

2021

**IOWA ACADEMY OF TRIAL
LAWYERS SEMINAR**

WIND TURBINES

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WIND TURBINES

THE EMPIRE STATE BUILDING WILL BE POWERED BY WIND ENERGY FOR THE NEXT THREE YEARS!

1. American Wind Energy Association as reported by the *Des Moines Register* January 25, 2021, stated:
 - a. Iowa landowners' lease payments from wind turbines are Sixty-Nine Million Dollars (\$69,000,000) annually.
 - b. State and local governments receive Sixty-One Million Dollars (\$61,000,000) in taxes.
2. U.S. Energy Information Administration (*Des Moines Register* January 25, 2021)
 - a. Iowa received 42% of its electricity from wind energy in 2019 which is the largest share of wind power of any state nationally.
 - b. Iowa ranked second in the United States (Texas first) for wind generating capacity.

CLASSIC POLARIZATION "NUISANCE" VS. "MAJESTIC"

Wind power is polarizing. Many citizens consider wind power a nuisance and a blight on the landscape. Other citizens look at the wind turbines as majestic and as a symbol of the energy revolution along with solar. Many landowners take the position if they own a piece of ground they can do whatever they want on their own property. Adjoining landowners believe there has to be a balance between the rights of landowners and adjoining landowners.

ISSUES FOR WIND TURBINE AGREEMENTS FOR LANDOWNERS

1. A wind energy agreement is a long-term agreement that will impact the land subject to the agreement for many years.

2. Initial contact with the landowner usually is not with the energy company which ultimately operates the wind turbines. It is not unusual for the first contacts to be made with absentee owners or with owners that do not have a home on the land. Initial contact is usually with a third-party (LLC) that has been formed to negotiate terms. The landowner has to make sure any representations or commitments that are important to the landowner in deciding whether to sign a wind turbine agreement are incorporated into the final signed document. There have been numerous allegations by landowners that the energy companies did not follow through with representations made by the initial LLC negotiating the agreement. Unless all terms are in the final signed document, the energy company normally is not bound by any such representations.

3. Normally the agreement is captioned "Easement." It may or may not be recognized as an easement and may be determined by the IRS as a "Lease." There may not be a difference but it is an issue to consider.

4. The energy company is liable for any damages resulting in the construction, maintenance or operation of the wind turbines. Confirm the energy company will indemnify the landowner from claims by third parties.

5. Determine how the lease will affect the farming operation.

6. Turbines and access roads can change field configurations, disrupt row orientations and create inconvenient end rows or land fragments not accessible to large equipment.

7. Usually the agreement will prohibit the landowner from doing anything that obstructs the flow of wind over the surface of the property. This will include restrictions on the height and location of new structures on the land.

8. Determine the exact location(s) of the wind turbines or any routing.

9. Discuss and confirm the temporary and/or permanent access to the turbines.

10. Determine with specificity if the agreement is limited to one particle parcel or property or other properties owned by the landowner.

11. Be aware how close the wind turbines are with the family home or any rental property. Issues with turbines that are in close proximity to inhabited residents are discussed below.

12. Determine whether or not the energy company can in the future use your land for other purposes.

13. The method of compensation to the landowner is not easily understandable. Understand how the compensation is computed and whether or not there are any guarantees and/or for what length of time. Make sure that the compensation structure contains an inflation adjuster clause. Ex. CPI Inflation adjustment.

14. Are payments under the agreement based on revenue generated by the wind turbine? If so, are there any protections to ensure some income stream?

15. If the wind energy company puts additional equipment on the towers and collects additional compensation, is the landowner entitled to more compensation?

16. Will property taxes increase because of additional revenue from the turbines? Who is responsible for the payment of the additional tax?

17. Consult with an insurance agent for possible additional coverage -- for instance, if the landowner damages the wind turbine.

18. Easements are personal to MidAmerican and may be sold or assigned by the energy company to another party without recourse and/or without consent. Does the energy company remain liable in the event the assignee does not fulfill the requirements of the agreement?

19. Determine the scope of the easement. Some of the initial easements were for ingress and egress including an area surrounding the turbine. Some of the most recent easements cover the entire property. The energy company can use the easements for collateral.

20. How long is the development phase and can that period be extended? How long may the land be tied up in the development phase?

21. What is the compensation during the development phase?

22. The operating period for the easement is significant. The operating period can be 40 years or up to 50 years.

23. Is there any ascertainable standard concerning compaction of the land?

24. Is there a time limit to file claims for damages to the ground during construction?

25. Easement agreements with multiple owners of the land usually require a designation of an agent for payment.

26. If the landowner sells the land, the owner usually can retain the income stream or direct payment in an estate plan.

27. A landowner may be able to pledge the income stream for security for a loan.

28. The agreement is a one-sided agreement. The energy company can terminate the agreement but not the landowner.

29. There is a confidentiality agreement in the easement prohibiting a landowner from disclosing the terms and conditions of the easement.

