

**BOARD OF COUNTY COMMISSIONERS
OF
FRANKLIN COUNTY, KANSAS**

RESOLUTION NO. 19- 38

A RESOLUTION OF THE FRANKLIN COUNTY BOARD OF COUNTY COMMISSIONERS APPROVING AMENDMENTS TO THE FRANKLIN COUNTY ZONING REGULATIONS ADDRESSING RENEWABLE COMMERCIAL ENERGY SYSTEMS AS A LAND USE AND ESTABLISHING DEVELOPMENT CRITERIA AND STANDARDS FOR THE UNINCORPORATED AREAS OF THE COUNTY AS PROVIDED BY K.S.A. 12-757

WHEREAS, Franklin County, Kansas is a county municipal government, organized pursuant to K.S.A. 19-101; and

WHEREAS, the Franklin County Board of County Commissioners did adopt Resolution # 23-91 creating the Franklin County Planning Commission as provided in K.S.A. 12-744; and

WHEREAS, the Franklin County Board of County Commissioners did adopt the Zoning Regulations of Franklin County Kansas on August 4th, 2002 as provided in K.S.A. 12-757; and

WHEREAS, the Franklin County Planning Commission did publish notice on September 24, 2019 and September 26, 2019 that public hearing would be held to consider an amendment to the Zoning Regulations of Franklin County Kansas as required by K.S.A. 12-757; and

WHEREAS, the Planning Commission did on October 17, 2019 and November 21, 2019 hold a public hearing for the consideration of adopting said amendments to the Zoning Regulations as prescribed by K.S.A. 12-757; and

WHEREAS, the Franklin County Planning Commission did review in detail the amendments to the Franklin County Zoning Regulations addressing renewable commercial energy systems as a land use and establishing development criteria and standards; and

WHEREAS, the Planning Commission, after due consideration of all written reports, public testimony, Kansas Statutes regarding changes to Zoning Regulations and the applicable criteria from the factors set forth in the Golden Case, the Planning Commission, by majority of its membership, did find the following:

1. That the amendments to the County Zoning Regulations are in compliance with the Kansas Statutes; and
2. That the amendments to the County Zoning Regulations are consistent with the County Comprehensive Plan; and
3. That the amendments are consistent with the purpose and intent of the County Zoning Regulations; and
4. That said amendments are in the public interest and will further provide for the public health, safety and general welfare; and
5. The Planning Commission does hereby approve and recommend that the Franklin County Board of County Commissioners adopt the amendments to the County Zoning Regulations.

NOW, THEREFORE, BE IT RESOLVED, that the Franklin County Board of County Commissioners, after duly reviewing the Planning Commission recommendation, together with written reports and public comments regarding said changes to the County Zoning Regulations, does hereby approve adopting said amendments to the Zoning Regulations as follows:

Article 2, Section 2-1.01 Definitions:

RENEWABLE ENERGY SYSTEMS: A Wind Energy Conversion System (WECS) or a Solar Energy Conversion System (SECS) as defined in this section.

SOLAR ENERGY CONVERSION SYSTEMS (COMMERCIAL): An assembly that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CST) or other conversion technology and consisting of a solar collector, an energy storage facility and components for the distribution of transformed energy for the sale, resale or off-site use.

SOLAR ENERGY CONVERSION SYSTEMS (PRIVATE): An assembly that converts sunlight into electricity, whether by photovoltaics (PV), concentrating solar thermal devices (CSV) or other conversion technology and consisting of a solar collector, an energy storage facility and components for distribution of transformed energy for the use on-site and not for commercial power production.

WIND ENERGY CONVERSION SYSTEMS (COMMERCIAL): A combination of mechanical and structural elements used to produce electricity by converting the kinetic energy of wind to electrical energy. Such systems consist of the turbine apparatus and related support structures and transmission improvements for the generation of electrical power for the purpose of off-site sale/resale for public use.

WIND ENERGY CONVERSION SYSTEMS (PRIVATE): A combination of mechanical and structural elements used to produce electricity by converting the kinetic energy of wind to electrical energy. Such systems consist of the turbine apparatus and related support structures and transmission improvements for the generation of electrical power for the purpose of on-site use and not for commercial production.

