicant for a project shall comply with all applicable FAA requirements. They shall also submit a report to the County Planning Office verifying said compliance.

**B. Environmental**

1. United States Fish and Wildlife Service (USFWS). The applicant shall comply with all applicable USFWS requirements including federal endangered species regulations as established in the Federal Endangered Species Act.
2. United States Army Corp of Engineers (COE). The applicant Project shall comply with all applicable COE requirements including the Federal Wetlands regulations as established in the Federal Clean Water Act.
3. Nebraska Department of Environmental Quality (NDEQ). The applicant shall comply with all applicable NDEQ requirements as well as with the Nebraska Game and Parks Commission (NGPC) requirements.
4. Materials Handling, Storage and Disposal
  - a. All solid wastes related to the construction, operation and maintenance of a Project shall be removed from the site and disposed of in accordance with all federal, state and local laws. No onsite disposal shall be allowed.

C. Nebraska Game and Parks Commission (NGPC). An applicant shall request, during initial site selection, information from NGPC on critical habitat of protected species that may be present. The applicant should obtain a letter from NGPC verifying that the applicant has coordinated with NGPC about the project site selection and describing any annual monitoring of wildlife impacts and mortalities, as recommended by the NGPC. The applicant will need to ensure access to the project area for the purposes of annual wildlife monitoring activities, if required. The applicant need not complete duplicative studies, but shall provide the County Planning Office with wildlife studies contained in existing environmental assessments and/or formal National Environmental Policy Act (NEPA) studies such as the Environmental Impact which cover the project area. NGPC will have forty-five (45) days from the date it receives the application to provide the County Planning Office with its comments concerning the application. If no comments are received within forty-five (45) days, the County Planning Office will assume the application is in order with the NGPC and proceed with the permitting process.

D. Archeological and Historical Resources. Any applicant is advised to seek comments and approval from appropriate agencies for matters concerning archaeology studies, historical importance and any other relevant federal, state and local issues and to include relevant reports in the application process. The applicant need not complete duplicative studies, but shall provide the County Planning Office with relevant historical or archeological studies contained in reports required by other jurisdictions. The County Planning Office will also route the application to the Nebraska State Historical Preservation Office (SHPO) and any other relevant agencies for comment and review. These agencies shall have forty-five (45) days from the date they receive the application to provide the County Planning Office with its comments concerning the application. If no comments are received within forty-five (45) days, the County Planning Office will assume the application is in order and will proceed with the permitting process.

**E. Department of Defense (DoD)**

Any applicant for a project shall comply with all applicable DoD requirements. They shall also submit a report to the County Planning Office verifying said compliance.

#### **42.18 DECISION OF THE COUNTY COMMISSIONERS**

As required in Section 23-114.01 (4) of the Nebraska Statutes, the County Commissioners shall make complete findings, issue an opinion, render a decision upon the record either granting or denying the application and state whether or not the applicant has met the standards required by these regulations and state statute. The decision shall be subject to the remedies provided herein. The Commissioners shall grant a permit, with conditions of approval to be satisfied by the applicant, if it determines that the proposed (WECS) complies with all standards properly adopted by the Commissioners and the standards required by these regulations. If approved, a building permit shall be issued after all conditions have been met, before any earthwork or construction may commence. No building permit shall be issued until after final approval of the complete application by the County Commissioners.

In making its findings, the County Commissioners should consider the following:

- a) Confirm application completeness;
- b) How the proposed project will positively or negatively affect the public health, safety, or general welfare of the community;
- c) Whether the project will adversely affect the public interest by overburdening services provided by Scotts Bluff County;
- d) Whether the applicant has complied with these regulations or any requests made by the Planning Commission and the County Commissioners;
- e) Whether the applicant has adequately addressed the following impacts: air quality, water quality, general nuisances to off-site property owners, soil disturbance, wildlife, cultural resources and negative economic impacts.
- f) A copy of the decision shall be served upon the applicant by certified mail, return receipt.

#### **42.19 ADDITIONAL REMEDIES FOR ENFORCEMENT**

A failure to comply with any of the Scotts Bluff County Regulations may result in a denial of a permit. A failure to comply with any of these regulations following issuance of a permit shall constitute a violation and default of the permit. Scotts Bluff County may seek any and all legal remedies to enforce these regulations including injunctive relief. Any violations may also be subject to penalties as provided in these regulations.

Scotts Bluff County, shall, in its sole discretion, provide written notice to any facility owner or operator setting forth the alleged default or violation of the permit. Such written notice shall provide the facility owner and operator a reasonable time period, not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default. If Scotts Bluff County determines in its discretion that the parties cannot resolve the alleged default within this time period, Scotts Bluff County may proceed to enforce these regulations and compliance with appropriate legal remedies.