

ARTICLE 27 WIND ENERGY CONVERSION SYSTEMS (WECS) OVERLAY DISTRICT REGULATIONS

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27-101 Purpose and Intent:

The purpose of the Overlay District is to ensure a regulatory means of facilitating wind energy development of a commercial Wind Energy Conversion System within the unincorporated portion of Marion County, and at the same time provide reasonable requirements for submittal of proposals for the establishment of a WECS to provide adequate information to the officials of Marion County charged with the responsibility to review said proposals.

To the extent there are conflicts between the requirements of this Article 27 and other provisions of the Marion County Zoning Regulations, it is intended that the purpose and intent of this Article 27 shall control the interpretation of the Zoning Regulations concerning WECS related issues.

A Wind Energy Conversion System is defined as an electrical generating facility that operates by converting the kinetic energy of wind into electrical energy and is comprised of one or more wind turbines and accessory facilities, including but not limited to, ancillary operational meteorological towers, overhead and underground communication and electrical transmission lines, transformers, substations, roads, administrative and operations buildings, turbines, supervisory control and data acquisition (SCADA) facilities, and other associated facilities. The energy may be used on-site or distributed into the electrical grid.

27-102 Applicability:

All WECS development within the WECS Overlay District, as described herein, shall comply with the standards and procedures of this Section and those required for a Conditional Use Permit as stated in Article 19 and Development Plan as stated in Article 12, understanding the "timeline" restrictions in Article 12 and Article 19 are not applicable to a WECS project because of the overall time for the development and construction thereof. Placement of noncommercial Wind Energy Conversion Systems, as defined in these Regulations, shall be subject to the procedures and requirements contained in these Regulations.

27-103 Overlay District Established:

The WECS Overlay District shall apply to all of the unincorporated portion of Marion County, Kansas.

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27-104 Circumstances Requiring Application of the WECS Overlay District:

The following circumstances require application of Overlay District standards and procedures within the designated WECS Overlay District:

1. An application for a Conditional Use Permit for a WECS; or
2. An application for expansion of a WECS beyond the area previously approved.

27-105 Additional Required Topics to be Included in Submittals:

In addition to the requirements of Article 12, applications for a WECS project shall address specific issues related with the project that include, but are not limited to the following:

1. In addition to strict conformance to all performance standards and Development Plan requirements as detailed in the Marion County Zoning Regulations, the Development Plan shall address the following:
 - A. The “boundary” of the project shall be the properties included within the “leased lands” on which the WECS is proposed to be constructed. The specific siting of individual components of the WECS, including towers, supporting structures, and all other aspects which entail a complete WECS as recognized within the industry, may be included conceptually within the Development Plan and are permitted to be moved and adjusted as necessary during the design and construction process without modifications to the Development Plan, so long as new lands are not added to the original “boundary” of the WECS and so long as such relocations conform to the setbacks and other requirements of this Article 27 and the total megawatt nameplate does not increase.
 - B. All setback designations herein, when referenced as “total height” shall mean “Total Tip Height”, which is the total height of the wind turbine measured at the highest point of the blade system during its rotation, or with respect to any other structure including meteorological tower, its total height. All horizontal setbacks shall be measured from the center point of the turbine tower to the edge point from which the setback is required. All setbacks shall be certified in writing by a licensed professional land surveyor.
2. No turbines shall be located closer than 500 feet from public roads or railroads, measuring from the nearest edge of the right-of-way or public road easement, or the total height of the turbine plus 50 feet, whichever is greater. No turbines shall be located closer than 1,000 feet from property lines of any property not included in the CUP, or the total height of the turbine plus 50 feet, whichever is greater. No turbine shall be located closer than 1,500 feet from an existing non-participating residential structure. For a participating residential structure, the turbine shall be located no closer than the total height of the turbine plus 50 feet. Turbine locations for other buildings on “participating lands” shall be as determined jointly by the WECS developer and the participating landowner.
 - A. For the purposes of the above requirements, a “participating residential structure” means a residential structure on the same land under lease or contract with a wind company; and a “non-participating residential structure” means a residential structure on land not under lease or contract with a WECS Developer.