30. If any problem arises with the agreement, the landowner waives a jury trial.

31. Ascertain whether or not there is a decommissioning plan for removal of the turbine. It will take thousands of dollars to remove the turbine.

32. Inquire whether or not a bond has been posted to ensure there are funds to remove the turbine and return the land to the original condition.

33. In signing the agreement, the landowner may relinquish all claims against the energy company including, but not limited to, any issues regarding mental, physical or emotional damages to all family members, damages for loss of enjoyment of the home, and quality of life, loss of livestock, damages resulting from excessive noise, flickering or shadowing and any losses for loss of value to the home and real estate.

ADJOINING LANDOWNER ISSUES

The energy company will contact adjoining landowners and offer a “good neighbor agreement.” A good neighbor agreement is intended to pacify adjoining landowners who do not have a wind turbine on their property in an attempt to minimize any complaints or lawsuits by an adjoining landowner.

1. Normally compensation to an adjoining landowner in a good neighbor agreement is nominal.

2. In accepting and signing the good neighbor agreement, the landowner may waive all claims against the energy company for all damages including, but not limited to, the following:

- a. Medical, emotional and psychological issues resulting from the operation of the turbines for all family members.
- b. Any claims for loss of enjoyment to the home and of quality of life.
- c. Any claims for excessive noise.
- d. Any claims for shadowing.
- e. Any claims for flickering.
- f. Any claims for loss of value of real estate.

- g. Any claims for loss of livestock.
- h. Any damage from ice throws.
- i. Any damage from stray voltage.
- j. Any damage from fire.
- k. Any damage from interference with television and radio signals.

3. Normally there is a confidentiality order prohibiting the adjoining landowner from discussing the terms of a good neighbor agreement.

4. As with all of the contracts with the energy companies, the energy company can terminate the agreement but the adjoining landowner cannot.

ISSUES WITH COUNTY ORDINANCES

1. One of the difficulties with wind turbines in Iowa is the lack of uniformity. Some counties have no ordinances regarding wind or solar projects. Other counties have adopted wind and solar requirements after construction of turbines in the county.

2. Attached is a sample ordinance from Madison County which was passed late in 2020. This ordinance is the subject of the *Des Moines Register* article of January 25, 2021. Because the ordinance was passed by the Madison County Board of Supervisors, the County is being sued by the energy company for the restrictions put in the new ordinance. As stated in the *Des Moines Register* article, there may be an attempt to enact uniform regulations in Iowa rather on a county-to-county basis.

3. Below is a listing of some of the significant provisions of any wind turbine ordinance:

- a. Setbacks. Setbacks differ depending on the location and type of structure. For inhabited residences, the setback can be measured from the base of the turbine to either the foundation of any inhabited home or the lot line of the adjoining

property. The setback from inhabited homes varies from county to county and generally range from about 1,600 feet to about 2,200 feet. The Madison County Board of Health recommended a 1.5-mile setback. That recommendation was part of the Madison County Ordinance which resulted in a lawsuit. The position of the energy company is that a 1.5-mile setback is impossible and basically eliminates any wind energy development in the county.

- b. The allowed noise level for the turbines is different in county ordinances and in some ordinances there is no limit on noise level.
- c. The amount of flickering and shadowing allowed during certain days and hours should be addressed.
- d. Decommissioning costs -- very important. The expense of taking down the turbines, removing all of the equipment and restoring the land to its original condition costs thousands of dollars. A bond is needed to ensure someone is responsible to cover the cost.

LITIGATION

Possible causes of litigation are the following:

1. Determine whether the turbines or facilities were constructed in violation of existing ordinances.
2. Nuisance theories.
3. Trespass.
4. Unconstitutional taking of land.

MITIGATION OF DAMAGES (No Good Solutions)

1. Plant wind break. This is a long-term solution that takes 10 to 20 years.
2. Different glass in windows and doors.
3. Different siding on home.
4. Construct addition to home facing a different direction.