Article 3 Zoning Districts and General Regulations, Section 3-3.01 Miscellaneous Regulations Governing All Zoning Districts:

U. Wind Energy Conversion Systems (Commercial).

- 1) The purpose of this section is to provide for the construction and operation of Commercial Wind Energy Conversion Systems (CWECS) in the unincorporated areas of Franklin County.
- 2) Commercial Wind Energy Conversion Systems may be permitted in the Agriculture (A-1) Zoning Districts subject to the approval of a Special Use Permit as provided in Article 19, Section 19-3.01 of these Regulations and also subject to the following required criteria and standards:
 - A). A legal description of the perimeter boundaries of the proposed project including lease agreements or other satisfactory evidence that the applicant is the owner of the property or has written permission of the owner/s to make such application.
 - B). Name, address and phone number of the developer and the developer's contact person for the project. A statement from the developer providing relevant information regarding an overview of the company, the company's environmental management history and the company's qualifications and experience in CWECS development. The applicant shall also include the names of the expected owner and/or builder of the proposed project and the name, address and phone numbers of the manager of the project in the event

the project. In the event of any change in contact personnel ownership or contact information, the applicant shall provide the address, phone number and name of the contact person to the Franklin County Planning Director.

- C). A site plan and development plan drawn in sufficient detail and scale to clearly describe the following:
- 1) General vicinity of the project location within the County;
 - 2) Scale and North arrow;
 - 3) Acreage of the site;
 - 4) Existing topography shall be shown at two (2) foot intervals;
 - 5) Location of existing electrical lines, including transmission lines, oil & gas pipe lines and any additional utility lines;
 - 6) Flood hazard boundaries as shown on the latest Federal Insurance Rate Maps;
 - 7) Property lines for each property under separate ownership included within the proposed CWECS boundaries with a key identifying each owner;
 - 8) Location of all existing residential structures within the boundaries of the proposed CWECS;
 - 9) All public roads within and/or adjacent to the CWECS;
 - 10) Location of all turbines, transformers, substations, connecting power lines and other structures to be used as part of the operation;
 - 11) The Development Plan shall have a written narrative in a style that is easily understood that describes the project, including cost/benefit analysis, anticipated lifetime, decommissioning and restoration. Detailed technical data, statistics and other supplementary information shall be included in an appendices.
- D). Design requirements for Commercial Wind Energy Conversion Systems (CWECS)
- 1). If a CWECS is proposed to be placed within two (2) miles of any existing airport or airstrip, the applicant shall provide acknowledgement of location approval from the Federal Aviation Administration prior to construction.
 - 2). Turbine location requirements
 - a). Commercial Wind Energy Conversion Systems shall be set back from public roads a distance equal to at least 1.5 times the height of the system and from any participating commercial or residential structure which is occupied on a regular basis a distance equal to at least twice the height of the system or 1,000 feet, whichever is greater. "Height above grade" or "height of the system" shall be computed as the maximum height of the turbine, from the ground, when the blades are at their highest point.
 - b). No turbines shall be located closer than 1.5 times the height of the system from the lot lines of any property not included in the Special Use Permit area or of any non-participating landowner.
 - c). All turbines will be set back from any residential structure existing at the time of the application of a non-participating landowner a distance equal to at least three times the height of the system or 2,000 feet, whichever is greater.
 - 3). Noise standards

The audible sound from a wind turbine generator shall not exceed 50 decibels (A weighted), as measured at the exterior of any occupied building on a non-participating landowner's property. This level may be exceeded during short-term events such as utility outage and/or severe weather conditions.

4). Turbine Access Road Requirements.

Access roads shall be constructed in accordance with engineering standards and in accordance with any applicable landowner agreements. Where an access road is to cross a stream or drainage way it shall be designed and constructed following all regulations pertaining to building a structure in any floodplain zone of the Federal Emergency Management Agency, the Kansas Department of Water Resources and the Franklin County Zoning Regulations and any amendments thereto.

5). Communication and Power Collection Lines.

Communication lines and power collection lines rated 45 kv or below are to be installed underground and shall be installed so as to permit agricultural usage or other current usage of the property. An underground (and if applicable, overhead) communication and power collection plan will be submitted with the application.

6). Minimum Blade Clearance.

The lowest point of the rotor blades shall be at least 65 feet above ground level at the base of the tower.

7). Turbine Tower Design

Turbine towers shall be approved by an engineer licensed by the State of Kansas. All structures for wind turbines shall be self-supporting tubular towers painted a non-reflective neutral color such as white or pale gray. No lattice-type structures or other 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 turbine shall be marked with a visible identification number located no higher than 15 feet above ground level.

8). Turbine Tower Lighting

There shall be no lights on the towers other than those required by the Federal Aviation Administration (FAA). On demand lighting shall be required if permitted for use by the F.A.A.

9). Field Representative

Prior to the start of and continuously throughout the construction and/or site restoration, the Applicant shall provide a field representative responsible for overseeing conditions of the Special Use Permit. Such representative shall be available by telephone during normal working hours. The address and emergency phone number of such representative shall be provided to the County Planning Director and Franklin County Emergency Management Director.

A). Cultural Assessment

Applicant shall perform a cultural resources assessment and provide the same to the County and to the State Historic Preservation Office.