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3. Communication lines and power collection lines are to be installed underground in the area covered by the CUP with use of directional boring, horizontal drilling, micro-tunneling, vibrating plowing, narrow trench ditching and other techniques in the construction of facilities. Such processes are intended to result in the least amount of disruption and damage as possible to the surface soil and natural features. Said lines are to be located under or at the edge of turbine access roads as feasible. Aboveground transmission lines may be used only in public rights-of-way, easements or other legal documents dedicated for such purposes, or when conditions on-site are found to make installation of underground supporting lines impractical or infeasible, for example the presence of existing underground lines or pipelines that conflict with such type of construction.
4. Designation of the public roads to be used as transportation routes for construction and maintenance of the WECS; said roads to be included within the mandatory Road Maintenance Agreement specified in these Regulations.
5. Turbine access road locations shall be agreed upon in writing between the WECS Owner and the landowner. 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. Where an access road is to cross a stream or drainage way, the applicant must follow all applicable regulations pertaining to constructing a roadway structure in a floodplain zone.
6. The lowest point of the rotor blades shall be at least 50 feet above ground level at the base of each tower.
7. No lights shall be installed on the towers unless required by the Federal Aviation Administration (FAA). If lighting is required, then only the installation of an Aircraft Detection Lighting System shall be used. This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment. Any modification of this standard shall require the approval of an amendment to the CUP. At no point shall white, strobe lights be permitted.
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. The county will assign addresses to each ingress point for turbine access roads. The WECS owner shall post county approved address signs at the ingress points.
9. At the end of the project's or an individual turbine's or tower's useful life, all WECS equipment shall be removed from the site and the foundation for the base of each tower shall be removed such that each location can be covered over with a minimum of 18 inches of topsoil and re-seeded with native grass. Any request greater than the minimum requirements shall be negotiated between the WECS Developer and/or Owner and the landowner at or before the time of decommissioning. Access roads shall be removed to the landowner's satisfaction, and the ground shall be restored to a use compatible with surrounding use. The requirement to remove access roads shall not apply to roads in existence before the WECS application was filed. The landowner may choose to have access roads left intact.

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10. The WECS and its associated facilities shall not be operated so as to cause microwave, television, radio, telecommunications or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law as to occupied residential structures existing as of the date of the CUP approval by Marion County. In the event the WECS and its associated facilities or its operations cause such interference, the applicant shall take timely measures reasonably necessary to correct the problem.
11. Reasonable measures shall be identified to mitigate specific adverse visual impacts such as reflections, shadow flicker, and blade glint affecting occupied residential structures existing as of the date of the CUP approval by Marion County, and within or immediately adjacent to the project area, such as planting trees, installing awnings, etc. A desktop study and mitigation plan are reasonable at the CUP approval phase.
12. If the WECS project area contains riparian watershed areas, native prairie grasses, or other sensitive areas designated by the county, the applicant shall identify the manner in which the WECS project shall comply with the following requirements:
 - A. The manner in which the riparian watershed areas, native prairie grass areas, or sensitive areas on any site shall be preserved, or shall be substituted for open space as approved by the County.
 - B. No clearing or grading shall be permitted within 125' from the centerline of any drainage area, unless otherwise permitted by the County. Clearing and grading within a Special Flood Hazard Area requires special permitting from the County, State, and other affected agencies.
 - C. Any development that is determined by the county to fall within the limits of the historical Chisholm Trail, Santa Fe Trail, or related historic natural or man-made feature shall comply with the following requirements:
 - 1) Any trees that are determined to endanger the preservation of trail ruts or diminish the visibility of a trail shall be removed under the direction of the County or the County's appointed designee.
 - 2) Interpretive signage as approved by the County shall be provided, if applicable.
 - 3) To the extent reasonably feasible, WECS projects should be designed, constructed and operated so as to have the minimal impact on existing historical or cultural resources, including the designation on the Development Plan and Construction Plans of areas designated as "off limits" to construction or operations activities.
13. An overview of the existing environment issues shall be documented and filed to include information regarding avoidance, impact minimization, and compensatory mitigation for the following:
 - A. Wildlife Habitat;
 - B. Bird Migration and the potential for bird strikes;
 - C. Flora – vegetation species, threatened species (officially listed), critical habitat and habitat conditions for such species;