50.40 COMMERCIAL WIND ENERGY CONVERSION SYSTEMS

PURPOSE & INTENT

The purpose of this ordinance is to establish minimum requirements and regulation of Applicant/Developer/Owner engaged in the construction, erection, placement, location, maintenance, modification, and operation of large scale industrial wind energy projects in Madison County. The intent of this ordinance is to ensure wind development sites are appropriately located to preserve and protect the following: the general welfare of the public; the character, image, and stability of Madison County's residential, tourism, recreational, agricultural, commercial, industrial, and other areas; the county's important and sensitive environmental and ecological assets and areas, open space, viewscapes, aesthetics, and wetlands. Accordingly, regulations are necessary to further the above goals and equally important, to minimize the potential adverse effects of this emerging high-impact land use on adjacent properties. All Commercial Wind Energy Conversion Systems (C-WECS), Industrial Wind Turbine (IWT), Turbines, turbine projects, project substations, and any upgrades to existing turbines or turbine projects including the Macksburg Project in Madison County and any C-WECS, IWTs, Turbines, or turbine projects, planned, permitted or not permitted, not erected, not placed, or uncompleted, including the Arbor Hill Project in Madison County, and any existing or future easements shall observe this Wind Energy Conversion Systems ordinance.

SECTION 1: DEFINITIONS

Aircraft Detection Lighting Systems (ADLS) a lighting system that provides reliable, continuous 360-degree radar surveillance of the airspace around sites to automatically activate obstruction lighting only when aircraft are detected at the defined outer perimeter.

Adverse Sound Character shall mean sound that causes building rattle, is impulsive, tonal, or has low- frequency bass rumble.

Ambient is defined as the background noise present at a given scene or a location.

ANSI is the American National Standards Institute

Audible the varying degrees of sound perception as reported by affidavit, including, but not limited to, just perceptible, audible, clearly audible, and objectionable.

Board of Adjustment (BOA) a board appointed by the Board of Supervisors.

Board of Supervisors (BOS) a board elected by Madison County residents.

Commercial Wind Energy Conversion System (C-WECS) shall mean for the purposes of this ordinance, a turbine, owned and operated by an energy corporation or a commercial entity to generate electricity by converting the energy of the wind into electrical energy to

be used on-site or distributed to the electrical grid. Any C-WECS having a Total Height greater than 125 feet is considered a commercial turbine.

Components shall mean all the physical facilities including Turbines (the tower, nacelle, hub, motor, and blades), turbine foundations, transformers, crane pads, feeder lines, and any accessory buildings, and equipment. It shall also include any substations that are constructed in conjunction with a C-WECS Project.

Confinement Feeding Operation Building shall have the same meaning as found in Iowa Code §459.102(15).

C-WECS Construction Permit a required permit to construct, erect, build, place, install a Commercial Wind Energy Conversion System in Madison County.

Commercial Wind Energy Conversion System Testing Facility a structure and equipment such as a meteorological tower for the collection of wind data and other meteorological data and transmission to a collection source. It shall not be deemed to be a communication tower. Experimental or a standard testing C-WECS, IWT, of any number or size for a testing facility is not allowed in Madison County.

C-WECS Project A commercial/industrial electrical generating project designed as an integrated system, more than one commercial turbine installed at the same time as a project that operates by converting the energy of wind into electrical energy to be used on-site or distributed to the electrical grid.

dB(A) the A-weighted sound level in decibels.

dB(C) the C-weighted sound level in decibels.

Decibel (dB) the principal unit measurement for sound pressure level; the intensity of a sound wave equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure of the measured sound to the sound pressure of a standard sound (20 microPascals); abbreviated "dB"

Excessive Noise sound that is determined by ordinance to be too loud or unnecessary or creates a noise disturbance.

FAA the Federal Aviation Administration

Feeder Line shall mean any above or below-ground line that carries electrical power from one or more turbines.

High-Impact shall mean, but not limited to, a large, great, considerable, extended; impact, effect, influence, repercussion, impression, shall include, but not limited to, a region of Madison County, adversely affects residents, adjacent properties, property values, wildlife, environment, and or ecosystem. Shall also include safety, general welfare, and quality of life. A cumulative effect would be considered high-impact.

Infrasound Low-Frequency Noise (ILFN) this includes "infrasound" (0-20 Hz) combined with "low-frequency" sound (20-200 Hz) when referring to noise emissions on the lowest range of the sound spectrum.

Industrial Wind Turbine (IWT) shall mean the physical turbine, tower, nacelle, hub, motor, blades, and foundation.

Lmax (LMax or LCMax) the maximum dB(A) or dB(C) sound level measured using the "fast" response # setting of the sound meter (equivalent to 0.125 second exponential averaging time)

Mega Watt (MW) a unit of power equal to one million watts, especially as a measure of the output of a power station.

Meteorological Tower (MET) shall mean a tower which is erected primarily to measure wind speed and directions, plus other atmospheric/weather data relevant to siting and operating a C-WECS. Meteorological towers do not include towers and equipment used by airports, the Iowa Department of Transportation or other applications to monitor weather conditions

Noise for the purpose of this Ordinance, a sound that causes disturbance that exceeds 40 dB(A) (LMax) fast or 60 dB(C) (LMax) fast.

