

Poweshiek County's Proposed Zoning Ordinance Amendments

(Draft 01/09/2017)

I. Article V. Definitions, Section 1, ¶90:

Current provision:

Wind Energy Conversion System (WECS): An electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and metrological (*sic*) towers that operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.

Proposed provision:

WIND ENERGY CONVERSION SYSTEM (WECS): 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 associated meteorological towers, overhead and underground electric and communication feeder transmission lines, transformers, substations, roads, administrative and operations buildings, turbines, and associated facilities. The energy may be used on-site or distributed into the electrical grid.

II. Article XX. Conditional Use Permits

A. Article 20, Section 5, Introductory Language

Current provision:

The requirements of this ordinance shall apply to all C-WECS proposed after the effective date of this ordinance. C-WECS for which a required permit has been properly issued prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided, that any such pre-existing C-WECS, which does not provide energy for a continuous period of twelve (12) months, shall meet the requirements of this Ordinance prior to recommencing production of energy. Also, no modification or alteration to an existing C-WECS shall be allowed without full compliance with this Ordinance.

Proposed provision:

The requirements of this ordinance shall apply to all C-WECS proposed after the effective date of this ordinance. C-WECS for which a required permit has been properly issued prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided, however that any such pre-existing C-WECS, which are deemed a discontinued use pursuant to Section 5, 1.n, below, shall meet the requirements of this Ordinance prior to recommencing production of energy. Also, no modification or alteration to an existing C-WECS shall be allowed without full compliance with this Ordinance.

B. Section 5, 1.h – Signal Interference

Current provision:

The applicant shall minimize and mitigate any interference with electromagnetic communications, such as radio, telephone or television signals cause by any C-WECS.

Proposed provision:

The applicant shall minimize and mitigate any interference with electromagnetic communications existing on the date of the approval of the Conditional Use Permit, such as radio, telephone or television signals cause by any C-WECS.

C. Section 5, 1.k – Setbacks - Generally

Current provision:

k) Setbacks. The following setbacks and separation requirements shall apply to all wind turbines and meteorological towers; provided that the Board of Adjustment may upon recommendation by the commission reduce the standard setbacks and separation requirements if the intent of this Ordinance would be better served thereby. All other structures shall comply with the applicable setbacks as defined by the base zone district

Proposed provision:

k) Setbacks. The following setbacks and separation requirements shall apply to all wind turbines and meteorological towers. However, to the extent that a written waiver is permitted, the Board of Adjustment may reduce the standard setbacks and separation requirements if the intent of this Ordinance would be better served thereby; and if the participating or adjoining property owner affected by the reduced setback or separation indicates completes a written waiver recorded with the Poweshiek County Recorder. All other structures shall comply with the applicable setbacks as defined by the base zone district. All setbacks shall be measured from the center point of the base of the wind turbine tower or the meteorological tower, as applicable. For purposes of this Ordinance, “Total Tip Height” shall mean the total height of the wind turbine measured at the highest point of the blade system during its rotation, or, with respect to a meteorological tower, its total height.

D. Section 5, 1.k.1 – Setbacks - Structures

Current provision:

k) 1. Structures. Each wind turbine and meteorological tower shall be set back from the nearest residence, school, hospital, church or public library, a distance of no less than the greater of (a) two (2) times its total tip height or (b) one thousand (1,000) feet. Total height shall be measured at the highest point of the blade system during its rotation.

Proposed provision:

k) 1. Occupied Structures. Each wind turbine and meteorological tower shall be set back from the nearest occupied structure, school, hospital, church or public library existing on the date of approval of the Conditional Use Permit a distance of no less than the greater of (a) two (2) times its Total Tip Height, or (b) one thousand (1,000) feet. For the purpose of Section 5 of this ordinance, an "occupied structure" is any building, structure, appurtenance to buildings and structures, or similar place adapted for overnight accommodation of persons, or occupied by persons for the purpose of carrying on business or other activity therein, or for the storage or safekeeping of anything of value where persons could be present. Such a structure is an "occupied structure" whether or not a person is actually present.

E. Section 5, 1.k.2 – Setbacks – Property Lines

Current provision:

k) 2. Property Lines. At no time shall any part of the wind turbine and meteorological tower overhang an adjoining property. Towers shall be 1.1 times the height of the tower and rotor from property lines without securing appropriate easements from adjoining property owners.

Proposed provision:

k) 2. Property Lines. At no time shall any part of the wind turbine or meteorological tower overhang an adjoining property unless appropriate easements or waivers from such participating or adjoining property owners have been obtained. Towers shall be set back a distance of 1.1 times Total Tip Height from property lines unless appropriate easements or written waivers from such adjoining property owners have been obtained and have been recorded with the Poweshiek County Recorder.

F. Section 5, 1.k.3 – Setbacks – Public Right-of-Way

Current provision:

k) 3. Public Right-of-Way. Setbacks from public right-of-way, railroads, power lines and structures shall be a minimum of 1.1 times the height of the tower and rotor.

