

## Section 16.14 **COMMERCIAL RENEWABLE ENERGY PROJECT (CREP)**

CONDITIONAL USE APPLICATION, REVIEW AND APPROVAL CRITERIA FOR A COMMERCIAL RENEWABLE ENERGY PROJECT FOR THE ZONING REGULATIONS OF HARVEY COUNTY, KANSAS.

*NOTE: See Section 9.04 in the A-1 Agricultural District Harvey County, KS for a CREP as a conditional use.*

**A. PURPOSE.** The purpose of this statement is to outline required information for application of a Conditional Use Permit and review and approval criteria for a Commercial Renewable Energy Project (CREP). A development plan is to be submitted with the application. These criteria are written to:

1. Assist the Applicant and relevant authorities;
2. Provide details of the CREP;
3. Provide information so individuals may gain an understanding of the CREP;
4. Provide a basis for public discussion and informed comment on the CREP;
5. Identify significant environmental, social, cultural, **historical, archeological** and economic effects related to the CREP; and, provide a background on which decision makers will consider the project.
6. Information in the application and development plan shall be as current as possible at the time of submission. Where information is unavailable or not yet finalized, estimates and/or alternative options shall be provided and noted as estimates or alternatives. Not all matters in the criteria are relevant to all aspects of a project. Only those matters relevant to the particular project need be addressed.
7. **Projects should adhere to Siting Guidelines for Wind Power Projects in Kansas, produced by Kansas Renewable Energy Working Group and/or the U.S. Fish and Wildlife Services Land Based Wind Energy Guidelines. Stricter guidelines by County, State or Federal Government will apply.**

**B. INTENT.** These criteria are intended to:

1. Address major issues associated with the project; however, they are not all inclusive.
2. Issues not listed may be deemed significant and issues may emerge as significant (studies, public input) during the course of review.
3. These criteria are not intended to regulate the installation of the smaller individual private wind energy conversion systems. (See Section 9.03 (28))
4. The development plan shall be written in a style that is easily understood by the general reader. Technical terminology shall be avoided as much as possible. Detailed technical data, statistics and supplementary information required to support the main text is to be included as appendices. All sources of information are to be referenced, and must be current. Information presented as maps, diagrams or plans is preferred as it is generally easier to understand.
5. Close consultation with the Zoning Administrator during preparation of the development plan is highly recommended. More than one draft may be required before it is considered suitable for presentation to the Planning Commission

These requirements specify the maps, information surveys and studies that must be submitted as part of the conditional use application. The County may adjust the standards for future projects

based on the results of monitoring avian collisions; the success or failure of remedial actions required in the decommissioning process; and with the changing technology in wind generated electricity.

If approved, the Conditional Use shall encompass the perimeter of the proposed CREP. One **Conditional Use** application, with landowner's signature (s), shall be required for all the land located within the perimeter of the Conditional Use. **Fee for Conditional Use permit will be per parcel and will be charged at the same rate as Cell and Communication Towers.**

### **C. DEFINITIONS:**

1. **COMMERCIAL RENEWABLE ENERGY PROJECT:** An electrical generating facility that utilizes water, wind or sun to produce electric. Renewable energy does not include petroleum, nuclear, natural gas or coal.
  - a. Commercial Wind Energy operates by converting the kinetic energy of wind into electrical energy and is comprised of one or more 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 electric grid.
  - b. Commercial Solar Energy means any device or assembly of devices that is ground installed and uses solar energy from the sun for generating electricity for the primary purpose of wholesale or retail sale and not primarily for consumption on the property on which the device or devices reside.
2. **NON-PARTICIPATING LANDOWNER:** An individual, group of individuals, a trust, or other entity owning real property who or which has not signed a lease agreement with the owner or operator of a Commercial Renewable Energy Project.
3. **NOTIFICATION AREA:** All landowners with-in 2000' of a Participating Landowner's property will be notified by mail of the Public Hearing.
4. **PARTICIPATING LANDOWNER:** An individual, a group of individuals, a trust, or other entity owning real property who or which has a signed lease agreement with the owner or operator of a Commercial Renewable Energy Project.
5. **PRESCRIBED BURNING:** The controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental (weather) conditions in accordance with a written prescription that:
  - a. Is designed to confine the fire to a predetermined area and to accomplish planned land management objectives; and,
  - b. Conforms to the standards established by the Kansas State University Research and Extension office in the Harvey County Courthouse
6. **PRIVATE AIRPORT/PRIVATE AIRSTRIP:** a location that is registered with the Kansas Department of Transportation and Federal Aviation Administration, appears on aeronautical charts, and has a landing surface(s) which is/are maintained and capable of providing a safe landing for aircraft. All such requirements must be in effect at the time a conditional use permit application is accepted by the Zoning Administrator.