Non-Participating Landowner is a landowner who has not signed a binding easement with the Applicant/Developer/Owner of the C-WECS project

NRO-mode 5 (Noise Reduction Operating modes) Considered to be a "throttle option" to control noise production. In NRO mode-5, the noise is reduced about 5 dBA to minimize potential noise production non-compliance.

Occupied, Non-residential Building shall mean any building (other than a residence) that is regularly occupied by humans, and that is open to the public, sells goods or services, or a public, religious, or other non-profit institution

Occupied Residence shall mean a building designed for, and actually occupied on a permanent basis as a residential dwelling

Participating Landowner a landowner who has signed a binding easement with the Applicant/Developer/Owner of the C-WECS project

Project Area shall mean the geographic area encompassing all Components of a C-WECS Project

Property Line shall mean the legal boundary between separately-owned real estate parcels, and privately-owned parcels and publicly-owned land or public right-of-way

Public Conservation Areas shall mean land owned by County, State, or Federal agencies and managed for conservation/preservation purposes, including but not limited to Wildlife Management Areas, Conservation Areas, Parks, Preserves, Covered Bridges, Wildlife Refuges, and Waterfowl Production Areas. For purposes of this regulation, Public Conservation Areas also include land owned by non-profit conservation organizations and other privately-owned lands upon which permanent conservation easements have been granted to public agencies or non-profit conservation organizations. Public Conservation Areas do not include land enrolled in the Conservation Reserve Program (CRP)

Rotor Diameter shall mean the diameter of the circle created by the Turbine's moving rotor blades

Shadow Flicker shall mean alternating changes in light intensity caused by the moving blades of a C-WECS, IWT, casting shadows on the ground and stationary objects, such as, but not limited to, a window of a dwelling, within a building or residence, yards or property

Strobe Effect the effect resulting from flashing of reflected light, which can be visible from some distance, from the surface finish of turbine blades

Supervisory Control and Data Acquisition (SCADA) is a system of software and hardware elements that allows industrial organizations to: Control industrial processes locally or at remote locations, monitor, gather, and process real-time data, directly interact with devices such as sensors, valves, pumps, motors, and more through human-machine interface (HMI) software, record events into a log file

Tip Height the height of the turbine with a blade at the highest vertical point.

Total Height shall mean the highest point above ground level reached by a rotor tip or any other part of a Turbine

Tower shall mean the vertical structure that supports the electrical generator, rotor blades, or meteorological equipment. Reinforced concrete towers shall not be permitted in Madison County.

Turbine shall mean C-WECS, IWT, and/or any piece of electrical generating equipment that converts the energy of blowing wind into electrical energy using airfoils, blades, or similar devices to capture the wind.

SECTION 2: PERMIT APPLICATION AND REVIEW

A. General

Before any construction activities related to a C-WECS can begin in Madison County, a C-WECS Construction Permit must be issued by the County. For purposes of this ordinance, the installation of MET Towers and access roads associated with a C-WECS shall not be deemed construction activities and shall not require a C-WECS Construction Permit; provided that any such tower or road must be installed in compliance with all other applicable county Ordinances and regulations.

Entities seeking easements in Madison County must have a well-publicized public meeting, following the Notice of Filing section 2 D of this ordinance, stating their intent prior to obtaining easements within Madison County. A landowner in multiple counties is prohibited from signing an easement in Madison County prior to all regulations in this ordinance being met.

An Easement Agreement is to be filed with the Madison County Recorder within 5 business days of signing. Failure to do so will render each late Easement Agreement null and void. The Madison County Assessor or Recorder shall keep a list of all

properties, property owners, and easement holders with completed Easement Agreements within each project for public viewing.

No C-WECS Testing Facility or C-WECS or IWT, for testing or experimental purposes, shall be permitted/allowed to be built or placed in Madison County. All existing or future Wind Easement Agreements in Madison County shall adhere to all regulations in this Commercial Wind Energy Conversion System Ordinance.