Proposed provision:

k) 3. Public Right-of-Way. Setbacks of wind turbines and meteorological towers from the nearest edge of a recorded public road right-of-way or a railroad right-of-way where infrastructure exists shall be a minimum of 1.1 times the Total Tip Height.

G. Section 5, 1.k.4 – Setbacks – Communication and Electrical Lines

Current provision:

k) 4. Communication and Electrical Lines. Each wind turbine and meteorological tower shall be set back from the nearest above-ground public electric power line or telephone line a distance of no less than 1.1. times its total height, determined from the existing power line or telephone line.

Proposed provision:

k) 4. Communication and Electrical Lines. Each wind turbine and meteorological tower shall be set back from the nearest above-ground public utility electric power line or public utility telephone line a distance of not less than 1.1. times Total Tip Height determined from the existing public utility electric power line or public utility telephone line. With respect to private electrical power lines of 15kV or less and private telephone service lines, wind turbines and meteorological towers may be located nearer than 1.1 times Total Tip Height to such lines upon receipt of a written waiver from the owner of the line recorded with the Poweshiek County Recorder.

H. Section 5, 1.1 – Noise

Current provision:

1) Noise. Audible noise due to C-WECS sites operations shall not exceed sixty (60) dBA for any period of time, when measured at any dwelling, school, hospital, church, or public library existing on the date of approval of any conditional use permit from the property line.

1. No change.
2. No change.
3. In the event the noise levels resulting from the C-WECS exceed the criteria listed above, a waiver to said levels may be granted by the Board of Adjustment upon recommendation by the Commission provided that the following has been accomplished;
 - a. Written consent from the affected property owners has been obtained stating that they are aware of the C-WECS and the noise limitations imposed by this Ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and
 - b. If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement shall be recorded in the Office of the Poweshiek County Recorder which describes the burdened properties and which advises all subsequent owners of the burdened property that the noise levels in excess of those permitted by this Ordinance may exist on or at the burdened property.

Proposed provision:

1) Noise.

Audible noise caused by C-WECS sites operations, not including existing ambient noise, shall not exceed fifty (50) dBA for any period of time, when measured at the exterior of any residence or occupied structure, school, hospital, church, or public library existing on the date of approval of the Conditional Use Permit.

1. No change from ordinance current language.
2. No change from ordinance current language.
3. In the event the noise levels resulting from the C-WECS exceed the criteria listed above, a waiver to said levels may be granted by the Board of Adjustment provided that the following has been accomplished:

- a. Written waiver from the affected property owners has been obtained stating that they are aware of the C-WECS and the noise limitations imposed by this Ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and
- b. If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement shall be recorded in the Office of the Poweshiek County Recorder which describes the burdened properties and which advises all subsequent owners of the burdened property that the noise levels in excess of those permitted by this Ordinance may exist on or at the burdened property.

I. Section 5, 1.m.1 – Safety

Current provision:

m) Safety.

1. All wiring between wind turbines and the C-WECS substation shall be underground. If the developer can demonstrate the need for an overhead line and the acceptance of land owners for this line, such option may be approved conditionally.

Proposed provision:

m) Safety.

1. All wiring between wind turbines and the C-WECS substation shall be underground. If the developer can demonstrate the need for an overhead line and the acceptance of land owners for this line, such option may be approved by the Board of Adjustment.

J. Section 5, 1.n – Discontinuation and Decommissioning

Current provision:

n) Discontinuation and De-commissioning. A C-WECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the Director outlining the steps and schedule for returning the C-WECS to service. . . . Each E-WECS (*sic*) shall have a De-commissioning plan outlining the anticipated means and cost of removing C-WECS at the end of their serviceable life of upon becoming a discontinued use. . . .

Proposed provision:

n) Discontinuation and Decommissioning. A C-WECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the Zoning Administrator outlining the steps and schedule for returning the C-WECS to service. Discontinued use does not apply to the pre-construction or construction period and shall be measured from the initial commercial energy production and operation of the C-WECS project. All C-WECS and accessory facilities shall be removed to a depth of four (4) feet below ground level within one year of discontinuation of use.

1. **Decommissioning Plan.** Each C-WECS shall have a Decommissioning Plan outlining the anticipated means and cost of removing the C-WECS at the end of their serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a professional engineer licensed in the State of Iowa. The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the C-WECS and accessory facilities. The County reserves the right to verify that adequate decommissioning terms are contained in the landowner's lease or easement.
2. **Decommissioning Fund.** The applicant shall continuously maintain a financial assurance mechanism(s) in the form of performance bond and/or other security approved by the County Attorney, for the period of the life of the facility. The amount of the security shall be 130 percent of the total decommissioning cost identified in the in the decommissioning plan, as amended by the Board of Adjustment. The financial assurance mechanism (s) must ensure that the funds will be available upon discontinuation and shall not include the future value, if any, of scrap. If a bond is posted to meet this requirement, the bond-issuing company must be agreed upon by both the applicant and the County. All decommissioning, removal, and remediation fund requirements shall be fully funded before a Conditional Use Permit is issued. The County shall have sole discretion with regard to the determination of the mode of financial assurance.