7. **POWER PURCHASE AGREEMENT (PPA):** a long term (10-25 years or more) electric supply agreement between two parties usually between a power producer and a customer (electric consumer or trader).
8. **QUALIFIED THIRD PARTY:** An individual or entity that is not owned by, operated by, or a subsidiary of the current owner or subsequent owners of a CREP or a property within the project boundary, who is qualified to perform the required analysis.
9. **RENEWABLE ENERGY EQUIPMENT:** Solar panels, wind turbines and other nonpetroleum renewable sources and their apparatus permanently installed for the generation, transmission, storage, distribution or utilization of mechanical or electrical power.
10. **SAND HILLS OVERLAY DISTRICT;** Located between West US Highway 50 north to Northwest Dutch Ave and North Woodberry Road east to North Golden Prairie Road. See official map in the zoning office.
11. **TURBINE:** The total structural components used to convert the wind's kinetic energy into electric energy. The total height of the turbine is measured from the elevation of the ground surface at the base of the turbine up to the height of the turbine measured at the highest point of the blade system during its rotation.

**D. KEY ISSUES.** Key issues relating to a CREP are listed below. These issues include, but are not limited to:

1. Land Use
2. Electromagnetic Interference Magnetic Fields
3. Visual Impact
4. Reception Interference
5. Noise
6. Flicker
7. Ice Throw
8. Cultural, **Historical and Archeological** Heritage
9. Bird Migration / Strikes
10. Native Vegetation / Weeds
11. Endangered Species
12. Cumulative Impact
13. Soil Erosion
14. Wildlife Habitat
15. Water Quality
16. **Leakage/Contamination**

17. Public Health and Safety
18. Infrastructure/Roads
19. Decommissioning / Restoration / Removal
20. Aviation / Lighting/FAA
21. Financial Surety Agreement

**E. POWER PURCHASE AGREEMENT (PPA).** Approval of a Conditional Use Permit does not authorize construction of the project until the Applicant has obtained a Power Purchase Agreement (PPA) for the electricity to be generated by the CREP. The Applicant shall advise the Zoning Administrator when it obtains a PPA and shall provide such documentation confirming said agreement.

Unless an alternate timeline is determined as a condition attached to the approved Conditional Use on a case by case basis, the PPA must be obtained within one year of the date of publication of the resolution for the Conditional Use. This one year period may receive up to a 6-month extension upon written request by the Applicant and subsequent approval by the Harvey County Board of County Commissioners.

In the event the Applicant does not obtain a PPA within the 12 to 18 month time span, the resolution effectuating the Conditional Use shall automatically become null and void.

**F. REQUIREMENTS FOR CONDITIONAL USE PERMIT.** Conditional Use approval shall include, but not be limited to the following requirements for a CREP:

1. Communication lines and power collection lines are to be installed underground in the area covered by the Conditional Use. Said lines are to be located under or at the edge of Renewable Energy Equipment access roads. Above ground, transmission lines may be used only in public rights of way or easements. If, however, there is documented evidence by the applicant that there are specific existing and potential circumstances in the area affected by physical, environmental and economic situations which may justify alternative construction above ground for such installations, consideration may be given to modifications of the above standards in all or a part of the area to mitigate such concerns. Such modifications shall be specifically described in a condition attached to the approval of the conditional use. Applicant must obtain any required Utility Permits from Harvey County Road & Bridge Department.
2. A Power Purchase Agreement (PPA) and a Surety Bond for deconstruction purposes must be approved and accepted before any Zoning-Conditional Use or Building Permit is issued for construction to begin.
3. Applicant shall apply for Building Permits prior to the construction of each Renewable Energy Equipment installation. ~~or for a number of installations being constructed concurrently.~~ Each structure will require a separate permit and fee.
4. Transportation routes used for construction shall be coordinated with the Harvey County Road and Bridge Superintendent and Township Officers. Applicant will need to obtain a Road Impact Study for all phases from the County's choice of engineering firms at the cost of the Applicant. A road agreement must be approved before any building permit is issued for construction to begin. Road agreement will include all phases including but not limited to site preparation, construction, on-going maintenance, replacement or repair and decommissioning. Applicant will obtain any required permitting overweight/oversized equipment.