B. Application

The Madison County Zoning Administrator's office will supply a written application form to be used by any person seeking a C-WECS Construction Permit. Each Project shall require a separate application and associated application fees. The Application shall contain:

- a) The name, address, EIN of the Applicant/Developer, as well as the proposed owners or operators of the Project, including the contact information (name, address, telephone, and email) of their authorized representatives. The Application shall designate the entity who will be the Permit Holder of the C-WECS Construction Permit.
- b) A list of the names and addresses of all property owners (a) located within the Project Area, and (b) located within 1.5 miles of any turbine regardless if beyond the county border. Applicant/Developer/Owner will also provide two (2) sets of mailing labels containing the names and addresses of the above property owners. Said list shall be verified by the Madison County Zoning Administrator.
- c) A Development Plan (Plan) for the Project shall contain aerial photographs of the entire proposed Project Area, showing the approximate proposed location of the Turbines, private access roads, Feeder Lines, Substations and all other Components of the Project, including any new transmission lines or expansion of existing transmission lines. The Plan shall show Property Lines and Setback Distances under Section 3 below, as well as all public roads and public drainage district facilities (i.e. ditches and underground tiles) in the Project Area. The Plan shall also identify any other turbines, C-WECS, communication antennae, communication towers, and airports (including private airstrips and heliports) located within five (5) miles of the Project Area; and all lakes, permanent water courses and Public Conservation Areas within three (3) miles of the Project Area boundaries. The topographical conditions in the project area shall be supplied. In providing the above information, the Plan shall use a GPS coordinate system that is compatible with the County's geographical information and data systems. The Plan shall also include a mailing address for the owner of each communication antennae and tower identified.
- d) Project details shall include the name of the Project and the anticipated number, make, model, type, generating capacity, tower height, and rotor diameter of the Turbines. The final number, type, generating capacity, tower height, rotor diameter, must be provided in the Final Development Plan.

- e) An unredacted Health & Safety Instructions Manual for make, model, and type of turbine from the manufacturer of said turbine permitting, must be presented to the county to have on file and must be made available to the public at time of application. No other generalized statement, document, or manual is acceptable. This Health & Safety Instructions manual must be specific to the make, model, and type of Turbine permitted and contain the Evacuation and Danger Zone measurement for the specific turbine permitting. The Applicant/Developer/Owner must comply with all requirements of turbine safety therein.
- f) Documentation of Applicant/Developer/Owner's legal control over the private property necessary for the Project, signed by the property owner. Such legal control must be vested in the Permit Holder of the C-WECS Construction Permit at the time of its issuance.
- g) A description of the public roads anticipated to be used during all phases of construction, as well as for access to material storage sites, staging areas, and laydown yards. As set forth in Section 5 below, before construction commences on a Project, all public road and public drainage district crossings must be provided to the County Engineer and approved for compliance with the County's Road Use and Public Drainage System Protection Agreements.
- h) A permit fee equal to \$1,000.00 for each Turbine in the Project, to be paid upon approval of the C-WECS Construction Permit. The permit fee is nonrefundable under any circumstance.
- i) Any FAA, FCC, or other state or federal permits or approvals that are necessary for the Project. Applicant/Developer/Owner shall submit a copy of the actual permit application, or proof that the permit has been filed with the appropriate agency, along with proof of approval or permit.
- j) Evidence in the form of a report prepared by a qualified unrelated third-party acceptable to the BOA & BOS, but not chosen or recommended by the Applicant/Developer/Owner, that the Project will not interfere with any existing commercial and/or public safety communication systems including radio, telephone, internet, GPS, microwave, Doppler, cellular/wireless or television signals.
- k) A report prepared by a qualified third-party using the most current modeling software available establishing that no Occupied Residence will experience more than thirty (30) hours per year, or more than thirty (30) minutes per day, of Shadow Flicker at the nearest external wall based on a "real world" or "adjusted case" assessment modeling. The report must show the locations and estimated amount of shadow flicker to be experienced at all Occupied Residences as a result of the individual Turbines in the Project. No amount of Shadow Flicker may fall on or in a Non-Participating Landowner's property. Shadow Flicker received on a Non-Participating Landowner's Property requires that individual turbine install the

Optional Shadow Flicker System resulting in Zero Shadow Flicker on a Non-Participating Landowner's Property. The Optional Shadow Flicker System will stop the C-WECS blades rotating during times when shadow flicker crosses a Non-Participating Landowner's property. The owner or resident of an Occupied Residence may waive the shadow flicker limits established above, which waiver must be in a written instrument signed by all owners, residents, and included with the Application.

