12-306-43   WHOLESALE STORAGE & DISTRIBUTION/WAREHOUSE
12-306-43.01   Standards that apply in the GB District:
Wholesale establishment or warehouse in a completely enclosed building so long as floor area
devoted to such uses shall not exceed 20,000 square feet.

12-306-44   WIND ENERGY CONVERSION SYSTEMS
12-306-44.01   Definitions
a. Small Wind Energy Conversion System (SWECS). Small wind turbines for personal or
   small commercial use described as:
   1) Wind Turbine – a device or structure used to convert energy from the wind into electric
      power. May also be known as windmill or wind pump; devices used to power or run
      machinery or for pumping ground water; and
   2) Maximum capacity to produce up to 50 kW of electrical power, for consumption on site
      and not for transfer or sale to a third party.

b. Large Wind Energy Conversion System (CWECS). A single wind turbine or system,
collection or group of large wind turbines, connected to transmission, collector or feeder
lines and energy conversion uses that collect, transmit and store electrical energy for use in
a larger electrical network exclusive of individual use. Also known as Commercial Wind
Energy Conversion System Project.

c. 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 is designed to confine the fire to a predetermined area and to
accomplish planned land management objectives.

d. Road agreement for maintenance. An agreement executed between the applicant and
governing body, having jurisdiction over said roads, identifying the responsibilities, cost,
upkeep, fees for maintenance of a specific route used for the construction, operation, and
decommissioning of a wind energy conversion system.

e. Extraordinary Events. Any of the following with respect to an approved Large Wind Energy
Conversion System: Tower collapse, Turbine failure, Thrown/broken blade or hub,
Collector/feeder line failure, Injured worker or citizen, Kills of threatened or endangered
species, or Discovery of an unexpectedly large number of dead birds of any variety on site.

12-306-44.02   Large Wind Energy Conversion System (Commercial Wind Energy
Conversion Systems).

a. Purpose of Regulations. It is the purpose of this section to provide details related to any
application for a Commercial Wind Energy Conversion System (CWECS) Project; create a
process to permit the development of a CWECS; provide a basis for public discussion and
informed comment on the CWECS; and identify significant environmental, social, and
economic effects related to the CWECS Project.

b. Intent of Regulations. It is the intent of this section to address major issues associated with
the project; however, issues not listed may be deemed significant and issues may emerge
as significant during the course of review.

1) These regulations are not intended to restrict installation of Small Wind Energy
Conversion Systems authorized and governed by Chapter 13 Construction Codes of
Douglas County Kansas. Small Wind Energy Conversion Systems (SWECs) are expressly exempt from the Conditional Use Permit process.

2) These requirements specify the maps, information surveys, and studies that must be submitted as part of the Conditional Use Permit (CUP) application. If approved, one CUP will be issued for the entirety of real property included within the perimeter of the proposed SWECs Project. In the event the application includes multiple properties, the applicant shall provide written evidence of land owner consent for any parcel contained within the CUP application.

3) At the time of application for a Conditional Use Permit the applicant shall be required to make surrounding property owners aware of a potential development application. In addition to notifying property owners within 1,000 feet of the SWECs project per section 12-324, the applicant must provide written notice to all owners of record of unincorporated property located within one mile radius of the proposed request. The applicant shall submit a certificate of mailing for the notice required by this section, and a list of notified property owners at the time of the application. The notice shall be sent by regular mail and shall include a brief description of the project, proposed construction date, date the application will be submitted to the planning office, the person with contact information (phone, address) designated by the applicant to respond to questions concerning the proposed application and the following statement:

This letter is being sent to the owners of nearby property for the purpose of informing the property owners and other interested parties about the proposed SWECs project described further in this letter. This letter does not grant the recipient and/or property owner any additional legal rights to challenge the proposed development, instead, it is being provided solely to advise property owner(s) of the pending development. For further information, contact the applicant’s designated representative or the Lawrence-Douglas County Planning Office at 785-832-3150.

4) Location Criteria. The purpose of this section is to identify appropriate location criteria for siting wind turbines. Wind turbines shall be subject to section 12-328 of the County Zoning Regulations and are prohibited from location within any federally designated floodway [F-W Overlay District].