B). Wildlife and Wetlands

Applicant shall comply with all requirements provided by law and obtain all permits required by the U.S. Fish and Wildlife Service (USF&WS), the Kansas Department of Wildlife, Parks and Tourism (KDWP&T), the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) regarding the protection of wildlife and identification of wetlands.

C). General Construction Document Requirements

Applicant shall provide a general description of major components of the turbines and on-site facilities including wind turbine specifications, transmission lines 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 turbines shall also be included.

D). Soil Erosion Sediment Control and Storm Water Runoff

Applicant shall prepare and provide to the County a KDHE approved Storm Water Pollution Prevention Plan for all construction sites.

E). Fire Safety and Emergency Plan

The develop plan shall include a Fire Safety and Emergency Plan identifying the potential fire risk associated with the project including both prescribed burning and non-prescribed burning. This shall address fire originating within the site, fires escaping from the site and potential effects of fire originating from outside the site. The applicant shall provide 24-hour contact information to the Franklin County Emergency Management Department and shall post emergency contact information on site.

The Fire Safety and Emergency Plan shall address high angle rescue and all provisions for fire suppression, fire and emergency medical response to be provided by the applicant both during construction and during operation of the project. The Plan shall identify what equipment is not presently owned by the public fire department or other first responder, which may be needed to respond to emergencies at the project. Any equipment so identified shall be purchased or provided by applicant.

F). Ground Water Resources

Applicant must notify the County of any risks it finds to ground water aquifers in connection with the construction of CWECs project and all mitigation measures the applicant proposes to utilize to mitigate such risk.

G). Air Quality

Applicant shall submit a plan to control dust on roads that will be used during construction which plan shall be a part of the Road Agreement required below.

H). Land Use and Development

Applicant shall identify potential constraints or benefits the CW ECS 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 recreational activities including hunting and fishing
- 2). Agricultural activities
- 3). Residential activities
- 4). Commercial activities
- 5). Industrial activities

I). Bibliography

The Development Plan shall provide a bibliography of the authorities consulted and documents relied on in completing the Development Plan.

J). Appendices

All detailed technical information that supports the Development Plan shall be included in the appendices. The most important feature of the appendices shall be included in the main body of the Development Plan.

K). Prerequisites to Construction Under an Approved Special Use Permit

1). Decommissioning Agreement

A Decommissioning Agreement as described in Section (N).(1) below must be approved and accepted by the Board of County Commissioners before any construction begins.

2). Road Agreement

Transportation routes used for construction shall be coordinated with the Franklin County Public Works Director. Franklin County may require the applicant to provide and pay for an independent study of all or some of the roads, bridges and culverts over which equipment for the CW ECS will travel during the construction phase to determine the ability of said roads, bridges and culverts to withstand the expected traffic. Applicant shall be held liable for any damages to county roads or rights-of-way resulting from tower construction, deconstruction and/or maintenance activities. A Road Agreement by which the developer or operator of the CW ECS assumes financial responsibility for infrastructure improvements needed for construction and repair for infrastructure damages caused by construction must be entered into by the Applicant and by the Board of County Commissioners before any construction begins.

3). Power Purchase Agreement

Applicant shall provide evidence that they have successfully entered into an agreement for the off-site purchase of power produced or have a grid interconnection for the energy produced with the relevant electrical authority (e.g. Southwest Power Pool or local utility) before construction begins.

L). Construction Requirements

1). Licensed Engineer

A professional engineer licensed by the State of Kansas or qualified engineering firm selected by Franklin County shall conduct all inspections on each turbine with respect to the foundation, structural assembly, mechanical and electrical aspects of turbine construction. Documentation regarding each approved inspection shall be submitted to the Planning Director.

All expenses of such engineer or engineering firm shall be the responsibility of the Applicant or holder of the Special Use Permit. Franklin 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 because of any damage 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.

2). Site Clearance

Site clearance and preparation shall be conducted in accordance with State Law and any applicable landowner agreements.

3). Field Representative

Prior to the start of and continuously throughout the construction and site restoration, Applicant shall designate a field representative responsible for overseeing compliance with the conditions of the Special Use Permit. Such representative shall be accessible by telephone during normal business hours. The address, phone number and emergency phone number of such representative shall be provided to the Planning Director and the Franklin County Emergency Management Department of any change in contact information.

4). Cleanup

Applicant shall remove all waste and scrap that is the product of construction, operations, restoration and maintenance from the site and properly dispose of it upon the completion of each task. Any land restoration shall be done in a manner that is consistent with the terms of the lease agreement executed between the Applicant and the landowner.

M). Operational Requirements of CW ECS Special Uses

1). Hazardous Materials

Lubricants and/or hazardous material located on the premises shall be kept and transported in accordance with all state and federal regulations.

2). Visual Impact

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 CW ECS Special Use area.