- l) A Site Impact Area Assessment prepared by a qualified third-party using the most current evaluation process for a 10 mile radius of the project border. This report will include the County's Comprehensive Plan's guided recommendations such as Cumulative Effect, 70+ CSR restrictions, Image, Character, Viewshed and Landscape considerations, etc.
- m) A Growth Assessment prepared by a qualified third-party using the most current evaluation process for a 10 mile radius of the project border and the nearest community.
- n) Madison County Soil and Water Conservation District (MCSWCD) shall be contacted prior to beginning development and the developer shall work closely with that office in the planning, construction, and development to ensure all required permits are in place, identify any easement area, and to conserve natural resources.
- o) Applicant/Developer/Owner shall be notified they are required to set up an Escrow account with the Madison County Treasurer in the amount of \$25,000 for Complaint fees when the C-WECS Construction Permit is approved. The developer will maintain that level of funding for the duration of the project life until all components are removed by replenishing the escrow account on a monthly basis.
- p) A Property Value Guarantee. Applicant/Developer/Owner shall offer a property value guarantee to Non-Participating property owners within the project and 2 miles of the project boundary. Such guarantee shall be based on non-turbine and with-turbine appraised values by a third-party assessor familiar with the region and credible qualifications that will make the Non-Participating property owners whole financially, with the difference in the event the property owner cannot find an interested party to purchase said property at market value within six (6) months of actively marketing their property, the Applicant/Developer/Owner shall be responsible to purchase the property at the non-turbine project market value due to proximity to the C-WECS project adversely affecting the residential property values.
- q) A Decommissioning Plan pursuant to Section 4 below.
- r) Such additional information as the County may request due to the unique

circumstances with the Project. Applicant/Developer/Owners are encouraged to have ongoing discussions with the Madison County Zoning Administrator and Engineer during preparation of the Application. Notes on said discussions shall be taken and made available to the public.

C. County Review

Applications shall be filed with the Madison County Zoning Administrator. Upon receipt of Application the Madison County Zoning Administrator shall give public notice of receipt. The Madison County Zoning Administrator shall have thirty (30) days to review a completed Application and provide comments to the Applicant/Developer/Owner.

D. Notice of Filing

No later than ten (10) days after filing the Application, the Applicant/Developer/Owner shall provide a notice of the filing in substantially the following form:

PUBLIC NOTICE

Notice is hereby given that Name of Applicant/Developer/Owner has filed an Application with Madison County to build/construct a commercial wind energy project to be located in Township Names and Section Numbers. The commercial wind energy project is projected to have _____ individual turbines that will be _____ feet high and each Turbine will have the rated capacity of _____ Mega Watts. The Application is currently being reviewed by Madison County. There will be a separate notice of the public hearing on the commercial wind project.

The Notice of Filing shall be:

- a) Published by the Madison County Zoning Administrator once for two consecutive weeks in the official newspaper of the county
- b) Mailed by the Madison County Zoning Administrator to each landowner identified in the Application pursuant to paragraph 2 B above, and to each City located within 1.5 miles of the Project Area; and to each public and private airport and heliport; and mailed to the owners of the Public Conservation Areas and all communication and other antenna and towers identified in the Application.

All costs of mailing and publication shall be paid by Applicant/Developer/Owner to the county care of the Madison County Zoning Administrator.

E. Public Hearing

Upon completion of the County's review of the Application which is performed by the Madison County Zoning Administrator, the County shall set a public hearing to be held for preliminary review of the project no later than thirty (30) days after the County review period. The Madison County Zoning Board will then meet to provide recommendations and a

decision to forward to the BOA. Representatives of the permit Applicant/Developer/Owner who are familiar with all aspects of the project must be present at the public hearing.

F. Notice of Public Hearing

Notice of the time and place of a public hearing shall be published and mailed by the Madison County Zoning Administrator in the same manner as the Notice of Filing in section 2 D above. The costs of such publications and mailings shall be paid by the Applicant/Developer/Owner to the Madison County Zoning Administrator.

G. Final Submission

No later than sixty (60) days following approval of the Madison County Zoning Commission's preliminary review and public hearing, Applicant/Developer/Owner shall submit a Final Development Plan (FDP) to the Madison County Zoning Administrator showing the final location of all Turbines and other Components comprising the Project (using a GPS coordinate system.) The FDP shall establish the Project's compliance with this Ordinance. Upon receipt of FDP the Madison County Zoning Administrator shall give Public Notice that the FDP has been received and publish it online for public review.

H. Approval by the Board of Adjustment

Within thirty (30) days following the submission of the FDP by the Applicant/Developer/Owner, the BOA shall hold a public hearing pursuant to its rules of procedure. During the review the FDP will be reviewed for completeness and accuracy to the preliminary submittal and compliance with this Ordinance and with the Madison County Comprehensive Plan; and, if same is in compliance, approve the application. Once the BOA approves the application it returns to the Madison County Board of Supervisors for final consideration and approval; the Madison County Board of Supervisors may also choose to hold a public forum to allow more public input prior to their approval. The Madison County Supervisors reserve the right to protect the safety and general welfare of Madison County residents by using the Iowa Code 331.301. If approved by the Madison County Supervisors, their decision shall direct the Madison County Zoning Administrator to issue C-WECS Construction Permits.