12-306-44.03 Conditions Required for Approval.
In addition to the findings of fact listed in section 12-307-2.07 the additional considerations shall be evaluated.

a. The applicant shall demonstrate its ability to strictly conform to all applicable performance standards detailed in these Regulations as well as applicable State and Federal law and regulations.

b. Key Issues. Key issues relating to SWECs include, but are not limited to:
   1) Visual Impact;
   2) Noise Impact;
3) Wildlife Habitat/ Native Flora and Fauna/ “Heritage Habitat Areas” [A Natural Areas Inventory of Douglas County in Northeast Kansas Prepared by the Kansas Natural Heritage Inventory, Kansas Biological Survey];

4) Bird migration/strike;

5) Endangered or Threatened Species;

6) Water Quality and Soil Erosion;

7) Infrastructure, including roads and bridges for construction access;

8) Aviation/FAA;

9) Reception Interference;

10) Cultural Heritage;

11) Maintenance of the Rural Character;

12) Cumulative Impact;

13) Company experience, reputation, and financial ability;

14) Removal/Reclamation;

15) Bond agreement; and

16) Specific requirements for building and construction.

12-306-44.04 Development/Site Plan Requirements.
As part of the CUP application, the applicant shall submit a CWECS Development Plan.

a. Each CWECS plan shall include the following:

1) Name of the project;

2) Name / address of land owner and land developer;

3) Narrative describing phases of construction (if applicable);

4) Concept plan showing the general location of turbines, electric collector and feeder lines, electrical equipment, substations, maintenance roads, and other associated facilities to be located on the subject property; equipment storage buildings or exterior storage areas;

5) Extent of area of subject property to be disturbed or cleared for access, construction, operation and maintenance;

6) Boundaries of the 100-year floodplain as identified on the Federal Insurance Administration’s “Flood Hazard Boundary Maps” of Douglas County, Kansas; and,
7) The location of any underground pipelines and other utility easements.

8) Provision of the following notes on the plan that state:

i. Decommissioned equipment shall be removed from the site and the foundations shall be removed to a depth of four (4) feet below the ground surface.

ii. The CWECS 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.

iii. 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.

iv. This CUP shall not be transferred from one party to a different person or entity without approval of the Board of County Commissioners. Applicant shall notify the Board of County Commissioners and the Director of Zoning and Codes, in writing, of a transfer from one party to another. All CUP transferees shall be required to meet the same conditions as the original Applicant. The transferee shall also meet the surety bond/escrow requirement to ensure the CWECS is decommissioned and removed to CUP specifications at the end of the project’s useful lifespan or in case of abandonment. The Commission may, in its discretion, provide for conditions that allow bank financing of a CWECS project, including a mortgage or lien on project assets, but any transfer or assignment of an interest in the CUP will remain subject to prior approval of the Board of County commissioners.

b. Supplemental information. All detailed technical information that supports the proposal should be included in appendices. The following information must be submitted with the application:

1) Vicinity Map. Two (2) maps showing project location and vicinity within Douglas County.

2) Demonstration of Qualifications to include the following information:

i. Name and address of the developer, and

ii. Statement from the developer providing relevant information regarding:

   (a) Qualifications and experience in commercial wind energy development;

   (b) Environmental management history of the company;

   (c) Financial information regarding the applicant's ability to construct, operate, and maintain the CWECS; and

   (d) Financial information regarding applicant's ability to meet the decommissioning escrow-bond requirements. (Note to Applicant: K.S.A. 45-221, Section 33 generally exempts financial information submitted by contractors in qualification statements from being open to the public.)
3) Relevant background information on the project, including a general overview of the project location, timeframe and project life, phases of development, and possibilities for future expansion.

4) Map of residential uses and structures within 1000’ of the site boundary [for each individual wind turbine included in the application];

5) Environmental guidelines and industry codes of practice that will be followed if the project is approved.

6) An inventory of existing wildlife, endangered and threatened species, wetlands, flora, fauna and geoconservation areas and other biologically sensitive areas within the site.