3). Electromagnetic Radar and Aviation Interference

Applicant shall conduct a survey and take such other actions necessary to comply with FCC, FAA, TV and Department of Homeland Security requirements regarding mitigations to reduce electromagnetic (radar, TV and aviation) interference.

4). Extraordinary Event Response

Upon an occurrence of an extraordinary event, the Applicant or Operator shall notify the Planning Director of such event and, if the event is deemed to be a possible threat to public safety immediately notify the Franklin County Sheriff. Extraordinary events include tower collapse, turbine failure, thrown/broken blade or collector-feeder line failure. In the event of any extraordinary avian mortality, the Applicant or Operator shall notify Kansas Department of Wildlife, Parks and Tourism and the U.S. Fish and Wildlife Service as required by law.

5). Decommissioning

Decommissioning shall occur in compliance with the Decommissioning Plan.

N). Decommissioning/Restoration/Abandonment/Financial Security

1). Decommissioning Agreement

Applicant shall enter into a Decommissioning Agreement with the Board of County Commissioners before any construction begins. Compliance with the Plan shall, at all times, be a condition of the Special Use Permit whether or not explicitly listed in any document reflecting the agreement. The Plan shall describe the manner in which the CW ECS improvements will be dismantled and removed from the site within 18 months of the abandonment or the end of the useful life of the CW ECS or of such improvement and shall require the removal of all above-ground components of the CW ECS. Foundations shall be removed to a depth of at least 4 feet below grade and the area refilled with soil that is reasonably similar in quality, structure and fertility to that of the original excavation. Access roads shall be removed in accordance with the terms of the property owners' lease agreements.

2). Abandonment

The CW ECS, or any wind turbine, shall be deemed abandoned at the end of a one-year period following the mailing by certified mail of written notice of abandonment to the CW ECS owner of record sent when a complete wind turbine does not produce electrical energy for distribution and there is no demonstrated plan to restore the equipment to operating condition. The Board of County Commissioners may require the current Special Use Permit holder to decommission any abandoned turbine or may undertake such decommissioning with the proceeds of the escrow account, surety bond or insurance policy or otherwise at the expense of the last approved holder of the Special Use Permit.

3). Financial Security

In accord with the Decommissioning Agreement, Applicant shall submit an Escrow Account/Surety Bond/Insurance Policy or other approved financial security agreement at the time and in the amount specified in the Decommissioning Agreement in order to guarantee removal of all

equipment and to restore the site, as near as possible, to its pre CW ECS topography, topsoil quality and to generally guarantee compliance with the Decommissioning Plan at the end of the project's life or in the event of abandonment of the CW ECS.

O). Transfer of Special Use Permit

If the Special Use Permit is to be transferred from the CW ECS owner/operator (first party) to a different CW ECS owner/operator (second party), said transfer must first be approved by the Board of County Commissioners. First party shall inform the second party of all requirements of the CW ECS Special Use Permit. The second party, or new holder, of the Special Use Permit shall meet all requirements of the CW ECS Special Use Permit. The County Commissioners may direct the Planning Director, the Public Works Director and/or a designated person to field inspect the CW ECS project to determine current compliance with required conditions. A transfer fee of \$1,000.00 shall be paid to the County to compensate for work related to the transfer.

P). Proof Of Insurance

Applicant shall indemnify and hold County harmless from and against any and all claims demands, suits and losses to the extent arising out of, relating to or resulting from or in connection with the negligent action or omission of applicant or its contractors or assigns during the development, construction or operation of applicant's wind energy project located in Franklin County, Kansas. Notwithstanding the foregoing, in no event shall the applicant, its contractors or assigns (or any of their respective affiliates, members, shareholders, officers, directors, agents or employees) be liable for consequential, incidental, indirect, special, exemplary or punitive damages.

During the construction phase of the project, Applicant or its main contractor shall, at their own expense, maintain the following insurance policies:

1). Commercial General Liability Insurance

Applicant or its main contractor shall maintain Commercial General Liability Insurance for the wind energy project on an "occurrence" basis, including coverage for:

Premises and Operations Liability;

Explosion, Collapse and Underground Damage Liability;

Personal Injury-Liability;

Broad Form Property Damage Liability;

Broad Form Contractual Liability supporting Applicant's indemnification agreements in favor of the additional insureds;

Completed Operations and Products Liability for a period of one (1) year following the date of final completion of the wind energy project; and

Independent Contractor's Protective Liability. Such policy shall have primary coverage limits of One Million Dollars (\$1,000,000.00) for injuries or death to one or more persons or damage to property resulting from any one occurrence and a Two Million Dollars (\$2,000,000.00) aggregate limit.

2). Commercial Automobile Liability Insurance.