I. Modifications

The location of Components may be modified from the FDP when necessary to address exigencies encountered during construction, subject to the following limitations:

- a) Any such modification shall remain subject to all setbacks and other requirements set forth in this Ordinance and the Ancillary Agreements; and
- b) The location of Turbines and Project substations can only be modified from the FDP with approval of the Madison County Zoning Administrator if the proposed relocation is 300 feet or less; or, for such modifications exceeding 300 feet, with the approval of

the BOA and BOS. Approval of a Turbine or Project substation modification by the Madison County Zoning Administrator or the BOA and BOS shall be deemed an approved amendment to the FDP and also automatically amend the C-WECS Construction Permit; and

- c) Within 30 days from the completion of the Project, the Permit Holder shall revise the FDP to show the exact “as-built” coordinates for all Components, including any modifications. [Failure to timely provide such coordinates shall be a material violation of this Ordinance.]

SECTION 3. SITING AND DESIGN STANDARDS

All C-WECS shall comply with the following minimum regulations and design standards set forth by Madison County. The design standards and bulk regulations listed for all zoning districts shall be suspended for all C-WECS projects and the following regulations shall apply instead. All C-WECS projects shall be in compliance with all applicable local, state, and federal regulatory standards and applicable electric codes.

A. Setbacks

All C-WECS, IWTs, Turbines, turbine projects, project substations, and any upgrades to existing Turbines or turbine projects, including the Macksburg Project in Madison County, and any Turbines or turbine projects, planned, permitted or not permitted, not erected, not placed, or uncompleted, including the Arbor Hill Project in Madison County, shall observe the following setbacks: [Note - all measurements shall be from the center point of the Tower (or from the nearest above-ground non-fence structure at a substation site) to what is noted below]

<u>Protected Area</u>	<u>Set Back Requirement</u>
Adjacent Property Lines	1.5 mile from a Non-Participating Landowner’s Property Line. 2100 feet from a Participating Landowner’s Property Line.
Occupied Residence	1.5 mile from a Non-Participating Landowner’s Property Line. 2100 feet from a Participating Landowner’s Occupied Residence Property Line.
Occupied, Non-residential Building	1.25 mile from Property Line.
Confinement Feeding Operation Building	1500 feet from property line
Public Road Right-of-Way	0.5 miles from nearest edge
Open Ditch	1500 feet from nearest edge

Public Conservation Areas, sites on the National Historical Registry, Covered Bridges	1.5 miles from Property Line.
Private-Owned Documented Conservation Areas	1.5 miles from Property Line.
Cemetery	1 mile from Property Line.
City Limits	1.5 miles from the Corporate Limits.
Public & private airports & heliports	8 miles radius from all existing or proposed runways, of any public or private airstrips 8 miles from all existing or proposed approaches no less than 1 mile width. 5 miles radius of any heliport Any additional setbacks as required by FAA

B. Environmentally Sensitive Areas

The setback distance from sensitive natural resource areas, wildlife management areas, prairies, wetlands, forested areas, and other significant public agency owned or managed natural resource area property or documented privately-owned conservation easement protected natural areas, shall be 1.5 miles from the Property Line.

Landowners' submitted information shall be evaluated for their natural resource area by the Madison County Supervisors and their discretionary entities. C-WECS shall not be placed at locations where any species of fish, wildlife, or plants protected under the Federal Endangered Species Act have been documented. C-WECS shall not be placed near documented bat hibernation, breeding or nursery, colonies, and in migration corridors, or between known colonies and feeding areas. Migratory bird or other aerial or land based wildlife corridors shall not be disturbed and no C-WECS shall be placed in a migratory bird or other aerial or land-based wildlife corridor. C-WECS shall not be placed within 5 miles of where bald eagles have been documented. No "Take" permits will be honored or accepted.

C. Setback Waivers.

No setback waivers are allowed except as noted below:

Private Airstrips – can be reduced to a setback of a One (1) mile radius, provided a waiver shall not alter any other non-waived set-back requirement. To effectuate such a waiver, the Applicant/Developer/Owner must provide the Madison County Zoning Administrator with a recordable instrument signed by all owner(s) (or the controlling governmental entity) of the affected Protected Area that specifically identifies the nature and the extent of the waiver. All waivers must be approved by the BOA and BOS for compliance with this Ordinance; and upon such approval, shall be recorded in the office of the Madison County Recorder.

D. Height Limits

No C-WECS, Industrial Wind Turbines (IWTs) shall exceed 500 feet. No Variances or conditional use or special permits will be allowed for height limits set in this ordinance.

E. Generating Capacity Limits

A limit of 2.3 MW of generating capacity per unit, C-WECS, IWT.

F. Color and Finish

Wind turbines shall be painted a non-reflective color. Finishes shall be matte or non-reflective. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.