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- D. Fauna – species, habitat assessment, threatened species (officially listed), migratory species, critical habitat and habitat conditions for such species;
 - E. Geoconservation – sites of geoconservation significance listed on the state/national database;
 - F. Flood zones. Any development, permanent or temporary, identified as being located within a special flood hazard area must obtain all necessary floodplain development permits and authorizations from the Kansas Department of Agriculture – Division of Water Resources, Marion County, the U.S. Army Corps of Engineers, and any other regulatory agency prior to applying for construction permits.
14. Other Lighting and Utility Standards. No light source greater than (1) one foot-candle shall be directed onto any public right-of-way, directed so as to cause glare onto any vehicle roadway, or cause light trespass onto any residentially used or zoned property. Security or safety lighting shall also be designed to avoid excess light trespass and glare. Lighting sources of all kinds shall be adequately shielded and positioned to avoid glare or direct visibility of the light source from adjoining property.
15. Noise. The audible noise created by the WECS shall not exceed 55 decibels (A-weighted) at all times measured at the property line of any non-participating property. Turbines shall be moved, or modified, or removed (and decommissioned) from service, if necessary, to comply with this condition.

27-106 Special Regulations Applicable for Conditional Use Permit for WECS:

The following regulations shall control all Conditional Use Permits for WECS:

1. Except as otherwise provided, developmental rights, and any other rights granted by the issuance of the Conditional Use Permit will continue under any extensions, re-issuances, renewals or assignments of the original lease as long as the Zoning Administrator is provided with documentation that a lease for the project was continuously maintained in effect, and all conditions placed on the permit are met.
2. With respect to a WECS project approved prior to December 2016, a construction permit must be applied for, for the installation of one or more wind turbines, on or before April 1, 2020. If construction cannot be commenced promptly upon the approval of the construction permit, the applicant may obtain a single one-year extension upon submission of a written report to the Zoning Administrator setting forth the reason(s) for a delay and the plan for commencing construction within the one-year extension period.
3. With respect to a WECS project approved after December 2016, a construction permit must be applied for within two (2) years of the approval of the CUP. If construction cannot be commenced within that two (2) year period, the applicant may obtain a single one-year extension upon the submission of a written report to the Zoning Administrator setting forth the reason(s) for a delay and the plan for commencing construction within the one-year extension period.

4. A failure of the holder of a Conditional Use Permit approved for a WECS project to timely apply for a construction permit or to timely commence construction shall result in the automatic termination the right to a WECS use under the CUP and of the CUP.
5. As to turbines, all Conditional Use Permits for WECS shall be limited to the installation, maintenance and repair of the turbines initially installed pursuant to the CUP such that no CUP extends to the replacement of turbines (a) at the end of their economic or physical life or (b) to substitute new turbine designs or technology. Any such replacement shall require a new Conditional Use Permit. Notwithstanding these limitations, individual turbines damaged prior to the end of their design life by fire, storm, accident or other casualty not the result of ordinary wear and tear may be replaced, including with then-current equivalent turbines, under the CUP authorizing the original installation of the turbines.
6. If the WECS project use ceases to exist for a period of two (2) years, the CUP will forfeit its Development Plan and will not be allowed to exist again unless a new application is made, a public hearing held, and a new Development Plan approved. However, the applicant may obtain a single one-year extension upon the submission of a written report to the Zoning Administrator setting forth the reason for the temporary cessation of operations and the plan of initiating operations. The County may initiate an action to remove the Conditional Use, but must follow the same procedures as followed to establish the Conditional Use originally.