7) Soil Erosion, Sediment Control, and Storm Water Runoff. Applicant shall develop a Soil Erosion, Sediment Control, and Storm Water Runoff Plan, per the approval of the County Public Works Director or his designee.

8) Archeological reconnaissance survey within the site that will be impacted by the construction or operation of the CWECS. The survey shall be provided to the State Historic Preservation Office (SHPO) to determine if cultural resources are present. Any unrecorded cultural resources that are found shall be evaluated for integrity and potential listing on the National Register of Historic Places. Undocumented resources that are eligible for listing on the National Register of Historic Places shall be avoided. All archaeological investigations shall meet the SHPO standards and guidelines.

9) A transportation route plan to be used for construction shall be coordinated with the Douglas County Department of Public Works. Execution of a road agreement, approved by the Department of Public Works, prior to issuance of a building permit for construction. Dust control plan to be implemented during construction phase and for regular maintenance as needed.

10) A plan detailing all off-site construction improvements needed for the project including, but not limited to, the following:
   i. Requirements for new transportation infrastructure and/or upgraded, realigned, or new roads.
   ii. Proposed agreement for road maintenance requirements as applicable for the development and continued operation of the CWECS.
   iii. Changes to electrical substations.
   iv. Changes to existing power transmission systems, including any upgrades to existing transmission lines within Douglas County.
   v. Requirements for the realignment of other utilities affected by the project.

11) A plan detailing the Mitigation Measures used to demonstrate reasonable efforts to address the following:
i. Fire Safety: Show how the towers and equipment are protected from fire within the site and from fire originating from outside the site such as with prescribed burning and non-prescribed burning (natural or accidental).

ii. High angle rescue.

iii. Extraordinary Event response plan: Within 48 hours of the occurrence of an Extraordinary Event, the Applicant shall notify the Director of Zoning and Codes. In the event of extraordinary avian mortality, the Applicant shall, within 30 days of the occurrence, submit a report to the Director of Zoning and Codes, to the Kansas Department of Parks and Wildlife, and to the U.S. Fish and Wildlife Service describing the cause of the occurrences and the steps taken to avoid future occurrences.

iv. Noise impact.

v. Applicant shall submit proof of having submitted FAA form 7460 (notice to build) at the time of application.

c. Operation and Maintenance Plan. Operation and maintenance requirements (including frequency of maintenance activities) for the turbines and transmission lines. Width of transmission line easements required, and any restrictions necessary on land use, development, and access within said easement.

12-306-44.05 Design Standards.
The following design standards are applicable to Commercial Wind Energy Conversion Systems Projects (CWECS) and are not intended to be applicable to SWECS. The following design standards may be modified, for a particular project, by the governing body (County Commission) following a public hearing held by the Planning Commission. It is the applicant’s burden to demonstrate that the public health, safety, welfare, will be preserved and maintained if the standards are modified.

a. Setback. This section governs the setback of a tower from adjacent property lines not within the CUP. Interior setbacks of properties within the CUP may be reduced at the discretion of the governing body

   1) A setback shall be equal to 110% of the height of tower plus length of blade.

   2) No turbine shall be located closer than 1500 feet to a residential structure.

   3) Additional or reduced setback requirements may be imposed as conditions to the project, depending on the circumstances.

b. Lowest point. The rotor blades shall be at least 100 feet above ground level at the base of the tower.

c. Lighting. All turbines and accessory facilities shall be sited to minimize adverse visual effect on the environment. Towers over 100 feet but less than 200 feet in height must be lit for aircraft safety consistent with the intent of FAA regulations, even if not strictly applicable, but lighting beyond what is necessary for aircraft safety will not be allowed. Towers more
than 200’ shall be lit consistent with the Federal Aviation Administration (FAA) design guidelines.

d. **Structure.** Structures for wind turbines shall be self-supporting tubular towers painted a neutral color such as a white or pale gray. A lattice structure shall be prohibited.

e. **Logos.** Logos or advertisements are prohibited on these structures.

f. **Identification Number.** Each structure for wind turbine shall be marked with a visible identification number located no higher than fifteen (15) feet above ground level.

g. **Turbine Access Roads.** Access roads shall be shown on the site plan and shall require approval of the County Public Works Director or his designee.
1) Access roads shall be low profile roads so farming equipment can cross them.
2) Where an access road is to cross a stream or drainage way, it shall be designed and constructed per the approval of the County Public Works Director or his designee and comply with applicable FEMA and Kansas Department of Agriculture — Division of Water Resources regulations pertaining to building a structure in a flood zone.