K. Section 5, 1.o – Avoidance and Mitigation of Damages to Public Infrastructure

Current provision:

o) Avoidance and Mitigation of Damages to Public Infrastructure.

1. **Roads.** Applicants shall identify all roads to be used for the purpose of transporting C-WECS, substation parts, cement, and /or equipment for construction, operation or maintenance of the C-WECS and obtain applicable weight and size permits from the impacted road authority (ies) prior to construction.
2. **Existing Road Conditions.** Applicant shall conduct a pre-construction survey, in coordination with the impacted local road authority (ies) to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility. The applicant is responsible for on-going road maintenance and dust control measures identified by the Poweshiek County Engineer during all phases of construction.
3. **Drainage System.** The applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of C-WECS.

Proposed provision:

o) Avoidance and Mitigation of Damages to Public Infrastructure.

1. **Roads.** Applicants shall identify all roads to be used for the purpose of transporting C-WECS, substation parts, cement, and /or equipment for construction, operation or maintenance of the C-WECS and obtain applicable weight and size permits from the impacted road authority (ies) prior to construction.
2. **Existing Road Conditions.** Applicant shall conduct a pre-construction survey, in coordination with the impacted local road authority(ies), to determine existing conditions of roads identified pursuant to subparagraph 1, above. The survey shall include photographs or video and written documentation of the condition of the identified road facilities. The applicant is responsible for on-going road maintenance and dust control measures identified by the Poweshiek County Engineer during all phases of construction.
3. **Drainage System.** No change.
4. **Post Completion Survey.** Applicant and the Poweshiek County Engineer will meet upon completion of the project and agree as to the necessary action needed to return roads to the existing road conditions as identified in subparagraphs 1 and 2, above.

L. Section 5, 1.p – Required Financial Security

Current provision:

p) Required Financial Security. The applicant shall be responsible for restoring or paying damages as agreed to by the applicable road authority (ies) sufficient to restore the road (s) and bridges to preconstruction conditions. Financial security in a manner approved by the Poweshiek County Attorney’s Office shall be submitted covering 130% the costs of all required improvements. This requirement may be waived by the Board of Adjustment by recommendation from the Poweshiek County Engineer.

Proposed provision:

p) Required Financial Security. The applicant shall be responsible for restoring or paying damages as agreed to by the applicable road authority(ies) sufficient to restore the identified road(s), bridge(s), and associated infrastructure to preconstruction conditions. Financial security in a manner approved by the County Attorney shall be submitted covering 130% of the costs of all required improvements. This requirement may be waived or modified by the Board of Adjustment upon recommendation from the Poweshiek County Engineer.

M. Section 5, 1.q – Pre-Application Review.

Current provision:

q) None

Proposed provision:

q) **Pre-Application Review.** A Conditional Use Permit applicant may submit preliminary matters to the Board of Adjustment for review prior to making application for a permit. The review must occur no more than 60 days prior to submission of the application.

N. Section 5, 1.r – Submittal Requirements

Current provision:

q) Submittal Requirements. In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for C-WECS must submit the following information (as applicable):

1. The names of the project applicant.
3. The legal description and address of the property.
5. Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale.
6. Engineer’s certification(s) as required in these supplemental standards.
7. Documentation of land ownership or legal control of the property.
8. The latitude and longitude of individual wind turbines. . . .
11. An acoustical analysis.
13. Location of all known communications towers/facilities within two (2) miles of the proposed C-WECS.

Proposed provision:

r) Submittal Requirements. In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for C-WECS must submit the following information (as applicable):

1. The names of the project applicant, including a designated Representative(s) of the project applicant.
2. No change to original language.
3. No change to original language.
4. No change to original language.
5. No change to original language.
6. No change to original language.

7. Documentation of land ownership or legal control or equivalent right to submit an application for a C-WECS facility on behalf of a property owner.
8. No change to original language.
9. No change to original language.
10. No change to original language.
11. No change to original language.
12. No change to original language.
13. No change to original language.
14. No change to original language.
15. No change to original language.
16. No change to original language.
17. No change to original language.

O. New Section 5, 1.s – Submittal Requirements – Post-Construction

Current provision:

None.

Proposed provisions:

s) **Submittal Requirements – Post-Construction.** As soon as reasonably possible and in no event more than 120 days following completion of construction of a C-WECS project, the applicant shall submit a final certification of compliance documenting the location of all individual wind turbines and demonstrating that all facilities are located within the permitted zoning area and meet all applicable performance standards, including setbacks.

P. New Section 5, 1.t – Transferability

Current provision:

None.

Proposed provisions:

t) **Submittal Requirements – Post-Construction.** If ownership or operation of a C-WECS project is transferred from the original project owner and recipient of the Conditional Use Permit, the transferee shall be responsible and accountable to the Conditional Use Permit and all requirements contained therein. The transferees shall also be responsible and accountable for all other rules and regulations applicable to the C-WECS as established by Poweshiek County. Any new owner or operator shall provide notice of such transfer and shall acknowledge its compliance obligations, in writing, to the Zoning Administrator.