5. Applicant shall be held liable for any damage to County or Township roads or rights of way resulting from Renewable Energy construction, deconstruction, **decommissioning** and/or maintenance activity.
6. If lubricants and/or hazardous materials are needed to be located on the premises in connection with the CREP, said materials shall be kept and transported in accordance with all state and federal regulations. **Any leakage or contamination of soils or groundwater from storage or applicant's equipment will be the responsibility of the applicant to clean up.**
7. At the end of the project's useful life, equipment shall be removed from the site and the foundations shall be removed to a depth of four feet below the ground surface and the area removed and filled with four foot of soil which is reasonably similar in quality to that of the original excavation. Access roads shall be removed to the landowner's satisfaction, and the ground shall be reseeded in native grasses **or returned to tillable state.** The requirement to remove access roads shall not apply to roads in existence before the CREP application was filed. The landowner may choose to have access roads left intact.
8. **Applicant will have a disposal plan for unrecyclable parts included in their application. Parts will need to be removed off the property at time of repair or within 60 days. It must be included in the plan where the parts will be taken or the plan to dispose of the parts.**
9. An owner, lessee or occupant of agricultural land is not liable for property damage caused by or resulting from prescribed burning conducted on the land owned by, leased by or occupied by the person if the prescribed burning is conducted under the procedures established by the Kansas State University Research and **Extension and in accordance with the burn policy of Harvey County.**
10. A CREP shall not be located in the **400-year flood plain Special Flood Hazard Area (SFHA) as identified by the Federal Emergency Management Agency (FEMA)** on a Flood Insurance Rate Map (FIRM). **unless there is no alternative upon the property under consideration for the said proposed use.**
11. A Certified Structural Engineer or Certified Structural Engineering firm selected by the Applicant and approved by Harvey County, shall conduct all necessary inspections on each Renewable Energy Equipment. Inspections shall include, but not be limited to; foundation, structural assembly, mechanical and electrical. Documentation regarding each approved inspection shall be submitted to the Zoning Administrator before advancing to the next step of construction.
12. All expenses of the said Engineer or Engineering Firm shall be the responsibility of the Applicant or holder of the Conditional Use. Harvey County, its officers, agents and employees shall be held harmless from any and all claims, costs, liabilities, damages or expenses, including costs of suits and fees and expenses for legal services on account of any damages claimed by any third party, including such claims by agents or employees of said third party, arising from any approval or non-approval of any inspection.
13. If the Conditional Use is to be transferred from, one party to a different party, said transfer must first be approved by the Board of County Commissioners. First party shall inform the second party of the Surety Bond and all other requirements of the Conditional Use. The second party or new holder of the Conditional Use shall meet the Surety Bond requirements and all other requirements of the Conditional Use. The County Commissioners may direct the **Zoning** Administrator and/or a designated person to field inspect the Conditional Use project to determine current compliance with required conditions. A transfer fee of \$100.00 per Renewable Energy Equipment shall be paid to the County.
14. The Applicant shall supply to the Zoning Administrator, prior to Conditional Use Application for a CREP, a letter from the Kansas Department of Wildlife and Parks (KDWP) attesting to the fact that no threatened or endangered species as designated by the Kansas Nongame and Endangered Species Conservation Act of 1975 and amendments thereto, shall be negatively

affected by the construction and operation of said **wind farm CREP**. If affected, the Applicant shall provide a copy of the "Action Permit" issued from the KDWP for the proposed use.

15. CREP site location must be within the A-1, Agricultural Zoning District.
16. Documentation acceptable to the county, that the applicant has signed lease agreements currently in effect, to use the land in the manner requested. The applicant may redact sensitive financial or confidential information.
17. Each application for a Conditional Use Permit shall include a written agreement by the Applicant to reimburse the County for all unusual and extraordinary expenses incurred by the County to process the application and conduct the public hearing.
18. The CREP shall avoid cultural, historical and archeological sites. Applicant shall supply to the Zoning Administrator with application for CUP a letter from the Kansas Historical Society (KHS) attesting to the fact that no cultural, historical or archeological site or resource shall be negatively affected by the construction and operation of said CREP. Cultural, historical and archaeological resources and sites are those as designated by the State Historic Preservation Office (SHPO) Also included are those sites which have not been made public by the SHPO. Cultural, historical and archeological site protection shall be in accordance with SHPO guidelines and regulations as well as with federal and state laws. These shall include but not be limited to the following and shall include amendments thereto: Kansas State Preservation Law of 1977; Kansas statute K.S.A. 75-2724 and associated regulations; Section 106 of National Historic Preservation Act; Kansas Antiquities Act of 1967; and, the Unmarked Burial Sites Preservation Act.

#### **G. ADDITIONAL REQUIREMENT SPECIFIC TO WIND ENERGY**

Renewable Energy Equipment Location Requirements:

1. No Renewable Energy Equipment shall be located closer than 500 feet or the total height of the Renewable Energy Equipment plus 50 feet, whichever is greater, from public roads.
2. No Renewable Energy Equipment shall be located closer than **1500 feet** ~~or the total height of the Renewable Energy Equipment plus 50 feet, whichever is greater;~~ from lot lines of any property not included in the Conditional Use.
3. No Renewable Energy Equipment shall be located closer than 2000 feet from an active residential building.
4. ~~An active residential building located within the 2000 feet area described above may be located within that area if the property owner supplies a properly signed and executed waiver form that will be supplied to the Applicant and filed with the Conditional Use Application.~~
5. No Renewable Energy Equipment shall be located closer than 1500 feet from a school, church
6. Renewable Energy Equipment shall be located no closer than the total height of the Renewable Energy Equipment plus 50 feet from an accessory structure.
7. No Renewable Energy Equipment may be located closer than 1500 feet from county or private parks property lines.
8. No Renewable Energy Equipment shall be located in the Sand Hills Overlay District
9. Renewable Energy Equipment must adhere to the Code of Federal Regulations Title 14, Chapter 1, Subchapter E, Part 77. Applicant will obtain a determination of no hazard for all proposed structures. by the Federal Aviation Administration (FAA) for all airports. Setbacks will be no less than 7 nautical

miles from a public or commercial airport or 2 miles from private airports or airstrips. Greater setbacks may be required by the FAA will take precedence.