Applicant or its main contractor shall maintain Commercial Automobile Liability Insurance, including coverage for owned, non-owned, rented, leased and hired automobiles for both bodily injury and property damage in accordance with state legal requirements, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per accident with respect to bodily injury, property damage or death.

3). Umbrella Excess Liability Insurance.

Applicant or its main contractor shall maintain Umbrella Excess Liability Insurance with a limit of Twenty-five Million Dollars (\$25,000,000.00) per occurrence and annual aggregate limit of Twenty-five Million Dollars (\$25,000,000.00) with Completed Operations and Products Liability coverage, which coverage shall remain in effect for one (1) year after the date of final completion of the wind energy project.

4). Workers' Compensation and Employer's Liability Insurance.

Applicant or its main contractor shall maintain Workers' Compensation Insurance with statutory limits (as may be amended from time to time), including Employer's Liability Insurance with limits of liability of not less than:

- i). One Million Dollars (\$1,000,000.00) for bodily injury by accident, each accident;
- ii). One Million Dollars (\$1,000,000.00) for bodily injury by disease, each employee;
- iii). One Million Dollars (\$1,000,000.00) aggregate liability for disease.

After construction is complete and during the operational phase of the project, Applicant shall maintain the insurance policies provided above, except the limits of the Umbrellas Excess Liability Insurance may be reduced to a lower figure if approved by the Board of County Commissioners.

- Q). Franklin County shall provide written notice of any proposed CWECS to be located within the established Growth Area or two (2) miles (whichever is greater) of any City within Franklin County requesting a review by that City prior to final consideration and action on the Special Use Permit.

Article 3 Zoning Districts and General Regulations, Section 3-3.01 Miscellaneous Regulations Governing All Zoning Districts:

V. Solar Energy Conversion System (Commercial)

- 1). The purpose of this section is to provide for the construction and operation of Commercial Solar Energy Conversion Systems (CSECS) in the unincorporated areas of Franklin County.
- 2). Commercial Solar Energy Conversion Systems may be permitted in the Agricultural (A-1) and Transitional Agriculture (A-2) Zoning Districts subject to the approval of a Special Use Permit as provided in Article 19, Section 19-3.01 of these regulations and also subject to the following required criteria and standards:

- A). A legal description of the perimeter boundaries of the proposed project including lease agreements or other satisfactory evidence that the applicant is the owner of the property or has written permission of the owner/s to make such application.
- B). Name, address and phone number of the developer and the developer's contact person for the project. A statement from the developer providing relevant information regarding an overview of the company, the company's environmental management history and the company's qualifications and experience in CSECS development. In the event of any change in contact personnel ownership or contact information, the applicant shall provide the address, phone number and name of the contact person to the Franklin County Planning Director.
- C). A site plan and development plan drawn in sufficient detail and scale to clearly describe the following:
- 1) General vicinity of the project location within the County;
 - 2) Scale and North arrow;
 - 3) Acreage of the site;
 - 4) Existing topography shall be shown at two (2) foot intervals;
 - 5) Location of existing electrical lines, including transmission lines, oil & gas pipe lines and any additional utility lines;
 - 6) Flood hazard boundaries as shown on the latest Federal Insurance Rate Maps;
 - 7) Property lines for each property under separate ownership included within the proposed CSECS boundaries with a key identifying each owner;
 - 8) Location of all existing residential structures within the boundaries of the proposed CSECS;
 - 9) All public roads within and/or adjacent to the CSECS;
 - 10) Location of all solar collectors, transformers, substations, connecting power lines and other structures to be used as part of the operation;
 - 11) The Development Plan shall have a written narrative in a style that is easily understood that describes the project, including cost/benefit analysis, anticipated lifetime, decommissioning and restoration. Detailed technical data, statistics and other supplementary information shall be included in appendices.
- D). Collection lines rated at 45 kv or below are to be installed underground and shall be installed so as to permit agricultural usage or other current usages of the property, an underground (and if applicable overhead) communication and power collection plan will be submitted with the application.
- E). Information shall be provided relative to the solar technology to be used (i.e. polycrystalline PV, monocrystalline PV, Cadmium Telluride PV, evacuated tube solar thermal, flat plate solar thermal, etc.); approximate number of solar modules/panels; system mounting (i.e. fixed-tilt on flat roof, fixed-tilt ground-mount, I-axis tracking ground mount, etc.); the maximum height of any new utility poles; and power capacity of the system, in both DC and AC Watts where applicable; total acreage of array and acreage of total project; manner in which the project will connect (i.e. net meter to existing distribution line, to new distribution line, to transmission line); and, whether a new substation will be constructed. (If so, provide location and size).
- F). If a CSECS is proposed to be placed within one (1) mile of any airport or airstrip as shown on the Airport and Airstrip Map incorporated herein by reference, the

applicant shall provide acknowledgement from the Federal Aviation Administration prior to construction.