27-107 Requirements for Construction Permit:

The following requirements shall be met in order to obtain a construction permit from the County:

1. No construction permit application shall be accepted by the County until a road agreement has been approved by the County and other public entities having jurisdiction. The WECS owner and the County and any other public 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. The WECS owner shall be held liable for any damage to county or township roads or rights-of-way resulting from tower construction, deconstruction, and/or maintenance activity. The WECS owner shall not be held responsible to maintain or repair a road to a condition better than what existed before said owner began using the public road for WECS purposes.
2. A construction permit shall be required for the construction of each turbine, MET tower, electrical substation, SCADA house, operations & maintenance facility, laydown yard, batch plant, turbine access road, crane paths, any above ground structure associated with the WECS (not including transmission lines and poles) within the approved WECS, accompanied by the payment of all fees associated therewith as established by the County. The WECS Owner shall specify whether each item is permanent or temporary. Turbine access roads may be permitted collectively, and crane paths may be permitted collectively. Construction shall be allowed to begin only after approval by the County following review of all submittals for the permit outlined herein. Upon the receipt of a complete application the County shall have a maximum of 45 calendar days to review all submitted materials in order to either approve the construction permit or notify the applicant of any deficiencies associated therewith, or within such further period as may be agreed to by the applicant.

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3. Construction plans showing the general description of major components and on-site facilities of the WECS including, but not limited to, wind turbine specifications; transmission line and accessory facilities such as control rooms, transformers, substations, maintenance facilities; underground infrastructure; and interior access roads plans shall be provided with the application for the construction permit. This shall include the designation of the number, location, capacity, and dimensions of the turbines for the WECS project and shall include the following:
 - A. A description and general schedule of major construction activities for the turbines, transmission lines, and common accessory structures related to WECS.
 - B. An outline of any proposed site preparation involving removal of vegetation, and restoration of the site due to construction.
 - C. The volume and designated route for traffic generated during the construction phase, including oversized and heavy equipment.
 - D. The WECS owner shall inform all employees, contractors and others involved in the construction of the WECS project of the terms and conditions of the approved Conditional Use Permit.
4. Marion County retains the authority to retain the services of a structural engineer or structural engineering firm licensed by the State of Kansas Board of Technical Professions to practice engineering or to offer engineering services in the State of Kansas to conduct all necessary inspections on each turbine. Inspections shall include, but not be limited to; foundation, structural assembly, mechanical, and electrical. For the purposes of the inspections regarding the WECS, the most current building and construction code published by the International Code Council and the most current electrical code published by the National Fire Protection Association shall be applicable on behalf of Marion County, Kansas. Documentation regarding each approved inspection shall be filed with the Zoning Administrator. All costs incurred by Marion County and associated with the inspections shall be paid to Marion County by the WECS owner.
5. Construction (On-site within the WECS permitted area). Prior to the start of, and continuously throughout construction and site restoration, the WECS owner shall designate a field representative responsible for overseeing compliance with the conditions of the CUP. Said field representative shall be accessible by telephone as needed by the County Zoning Administrator or his or her designee (as provided in writing to the WECS owner.) The designated field representative shall provide an address, phone number and emergency phone number to the Zoning Administrator and 911 Emergency services officials of the County. Said information shall be available to residents, officials, and other interested persons by the County. The WECS owner shall notify the Zoning Department and 911 Emergency services should a change be made in the designated field representative. If environmental conditions not previously identified are discovered during construction, the applicant shall have the right to move or relocate a turbine site, only if the discovery would, by law, prevent such use; however, the alternate turbine site must comply with WECS regulations as set forth in Article 27.