10. No Renewable Energy Equipment shall be located closer than 1500 feet from a cultural, historical or archeological resource.

11. Lowest point of the rotor blades shall be at least ~~82~~ 50 feet above ground level at the base of the tower.
12. There shall be no lights on the towers other than those required by the minimum standards of the Federal Aviation Administration (FAA). Lighting shall consist of dual lighting equipment with daytime white lights and nighttime red lights only. No high intensity or nighttime strobes shall be permitted. These restrictions shall not apply to infrared heating devices used to protect the wind monitoring equipment.
13. Structures for Wind Renewable Energy Equipment shall be self-supporting tubular towers painted a neutral color such as a white or pale gray. No lattice-type structure or other non-reflective designs that would provide perches for avian predators shall be used. To promote visual uniformity, the rotors, nacelles and towers in an array should appear similar. No logos or advertisements are allowed on these structures. Each Renewable Energy Equipment shall be marked with a visible identification number located no higher than 15 feet above ground level.
14. Applicant shall take reasonable measures to correct deficiencies in radio and television reception in or near the project area shown to be caused by the project. CREP shall operate in conformance with the Federal Communications Commission (FCC) regulations.
15. Applicant shall take reasonable measures such as planting trees, installing awnings, etc. to mitigate specific adverse visual impacts such as reflections, shadow flicker and blade glint affecting residences within or immediately adjacent to the project area.

#### H. CONTENTS OF CREP DEVELOPMENT PLAN.

1. **Introduction:** This section shall provide information on the following:
  - a. Name of the project.
  - b. Phases of construction (if applicable).
  - c. Maps showing vicinity and project location. One at 1:100,000 scale and one at 1:2,000 scale (U.S.G.S. scale), in paper and electronic form.
  - d. Name, address, ~~and~~ phone number ~~and email address~~ of the developer and similarly for the contact person. An overview of the company from the developer providing relevant information regarding qualifications and experience in commercial wind energy development and environmental management history of the company.
  - e. Relevant background information on the project, including a general overview of the project location, time frame and project life, phases of development, likely markets for electricity produced and possibilities for future expansion.
  - f. Reasons for the choice of this location.
  - g. Adopted environmental guidelines and industry codes of practice that will be followed if approved.

- h. An inventory of existing wildlife, endangered species, wetlands and other biologically sensitive areas within the site.
  - i. Archeological reconnaissance survey within the site that will be impacted by the construction or operation of the CREP. Survey shall be provided to the State Historic Preservation Office (SHPO) to determine if cultural, **historical or archeological** resources are present. Any unrecorded cultural, **historical or archaeological** resources that are found shall be evaluated for integrity and potential listing on the State Historic Site Survey and/or the National Register of Historic Places, **the Register of Historical Kanas Places and the Kansas Historical Resource Inventory (KHRI)**. Undocumented resources that are eligible for listing on the National Register of Historic Places, **the KHRI, and the Kansas Register of Historical Kansas Places** shall be avoided. All archaeological investigations shall meet the SHPO standards and guidelines.
  - j. An estimated economic cost/benefit analysis describing the impact on the local economy in respect, but not limited to, construction and permanent jobs, taxes, electricity generated, tourism, infrastructure and emergency services.
2. **Site Plans:** A site plan with the following specifications shall be submitted:
- a. Scale of 1" = 2,000';
  - b. Scale and north point (up);
  - c. Name, address, **email address** and phone number of landowner(s), land developer and designated contact person.
  - d. Boundary of the entire site including delineation of individual landowners, if applicable, and boundary of area affected by conditional use;
  - e. Acreage of site and point(s) of access to the project;
  - f. Topography with contours at intervals of 20 feet;
  - g. Adjoining streets with names and location of nearby railroads and airports;
  - h. Transmission lines
  - i. Active residential buildings within 2000 feet of the site boundary;
  - j. Natural and man-made features on the site including woodlands, creeks, wetlands, etc.;
  - k. Wind characteristics (histograms) and dominant wind directions;
  - l. Schematic location of renewable energy equipment, electric collector and feeder lines, electrical equipment, maintenance roads and other associated facilities;
  - m. Proposed setbacks of all structures from the boundary lines;
  - n. Boundaries of any **special flood hazard area 400-year floodplain** as identified on **the Federal Insurance Administration's Federal Emergency Management Agency "FEMA" Flood Hazard Boundary Maps"** **Flood Insurance Rate Map**; and **the Flood Insurance Study (FIS)** of Harvey County, Kansas
  - o. Show the location and purpose of any underground pipelines and other utility easements.
  - p. **Cultural, historical or archeological sites which are contained within the site plan.**