The applicant shall provide a Solar Glare Hazard Analysis utilizing the latest version of the Solar Glare Hazard Analysis Tool (SGHAT), or its equivalent, per its user's manual, to evaluate the solar glare aviation hazard. The full report for each flight path and observation point, as well as the contact information, shall be submitted to the Planning Director at least thirty (30) days before the required public hearing for the Special Use Permit for the CSECS. Any applicable CSECS design changes (e.g. module tilt, module reflectivity, etc.) after initial submittal shall be rerun in the SGHAT tool and the new full report shall be sent without undue delay to the Planning Director for accurate records of the as-built system. The analysis shall provide an assessment of when and where glare will occur throughout the year.

- 1). If solar glare is predicted, the applicant shall provide mitigation measures to address the impacts of solar glare. Mitigation measure may include, and are not limited to, texture glass, anti-reflective coatings, screening, distance and angling of solar PV modules in a manner that reduces glare to surrounding land uses of non-participating property owners.
 - G). The CSECS shall not exceed thirty-five feet (35') in height; provided, however, said height restriction shall not apply to substation facilities or transmission lines.
 - H). All CSECS structures shall be setback from the project boundary lines and public rights-of-way at least forty feet (40'). Additionally, all CSECS structures shall be setback two hundred fifty (250) feet as measured from the nearest portion of any existing and non-participating landowners residential structure at the time of the application.
 - I). The CSECS shall be enclosed by perimeter fencing at least eight feet (8') tall to restrict unauthorized access. No outdoor storage of any materials or equipment is permitted except for construction equipment and materials during construction.
 - J). There shall be no signage allowed on the CSECS with the exception of safety and emergency contact signs, warning signs, directional or project identification signs and any other signage required by applicable law or regulations.
 - K). The CSECS should be located to make maximum use of existing terrain, vegetation and structures to screen the Project from off-site views. Where possible, CSECS should be sited such that non-shading vegetation and/or existing structures are located between the facility and public and private viewpoints. Landscaping and/or screening may be required to help screen the CSECS.
 - L). The applicant shall identify the potential fire risk associated with the project, including both prescribed burning and non-prescribed burning.
 - M). No CSECS shall be placed such that concentrated solar glare casts onto adjacent properties or roadways.
 - N). Access roads to be constructed within the project, for installation and operation purposes, shall be shown on the site plan and shall be constructed in accordance with engineering standards and in accordance with any applicable landowner agreements.
- 3). Contents of the CSECS Development Plan
- A). Cultural Assessment

Applicant shall perform a cultural resources assessment and provide the same to the County and to the State Historic Preservation Office.

B). Wildlife and Wetlands

Applicant shall comply with all requirements provided by law and obtain all permits required by the U.S. Fish and Wildlife Service (USF&WS), the Kansas Department of Wildlife, Parks & Tourism (KDWP&T), the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) regarding the protection of wildlife and identification of wetlands.

C). General Construction Document Requirements

Applicant shall provide a general description of major components of the solar panels and on-site facilities including solar panel specifications, transmission lines and accessory facilities, such as control rooms, transformers, substations, maintenance facilities, underground infrastructure and interior access roads. The proposed number, location, capacity and dimensions of the arrays shall also be included.

D). Soil Erosion Sediment Control and Storm Water Runoff

Applicant shall prepare and provide to the County a KDHE approved Storm Water Pollution Prevention Plan for all construction sites.

E). Fire Safety and Emergency Plan

The develop plan shall include a Fire Safety and Emergency Plan identifying the potential fire risk associated with the project, including both prescribed burning and non-prescribed burning. This shall address fire originating within the site, fires escaping from the site and potential effects of fire originating from outside the site. The applicant shall provide 24-hour contact information to the Franklin County Emergency Management Department and shall post emergency contact information on site.

F). Ground Water Resources

Applicant must notify the County of any risks it finds to ground water aquifers in connection with the construction of CSECS project and all mitigation measures the applicant proposes to utilize to mitigate such risk.

G). Air Quality

Applicant shall submit a plan to control dust on roads that will be used during construction which plan shall be a part of the Road Agreement required below.

H). Land Use and Development

Applicant shall identify potential constraints or benefits the CSECS 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). Agricultural activities;
- 2). Residential activities;
- 3). Commercial activities;

4). Industrial activities.

D). Bibliography

The Development Plan shall provide a bibliography of the authorities consulted and documents relied on in completing the Development Plan.

J). Appendices

All detailed technical information that supports the Development Plan shall be included in the appendices. The most important feature of the appendices shall be included in the main body of the Development Plan.

K). Prerequisites to Construction Under an Approved Special Use Permit

1). Decommissioning Agreement

A Decommissioning Agreement as described in Section “N).1)” below must be approved and accepted by the Board of County Commissioners before any construction begins.