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6. Construction (Off-site outside the WECS permitted area). Any new infrastructure or off-site accessory structures required for the project to progress shall be described, including the following:
 - A. Requirements for new transportation infrastructure and/or upgraded, realigned, or new road.
 - B. Changes to electrical sub-stations.
 - C. Changes to existing power transmission systems, including any upgrades to existing transmission lines.
 - D. Requirements for the realignment of other utilities affected by the project.
7. The WECS owner, or its construction company, shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation, and maintenance of the WECS. The contractor shall minimize the removal of trees and shall not remove groves of trees or hedgerows (shelter belts) without approval of the affected landowner. The contractor shall separate and protect topsoil from subsoil. On cultivated land, the contractor shall minimize compaction of the land during all phases of the WECS life. Compaction shall be confined to as small an area as practical. 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.
8. All lubricants and/or hazardous materials to be located on the premises in connection with the WECS facility shall be kept and transported in accordance with all state and federal regulations.
9. Construction permit application shall include fire mitigation and action plan and address high angle rescue. It is important to be aware that PRESCRIBED BURNING, or range burning is a common practice in Marion County. 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. 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 county-specified rules and regulations.

The applicant shall acknowledge that an owner, lessee, or occupant of any agricultural land is not liable for property damage caused by or resulting from prescribed burning their own land or the land owned by, leased by, or occupied by the WECS.
10. The applicant shall develop a Soil Erosion, Sediment Control & Storm Water Runoff Plan, and any required SWPP and NPDES permit(s) shall be finalized and submitted prior to the issuance of a construction permit and the start of construction. The Plan shall address what types of erosion control measures will be used during each phase of the project. Said plan shall identify plans for the following:
 - A. Grading;
 - B. Construction and drainage of access roads and turbine pads;
 - C. Necessary soil information;

- D. Design features to maintain down-stream water quality;
- E. Re-vegetation to ensure slope stability;
- F. Restoring the site after temporary project activities.

The Soil Erosion, Sediment Control & Storm Water Runoff Plan shall also include practices regarding:

- 1) Disposal or storage of excavated materials;
 - 2) Protecting exposed soil;
 - 3) Stabilizing restored material and removal of silt fences or barriers when the area is stabilized;
 - 4) Maintenance of erosion controls throughout the life of the project.
11. Cleanup. The WECS owner or its contractor 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.
12. Operation & Maintenance. The WECS owner shall be filed with the Zoning Administrator information concerning the following:
- A. Operation and maintenance requirements (including frequency of maintenance activities) for the turbines and transmission lines.
 - B. Width of transmission line easements required, and any restrictions necessary on land use, development, and access within said easement. Transmission line easements shall be filed with the County, and a copy shall be provided to the Zoning Administrator.
13. At least one member of the WECS development team shall accompany the project through the end of the construction period for continuity purposes. That member shall be versed in all agreements between the County and the WECS Owner/Developer. If ownership of the WECS is transferred from the WECS developer identified in the original permitting documents at the time of initial construction of the WECS to a different unrelated entity, the new owner shall be responsible for and accountable to the Conditional Use Permit and all other requirements of the Conditional Use Permit and conditions and requirements of the construction permits and all other rules and regulations applicable to the WECS as established by Marion County, Kansas. Notice of such transfer and acknowledgment by the new owner of compliance obligations shall be provided to the Zoning Administrator and filed with the Marion County Register of Deeds.

27-108 Incorporation of Provisions of Construction and Decommissioning Agreements.

The holder of any approved CUP for a WECS shall comply and remain in compliance with the terms of any agreement with Marion County with respect to (a) the use and improvement of roads, bridges or other infrastructure owned or maintained by the county in connection with the construction, operation or decommissioning of the WECS, (b) the decommissioning of a WECS or (c) providing and form of financial security to the County with respect to decommissioning the WECS. A failure to so comply or to remain in compliance shall be deemed a failure of compliance with the conditions and requirements of the Conditional Use Permit.