3. **General Construction Document Requirements:** Applicant shall provide:
  - a. General- General Description of major components and onsite facilities. Renewable energy specifications, transmission line and accessory facilities such as control rooms, transformers, substations, maintenance facilities, underground infrastructure and interior access roads. The number, location, capacity and dimensions of the renewable equipment shall also be included.
4. **Construction — (On-site)**
  - a. Prior to the start of, and continuously throughout construction and site restoration, Applicant shall designate a field representative responsible for overseeing compliance with the conditions of the Conditional Use. Said representative shall be accessible by telephone during normal business hours. Address, phone number and emergency phone number shall be provided to the Zoning Administrator and 911 Emergency Services and shall be available to residents, officials and other interested persons. Applicant is required to notify the **Zoning** Administrator and 911 Emergency Services should they change their designated representative.
  - b. A description and general schedule of major construction activities for the Renewable Energy Equipment, transmission lines and accessory structures related to the CREP.
  - c. An outline of any proposed site preparation involving removal of vegetation and restoration of the site due to construction.
  - d. The volume and designated route for traffic generated during the construction phase, including oversized and heavy equipment.
  - e. Applicant shall inform all employees, contractors and others involved in the construction of the CREP of the terms and conditions of the Conditional Use.
  - f. If environmental conditions not previously identified are discovered during construction, the Applicant shall have the right to move or relocate a Renewable Energy Equipment site, once the Zoning Administrator is notified of such, only if the discovery would, by law, prevent such use.
5. **Construction — (Off-site)**
  - a. Any new infrastructure or off site accessory structures required for the project to progress shall be described, including the following:
  - b. Requirements for new transportation infrastructure and/or upgraded, realigned or new road.
  - c. Changes to electrical substations.
  - d. Requirements for the realignment of other utilities affected by the project.
6. **Operation and Maintenance**
  - a. Operation and maintenance requirements (including frequency of maintenance activities) for the Renewable Energy Equipment and transmission lines.
  - b. Width of transmission line easements required and any restrictions necessary on land use, development and access within said easement.
7. **Mitigation Measures:**

- a. Applicant shall address the following potential environmental effects and shall provide plans to mitigate each:
  1. Overview of existing environment information shall include data regarding:
  2. Flora — vegetation species, threatened species (officially listed), critical habitat and habitat conditions for such species.
  3. Fauna — species, habitat assessment, threatened species (officially listed), migratory species, critical habitat and habitat conditions for such species.
  4. Geo-conservation — sites of geo-conservation significance listed on the state/national database.
  5. ~~Conditional Flood Hazard Zones.~~ Special Flood Hazard Areas.
  6. Applicant shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the CREP.
  7. Applicant shall minimize the removal of trees and shall not remove groves of trees or hedgerows (shelterbelts) without approval of the affected landowner.
  8. On cultivated land, applicant shall minimize compaction of the land during all phases of the CREP's life. Compaction shall be confined to as small an area as practical.
  9. 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 renewable energy equipment.

## **8. Roads**

### **a. Public Roads**

1. Applicant shall supply Road and Bridge Impact Study to County Road and Bridge Superintendent and Board of County Commissioner at the cost of the applicant. Applicant shall identify all county roads that will be used for the CREP and shall notify the Harvey County Road and Bridge Department and Township to determine if it needs to inspect the roads prior to their use. Where practical, existing roadways shall be used for all activities associated with the CREP.
2. Applicant, Road and Bridge Superintendent, and the Board of County Commissioners 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 renewable energy equipment components during all phases of the project.
3. Applicant shall not be held responsible to maintain or repair a road to a condition better than what existed before applicant began using it for CREP purposes.

### **b. Renewable Energy Equipment Access Roads**

1. Applicant shall construct the smallest number of renewable energy equipment access roads as necessary.
2. Access roads shall be low profile roads so farming equipment can cross them.

3. 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.

~~4. Where an access road is to cross a stream or drainage way, applicant must follow regulations, pertaining to building a structure in a Special Flood Hazard Area, floodplain zone of the Federal Emergency Management Agency, the State of Kansas and the Harvey County Unified Development Code Article 15. Floodplain Development Overlay District. the floodplain management regulations Harvey County, Kansas.~~

## **9. Soil Erosion, Sediment Control and Storm Water Runoff**

- a. Applicant shall develop a soil erosion, sediment control and storm water runoff plan.
- b. The above 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. Revegetation to ensure slope stability.
  3. Construction and drainage of access roads and Renewable Energy Equipment pads.
  4. Necessary soil information.
  5. Restoring the site after temporary project activities.
  6. Design features to maintain downstream water quality.
  7. Soil Erosion, Sediment Control and Storm Water Runoff Plan shall also include practices regarding:
    - a. Disposal or storage of excavated materials.
    - b. Protecting exposed soil.
    - c. Stabilizing restored material and removal of silt fences or barriers when the area is stabilized.
    - d. Maintenance of erosion controls throughout the life of the project.

## **10. Cleanup**

- a. Applicant shall remove all waste and scrap that is the product of construction, operation, restoration and maintenance from the site and properly dispose of it upon completion of each task. Bottles, paper and other litter deposited by site personnel shall be removed on a daily basis.

## **11. Fire Safety, Rescue and Hazardous Materials Plan:**

- a. Applicant shall submit a fire, rescue and hazardous material plan. The plan shall identify the potential fire risk associated with the project, including both prescribed burning and non-prescribed burning (natural or accidental). This shall include fire within the site, escape from the site and the effects of fire originating from outside the site. Also address high angle rescue. The plan shall be reviewed and approved by the Harvey County Emergency Management Director.