2). Road Agreement

Transportation routes used for construction shall be coordinated with the Franklin County Public Works Director. Franklin County may require the applicant to provide and pay for an independent study of all or some of the roads, bridges and culverts over which equipment for the CSECS will travel during the construction phase to determine the ability of said roads, bridges and culverts to withstand the expected traffic. Applicant shall be held liable for any damages to county roads or rights-of-way resulting from solar panel construction, deconstruction and/or maintenance activities. A Road Agreement by which the developer or operator of the CSECS assumes financial responsibility for infrastructure improvements needed for construction and repair for infrastructure damages caused by construction must be entered into by the Applicant and by the Board of County Commissioners before any construction begins.

3). Power Purchase Agreement

Applicant shall provide evidence that they have successfully entered into an agreement for the off-site purchase of power produced or have a grid interconnection for the energy production with the relevant electrical authority (e.g. Southwest Power Pool or local utility) before any construction begins.

L). Construction Requirements

1). Licensed Engineer

Construction shall be in compliance with applicable County Building Codes, State and Federal Regulations and applicable conditions set forth in the Special Use Permit.

2). Site Clearance

Site clearance and preparation shall be conducted in accordance with State Law and any applicable landowner agreements.

3). **Field Representative**

Prior to the start of, and continuously throughout the construction and site restoration, Applicant shall designate a field representative responsible for overseeing compliance with the conditions of the Special Use Permit. Such representative shall be accessible by telephone during normal business hours. The address and emergency phone number of such representative shall be provided to the Planning Director and the Franklin County Emergency Management Director of any change in contact information.

4). **Cleanup**

Applicant shall remove all waste and scrap that is the product of construction, operations, restoration and maintenance from the site and properly dispose of it upon the completion of each task. Any land restoration shall be done in a manner that is consistent with the terms of any agreement executed between the Applicant and the landowner.

M). **Operational Requirements of CSECS Special Uses**

1). **Hazardous Materials**

Lubricants and/or hazardous material located on the premises shall be kept and transported in accordance with all state and federal regulations.

2). **Visual Impact**

Applicant shall take reasonable measures to mitigate specific adverse visual impacts such as reflections and glare affecting residences within or immediately adjacent to the CSECS Special Use area.

3). **Decommissioning**

Decommissioning shall occur in compliance with the Decommissioning Plan.

N). **Decommissioning/Restoration/Abandonment/Financial Security**

1). **Decommissioning Agreement**

Applicant shall enter into a Decommissioning Agreement with the Board of County Commissioners before any construction begins. Compliance with the Plan shall, at all times, be a condition of the Special Use Permit whether or not explicitly listed in any document reflecting the agreement. The Plan shall describe the manner in which the CSECS improvements will be dismantled and removed from the site within 18 months of the abandonment or the end of the useful life of the CSECS or of such improvement and shall require the removal of all above-ground components of the CSECS. Foundations shall be removed to a depth of at least four feet (4') below grade and the area refilled with soil that is reasonably similar in quality, structure and fertility to that of the original excavation. Access roads shall be removed in accordance with the terms of the property owners' lease agreement.

2). **Abandonment**

The CSECS shall be deemed abandoned at the end of a one-year period following the mailing by certified mail of written notice of abandonment to the CSECS owner of record sent when a complete inverter block of panels does not produce electrical energy for distribution and there is no demonstrated plan to restore the equipment to operating condition. The Board of County Commissioners may require the current Special Use Permit holder to decommission any abandoned CSECS or may undertake such decommissioning with the proceeds of the escrow account, surety bond or insurance policy or otherwise at the expense of the last approved holder of the Special Use Permit.

3). Financial Security

In accord with the Decommissioning Agreement, Applicant shall submit an Escrow Account/Surety Bond/Insurance Policy or other approved financial security agreement at the time and in the amount specified in the Decommissioning Agreement in order to guarantee removal of all equipment and to restore the site, as near as possible, to its pre CSECS topography, topsoil quality and to generally guarantee compliance with the Decommissioning Plan at the end of the project's life or in the event of abandonment of the CSECS.

O). Transfer of Special Use Permit

If the Special Use Permit is to be transferred from the CSECS owner/operator (first party) to a different CSECS owner/operator (second party), said transfer must first be approved by the Board of County Commissioners. First party shall inform the second party of all requirements of the CSECS Special Use Permit. The second party, or new holder, of the Special Use Permit shall meet all requirements of the CSECS Special Use Permit. The County Commissioners may direct the Planning Director, the Public Works Director and/or a designated person to field inspect the CSECS project to determine current compliance with required conditions. A transfer fee of \$1,000.00 shall be paid to the County to compensate for work related to the transfer.