**12-306-44.06 Decommissioning/Restoration/Abandonment Plan.**
Applicant shall submit a Decommissioning Plan describing the manner in which the CWECS will be dismantled and removed from the site at the end of its useful life.

a. All aboveground components of the CWECS shall be removed.

b. Foundations shall be removed to four (4) feet below ground level. Remainder of foundation may be left intact.

c. Access roads shall be removed unless specified by the property owner that they are intended to remain.

d. Land shall be restored to pre-permit conditions, using either productive top soil or re-seeded in native grasses.

e. Applicant shall submit documentation showing financial capability to carry out the decommissioning and restoration requirements.

f. When a completed CWECS project does not produce any electric energy for a period of one (1) year, and there is no demonstrated plan to restore the equipment to operating condition, the Director of Zoning and Codes may notify the landowner and/or holder of the CUP that the CWECS project is deemed abandoned.

g. If the landowner or holder of the CUP for the CWECS project does not cause the project to resume production of electricity within one (1) year from the date of the notice referenced above, the landowner and the CUP holder shall be jointly responsible to commence and shall complete abatement of the CWECS project as set forth in the Douglas County Zoning Regulations. The Board of County Commissioners may require Applicant (Holder of the CUP) to decommission any commercial abandoned turbine, even if other turbines in the project are active.
h. At the end of the CWECS’s useful life, or if CWECS is abandoned, the site shall be restored in accordance with the requirements of this condition within eighteen (18) months.

12-306-44.07 Bond Agreement.

a. Bond Requirement:
   1) Applicant shall obtain a surety bond naming Douglas County, Kansas, as payee in a form and amount as specified by acceptable to the Board of County Commissioners. Applicant shall maintain said bond through the lifespan of the CWECS. Bondholder shall provide the County annual notification of bond status. Bondholder shall provide the County 30-days written notice of any cancellation thereof.

   2) In the event the Applicant or CUP holder is in non-compliance or default due to non-payment, the County shall have the right to call said bond and use it for decommissioning purposes. Should there be any remaining balance; the County shall have the right to withhold refund payment until the decommissioning process is completed to the County's satisfaction.

b. Liability on Termination or Expiration:
   1) In the event of termination of this CUP for any reason, the CUP holder shall remain liable to the County for any expense incurred by the County that is above and beyond what is covered by the surety bond, escrow account, and/or insurance policy.

   2) The CUP holder shall remain liable to the County for any unspent funds, the expenditure or use of the funds in a manner or for a purpose not authorized by this agreement and/or damages as a result of any breach of this agreement by the CUP holder.

   3) The County shall have the right, at any time prior or subsequent to any remedies, including seeking injunctive or other equitable relief, to enforce the provisions of this agreement and/or recover funds, which are unspent, expended or used in an unauthorized manner, or for an unauthorized purpose and/or damages sustained by the County as a result of any breach of this agreement by the CUP holder.

c. Non-Liability: Nothing in this agreement or otherwise shall impose any liability or duty whatsoever on Douglas County or any of its agencies, including, but not limited to, any liability for taxes, wages, or any other employee benefits for any person or entity. Contractors, suppliers, or consultants accepting and relying on documents, materials, and other information from the Applicant or CUP holder will do so on their own responsibility and at their risk.

12-306-45 WIRELESS FACILITIES

12-306-45.01 Purpose.
The Governing Body recognizes that facilitating the development of wireless service technology benefits both the residents and the economic development of Douglas County. The purpose of these standards is to ensure that residents, businesses, and industry within the county enjoy reliable access to wireless telecommunications networks, while, at the same time, safeguarding the health, safety, welfare, and aesthetics of the county. Accordingly, these standards are intended to ensure that the location, installation, construction, and modification of Wireless Facilities within the unincorporated portion of the county comply with all Federal and State laws and regulations.