- b. It is important to be aware of the fact that prescribed burning or range burning may be a common practice in the area. Mitigation plans are to show how the Renewable Energy Equipment are protected from fire within the site and from fire originating from outside the site. Best source information is the Kansas State University Research and Extension office located in Harvey County Courthouse.

c. "The Sand Hills Overlay District is prohibited area for renewable wind energy due to high wild fire risk."

## 12. Water

### a. Surface Water

1. Applicant shall identify effects of the CREP and methods to be used to migrate these effects, if any.
2. Wetlands shall be preserved. Wetlands are identified on the U.S. Fish & Wildlife Service National Wetland Inventory map or Kansas GIS Wetlands Layer.

### b. Ground Water

1. Applicant must demonstrate that the CREP is consistent with the objectives and requirements of all relevant water management policies of the County including:
2. Protection of the quality and quantity of the areas ground water resources.
3. Maintenance of existing ground water quality. Of the highest concern; the Equus Beds in western Harvey County. This is the water source for over half a million people. There is currently a salt plume that exists in the Aquifer, any disturbance could make the contamination migrate.
4. The applicant will gain approval of the location and plan with the Equus Beds Groundwater Management District No.2 (GMD2) prior to application for the CUP. All Structures including footings, pilings and foundations, that intersect with groundwater must meet required separation distance set by GMD2. Applicant will provide proof of approval from GMD2 for all structures.
5. No burying of trash or debris is allowed in the Equus Beds Overlay area. Smaller debris and trash should be removed immediately. Larger debris, broken parts, will be removed within 60 days or at time of repair. Any spills of hazardous waste, oil, chemicals or petroleum products must be cleaned-up within 24 hours of first report.

## 13. Air Quality

Applicant shall submit a plan to control dust on Commercial Renewable Energy Equipment access roads, especially during construction. Harvey County is a partner within the Air Quality Improvement Task Force.

## 14. Noise

- a. An acoustic assessment analysis and map prepared by a third-party company of the county's choice, shall be required with a Conditional Use Permit application. The acoustic study shall analyze the expected audible noise level on a one (1) hour continuous sound level decibels (Leq) basis at each active residential, educational and religious structure within the project boundary and explain the methodology used to achieve the results of the study.
- b. To assist in minimizing noise generated by the turbine, the Applicant should consider using

turbine blades that are equipped with Low Noise Trailing Edge (LTNE) technology and blade serrations or other available noise reduction technology.

- c. The maximum sound level permitted for a CREP at any time shall not exceed ~~60~~ 45 dB (A weighted) measured at five feet above ground level at the boundary of the Conditional Use property ~~and shall not exceed 50 decibels (C-weighted)~~ if it is determined that a pure tone noise is generated by the project. Renewable Energy Equipment shall be moved or modified or removed (and decommissioned) from service if necessary to comply with this condition.
- d. Complaints of noise throughout the life of the CREP will be investigated and an assessment analysis prepared by a third-party company of the county's choice. Complaints due to possible low intensity and low frequency noise within a mile and a half (1.5) of the tower will be assessed. Renewable Equipment found to exceed noise will be modified, replaced or removed.

## 15. Ice Throw

An ice throw analysis and map prepared by a third party company shall be required with a Conditional Use Permit Application. The ice throw study shall analyze conditions which may cause ice to be thrown off an in-motion turbine blade and towards an occupied structure within the project boundary. The study should explain the methodology used in evaluating the risk of damage to occupied principal buildings. Also included in the study should be the manufacturer's setback distances related to in-motion ice throws and the type of ice monitoring sensors and devices installed in each turbine and the potential maximum distance ice could be thrown from an in-motion turbine blade. If ice throw study shows ice throw may exceed minimum setbacks, setbacks should be increased to meet study results. Applicant will investigate complaints of ice throw and will modify, repair, replace or remove any structure that is throwing ice more the allowed setback distance from property line.

## 16. Shadow Flicker

- a. Shadow flicker analysis and map prepared by a third-party company shall be required with a Conditional Use Permit application. The shadow flicker study shall analyze the expected annual number of hours and specific times the shadow flicker is expected to occur at each principal building within the project boundary and explain the methodology used to achieve the results of the study.
- b. To minimize the effects of shadow flicker, the Applicant shall utilize the data from the shadow flicker report to assist landowner in reducing the number of hours of shadow flicker to the minimum requirement of the zoning regulations. The Applicant and landowner shall collaborate and decide the best means to reducing the amount of shadow flicker.
- c. The maximum number of shadow flicker hours per year for an active residence, school or church shall receive is 30. Applicant will investigate all complaints. Any equipment exceeding these requirements must be mitigated, modified or removed from service.

## 17. Land Use and Development

- a. Applicant shall identify potential effects in terms of constraints or benefits the CREP may place on the 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. Agricultural activities
3. Local and regional tourism
4. Residential activities
5. Commercial activities
6. Industrial activities

#### 18. Electromagnetic Interference

- a. Applicant shall not operate the CREP and its associated facilities so as to cause microwave, television, radio, telecommunications or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law.
- b. In the event the CREP and its associated facilities or its operations cause such interference, Applicant shall take timely measures necessary to correct the problem.