P). Proof of Insurance

Applicant shall indemnify and hold the County harmless from and against any and all claims demands, suits and losses to the extent arising out of, relating to or resulting from or in connection with the negligent action or omission of Applicant or its contractors or assigns during the development, construction or operations of Applicant's solar energy project located in Franklin County, Kansas. Notwithstanding the foregoing, in no event shall the Applicant, its contractors or assigns (or any of their respective affiliates, members, shareholders, officers, directors, agents or employees) be liable for consequential, incidental, indirect, special, exemplary or punitive damages.

During the construction phase of the project, Applicant or its main contractor shall, at their own expense, maintain the following insurance policies:

1). Commercial General Liability Insurance

a). Commercial General Liability Insurance

Applicant or its main contractor shall maintain Commercial General Liability Insurance for the solar energy project on an "occurrence" basis, including coverage for:

Premises and Operations Liability;

Explosion, Collapse and Underground Damage Liability;

Personal Injury-Liability;

Broad Form Contractual Liability supporting Applicant's indemnification agreements in favor of the additional insureds;

Completed Operations and Products Liability for a period of one (1) year following the date of final completion of the solar energy project; and

Independent Contractor's Protective Liability. Such policy shall have primary coverage limits of One Million Dollars (\$1,000,000.00) for injuries or death to one or more persons or damage to property resulting from any one occurrence and a Two Million Dollars (\$2,000,000.00) aggregate limit.

b). Commercial Automobile Liability Insurance

Applicant or its main contractor shall maintain Commercial Automobile Liability Insurance, including coverage for owned, non-owned, rented, leased and hired automobiles for both bodily injury and property damage in accordance with state legal requirements, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per accident with respect to bodily injury, property damage or death.

c). Umbrella Excess Liability Insurance

Applicant or its main contractor shall maintain Umbrella Excess Liability Insurance which coverage shall remain in effect for one (1) year after the date of final completion of the solar energy project. The County Commission has discretion to determine the exact Umbrella Excess Liability Insurance limit within the following: Up to ten million dollars (\$10,000,000.00) per occurrence and annual aggregate limit of up to ten million dollars (\$10,000,000.00) with Completed Operations and Products Liability coverage for a project up to twenty (20) MW in size. Between ten million dollars (\$10,000,000.00) and twenty million dollars (\$20,000,000.00) per occurrence and annual aggregate limit of between ten million dollars (\$10,000,000.00) and twenty million dollars (\$20,000,000.00) with Completed Operations and Products Liability coverage for a project twenty-one (21) MW to fifty (50) MW in size. Between twenty million dollars (\$20,000,000.00) and twenty-five million dollars (\$25,000,000.00) per occurrence and annual aggregate limit of between twenty million dollars (\$20,000,000.00) and twenty-five million dollars (\$25,000,000.00) with Completed Operations and Products Liability coverage for a project above fifty (50) MW in size.

d). Workers' Compensation and Employer's Liability Insurance

Applicant or its main contractor shall maintain Workers' Compensation Insurance with statutory limits (as may be amended from time to time), including Employer's Liability Insurance with limits of liability of not less than:

- i). One Million Dollars (\$1,000,000.00) for bodily injury by accident, each accident;
- ii). One Million Dollars (\$1,000,000.00) for bodily injury by disease, each employee;
- iii). One Million Dollars (\$1,000,000.00) aggregate liability for disease.

After construction is complete, and during the operational phase of the project, Applicant shall maintain the insurance policies provided above, except the limits of the Umbrellas Excess Liability Insurance may be reduced to a lower figure if approved by the Board of County Commissioners.

- Q. Franklin County shall provide written notice of any proposed CSECS to be located within the established Growth Area or one (1) mile (whichever is greater) of any City within Franklin County requesting a review by that City prior to final consideration and action on the Special Use Permit.

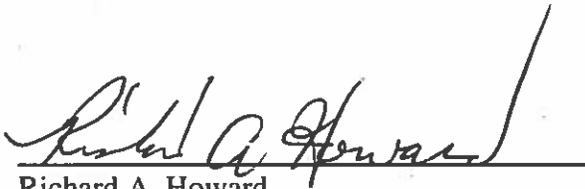
Article 4 Agricultural District (A-1) amending Section 4-3.01 Special Uses:

- 17. Wind Energy Conversion Systems (Commercial)
- 18. Solar Energy Conversion Systems (Commercial)

Article 5 Transitional Agriculture District (A-2) amending Section 5-3.01 Special Uses:

- 16. Solar Energy Conversion Systems (Commercial)

PASSED AND ADOPTED by the Franklin County Board of County Commissioners this 11th day of December, 2019.



Richard A. Howard
Chairman

Received and recorded this the 11th day of December, 2019.



Janet Paddock
County Clerk