#### 19. Meteorological Equipment Interference

- a. If any CREP equipment interferes with Meteorology Equipment owned by the National Weather Service or other Storm Prediction Centers, the applicant will work with the owner of the equipment to mitigate the problem. This may include relocation or removal of CREP equipment by applicant.

### I. DECOMMISSIONING / RESTORATION I ABANDONMENT.

#### 1. Decommissioning Plan:

- a. Applicant shall submit a Decommissioning Plan describing the manner in which the CREP will be dismantled and removed from the site at the end of its useful life. All above ground components of the CREP shall be removed. Foundations shall be removed to four feet below ground level and the area removed filled with four foot of soil which is reasonably similar in quality to that of the original excavation. Remainder of foundation may be left intact. Applicant will be required to:
  - i. Clear, clean, and removal of all above-surface facilities and infrastructure that have no ongoing purpose or value, and underground facilities to a minimum depth of 4 feet at the CREP's end-of-life to pre-CREP condition. All liquids, greases, or similar substances will need to be removed and any spills will need to be cleaned up. All voids and holes must be filled with topsoil. Drainage and erosion issues will be mitigated. Return all ground to tillable condition and plant with seed of landowner's choice.
  - ii. Applicant will be responsible for any clean-up of soil, air or water contamination or pollution clean-up at the expense of the applicant. The county will have the right to hold Escrow/Surety Bond/Insurance Policy until clean-up is completed to their satisfaction and can request an Environmental study (by a third party of the County's choosing) at the cost of the applicant to be completed at time of decommissioning and/or clean-up. .
- b. Access roads shall be removed to the owner's satisfaction. If the landowner requires removal of the road, the land will be restored to a tillable state.

- c. Decommissioning Plan will be updated within 10 years after the project begins operating at the expense of the applicant or current Conditional Use holder. The plan will be subsequently updated every five years.
- d. Applicant shall submit an Escrow Account / Surety Bond / Insurance Policy in an amount approved by the Board of County Commissioners. The applicant will show evidence of financial assurance that conforms to the requirements of this article and the conditional use permit to secure the performance of the applicant's obligation to remove the commercial renewable energy equipment and restore the all of the land located within the site of the CREP to its pre-CREP topography and reasonably similar soil quality.
- e. The bond amount will be reviewed every 5 years by an independent third party professional licensed engineer approved by the County at the cost of the applicant. ~~and adjustments made if necessary.~~ The applicant must deliver an updated estimate for removal and clean-up to the Board of County Commissioners. The applicant will be responsible for ensuring that the amount of the financial assurance remains sufficient to cover all expenses incurred in decommissioning, removal of all components, and clean up. Estimate may include a credit for the salvage value.
- f. The purpose of this account / bond / policy is to assure removal of all improvements subject to the Conditional Use at the end of the project's life, or in the event of abandonment of the CREP.
- g. Applicant or Holder of the Conditional Use Permit may not cancel financial assurance before the Board of County Commissioners has approved of the removal/decommissioning/clean-up of the CREP. In the event of a transfer of ownership or control, the applicant's financial security shall remain in place until the date of evidence of financial security meeting the requirements is provided to the County Commissioners.
- h. Abandonment shall include any one year period following delivery by certified mail of written notice of abandonment to the owner of record when a completed, Renewable Energy Equipment does not produce any electric energy and there is no demonstrated plan to restore the equipment to operating condition.
- i. Upon termination of the aforesaid one year period, abatement shall proceed as set forth in these criteria. The Board of County Commissioners may require Applicant or Holder of Conditional Use to decommission any abandoned Renewable Energy Equipment.
- j. At the end of the CREP's useful life, or if the CREP is abandoned, the site shall be restored in accordance with the requirements of this condition within 18 months.

**J. MONITORING AND REVIEW.** This section shall provide an outline of a monitoring, review and reporting program for each part of the project. Details shall include any pre-construction monitoring/ study sites to be sampled, sampling procedures, the parameters to be analyzed, frequency of sampling and reporting. A Site Plan showing sampling locations is required.

**K. EXTRAORDINARY EVENTS.** Within 48 hours of an occurrence, the Applicant shall notify the Zoning Administrator of any extraordinary event. Extraordinary events include:

1. Collapse.
2. Renewable Energy Equipment failure.
3. Kills of threatened or endangered species.
4. Thrown / broken blade or hub.

5. Collector-feeder line failure.
6. Discovery of an unexpectedly large number of dead birds or bats of any variety on site.
7. In the event of extraordinary avian mortality, the Applicant shall within 30 days of the occurrence submit a report to the Administrator, the Kansas Department of Parks and Wildlife, and the U.S. Fish and Wildlife Service describing the cause of the occurrences and the steps taken to avoid future occurrences. Applicant will provide yearly report on number and species of bird and bat strikes related to the project.
8. Injured worker or citizen.
9. Discovery and/or evidence of erosion, damage or impact to a cultural, historical or archeological resource. The applicant shall contact the Administrator of the State Historical Preservation Office.

**L. TRANSFER OF CONDITIONAL USE.** Conditional Use shall not be transferred from one party to a different party without approval of the Board of County Commissioners. Applicant shall advise the Board and the Zoning Administrator, in writing, of a requested approval. All new Conditional Use holders shall be required to meet the same conditions as the original applicant. The new Conditional Use Holder shall also meet the surety bond / escrow requirement to insure the CREP is decommissioned and removed to Conditional Use specifications at the end of the projects useful lifespan or in case of abandonment. Any expenses incurred by the County in processing the transfer of conditional use will be paid by the applicant or the new holder of the Conditional Use Permit.

**M. REFERENCES.** This section shall provide details of authorities consulted, reference documents, etc.

**N. APPENDICES.** All detailed technical information that supports the Development Plan should be included in appendices. The most important features of the appendices shall be included in the main body of the Plan.

**O. FINANCIAL AGREEMENT.**

1. Bond, Escrow Account or Surety Agreement. (Use of the term "bond" hereafter refers to the financial agreement chosen whether it be a bond, escrow account or surety agreement.)
  - a. Applicant shall obtain a surety bond naming Harvey County, Kansas as payee in a form acceptable to the Board of County Commissioners. Applicant shall maintain said bond through the lifespan of the Renewable Energy Project. Bondholder shall provide the County annual notification of bond status. Bondholder shall also provide the County 30-days written notice of any cancellation thereof.
  - b. In the event the Applicant or Conditional Use Holder is in noncompliance or default due to nonpayment, the County shall have the right to call said bond and use it for decommissioning purposes. Should there be any remaining balance; the County shall have the right to withhold refund payment until the decommissioning process is completed to the County's satisfaction.
2. Liability on Termination or Expiration.
  - a. In the event of termination of this Conditional Use for any reason, the Conditional Use Holder shall remain liable to the County for any expense incurred by the County that is above and beyond what is covered by the bond, escrow account and/or surety agreement.
  - b. Conditional Use Holder shall remain liable to the County for any unspent funds, the expenditure or use of the funds in a manner or for a purpose not authorized by this agreement and/or damages as a result of any breach of this agreement by the Conditional Use Holder.



- c. The County shall have the right, at any time prior or subsequent to any remedies, including seeking injunctive or other equitable relief, to enforce the provisions of this agreement and/or recover funds, which are unspent, expended or used in an unauthorized manner or for an unauthorized purpose and/or damages sustained by the County as a result of any breach of this agreement by the Conditional Use holder.
  3. Non- liability.
    - a. Nothing in the financial agreement or otherwise shall impose any liability or duty whatsoever on Harvey County or any of its agencies, including, but not limited to any liability for taxes, wages or any other employee benefits for any person or entity. Contractors, suppliers or consultants accepting and relying on documents, materials and other information from the Applicant or Conditional Use Holder will do so on their own responsibility and at their risk.
  4. An Indemnification Agreement:
    - a. An Indemnification Agreement with the County throughout the life of the project and a policy of general liability insurance with policy limits satisfactory to the Board of County Commissioners which identifies the County as an additional insured.
  5. Payment in Lieu of Tax Agreement (PILOT)
    - a. Applicant will provide PILOT agreement which adequately compensates the County for governmental services provided in the project boundary during the period of tax exemption.

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

**Q. APPEALS:**

1. Any person aggrieved, or any taxpayer affected, by any decision of the Planning and Zoning Administrator made in the administration of these Regulations may appeal to the Harvey County Board of Zoning Appeals
2. All appeals hereunder must be taken within the time provided by the Harvey County Board of Zoning Appeals. By filing with the Planning and Zoning Administrator a notice of appeal specifying the grounds thereof. The Planning and Zoning Administrator shall forthwith transmit to the Harvey County Board of Zoning Appeals. All papers constituting the record upon which the action appealed from was taken.
3. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Planning and Zoning Administrator certifies to the Harvey County Board of Zoning Appeals. After the notice of appeal has been filed by reason of the facts stated in the certificate a stay would in the opinion of the Planning and Zoning Administrator cause imminent peril to life or property. In such case, proceedings shall not be stayed except by the order of the Harvey County Board of County Commissioners on notice from the Planning and Zoning Administrator and on due cause shown.
4. The Harvey County Board of Zoning Appeals shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney.

5. Harvey County Board of Zoning Appeals may, in conformity with the provisions of this Regulation, reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as may be appropriate under the circumstances.
- R. JUDICIAL REVIEW:** Within 30 days any person aggrieved by any decision of the Harvey County Board of Zoning Appeals, pursuant to this Regulation may maintain an action in District Court.
- S. PENALTIES FOR VIOLATION:** Penalties shall be the same as established for violations of the Harvey County Zoning Regulations.
- T. CONFLICTING REGULATIONS:** Where there exists a conflict between any of the regulations or limitations prescribed in these Regulations any other regulations applicable to the same area, whether the conflict is with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.
- U. SEVERABILITY:** If any section; clause; provision; or portion of this resolution is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this resolution shall not be affected thereby.