G. Tower configuration

All wind turbines, which are part of the C-WECS project, shall be installed with a tubular, monopole type tower. Reinforced concrete towers shall not be permitted in Madison County. Alternate designs may be considered if the county supervisors determine them to be an improvement and more desirable. Meteorological towers may also be guyed or lattice towers.

H. Lighting.

C-WECS sites shall not be artificially lighted, except to the extent required by the FAA or other applicable authority. Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations. Red pulsating or flashing lights should be avoided except as noted below.

- a) Aircraft Detection Lighting System (ADLS) technology is required for all C-WECS, IWTs in Madison County. Aircraft Detection Lighting Systems (ADLS) is a passive radar sensing system used to turn on obstruction lighting (red flashing lights) only when aircraft are detected at the defined outer perimeter.
- b) All wind turbines that exceed an overall height of 200 feet above ground level or exceeds any obstruction standard contained in Title 14 Code of Federal Regulations Part 77, "Safe, Efficient Use, and Preservation of the Navigable Airspace," are to be marked and/or lighted with FAA-approved paint markings or lighting fixtures to ensure that they are visible to pilots at night.
- c) Installed ADLS systems must be in compliance with Title 14 Code of Federal Regulations Part 77
- d) Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators, with county supervisor approval.
- e) Substations and other related buildings for a wind project shall be lighted with minimum security lighting. The Madison County Board of Supervisors will consider complaints about lighting and require lighting adjustments.

I. Signage

All signage on site shall comply with the Madison County Zoning Ordinance. The manufacturer's or owner's company name and/or logo may be placed upon the compartment containing the electrical generator of the C-WECS. Signs indicating the 9-1-1 address of each C-WECS, or grouping of multiple C-WECS, shall be placed at each device site and/or the entry points of access roads per the Madison County Uniform Rural Address System Ordinance and require the signage fee. Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or owner/operator of the C-WECS sites.

J. Feeder Lines

All communications and feeder lines, equal to or less than 34.5kV in capacity, installed as part of a C-WECS project shall meet or exceed the current national electrical code (NEC). All feeder lines must be underground. Burial depth shall be at least ten (10) feet and cause no known environmental, land use, or safety issues.

K. Waste Disposal

Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, blades removed, as well as used oils and lubricants, shall be removed from the site and disposed of in accordance with all applicable local, state and federal regulations. Nothing shall be disposed of within the county, including on private or public lands, or at private or public waste management sites/dumps/landfills. Waste must be delivered and disposed of with proof of completion, within thirty (30) days of blade removal, removal of component(s), removal of oil, etc. If the Applicant/Developer/Owner fails to dispose of the blade(s), components, oil, and other such waste, within thirty (30) days, the county may seek any relief at law or equity to abate the nuisance and may also issue a municipal civil infraction citation. Each violation shall result in a \$1000.00 fine. Each day of non-compliance shall be a separate offense. If within sixty (60) days the waste disposal has not been completed the C-WECS will be determined to be discontinued use and removal will commence immediately at Applicant/Developer/Owner cost.

L. Minimum Ground Clearance

The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet. Macksburg wind project is included in this ordinance for minimum ground clearance.

M. Signal Interference

Electromagnetic Interference (EMI) also called Radio-Frequency Interference (RFI). The Applicant/Developer/Owner shall minimize and mitigate any interference with electromagnetic communications, such as radio, internet, telephone, cellular, wireless, broadband, Doppler, or television signals, caused by any C-WECS, IWTs.

N. Federal Aviation Administration

All C-WECS shall comply with FAA standards and permits.

O. Electrical Codes and Standards

All C-WECS components and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.

P. Substations and Accessory Buildings

Structures related to a C-WECS shall be subject to the dimensional and locational standards of structures in the zoning district. Where structures are visible from adjacent properties, the Madison County Zoning Commission shall require & approve vegetative or manmade screening to minimize visual off-site impact. The BOS reserves the right to review and require changes to the screening to further minimize the off-site impact.

Q. Noise.

Definitions:

40 dBA – means 40 decibels (measure of sound intensity or “strength”) as measured using an A-weighted filter (“centered” around 1000 Hz – thus when used discriminates against low frequencies; primarily measures in the 500-10K Hz range). In general, it is more useful to describe audible noise.

60 dBC – means 60 decibels (measure of sound intensity or “strength”) as measured using a C weighted filter (centered as zero) between 250 and 1000 Hz; unlike A-weighting, C-weighting does not discriminate against low frequencies and measures uniformly over the frequency range of 30-10K Hz). Measuring at 20 Hz (defined boundary between infrasound and low-frequency noise, using the A-weighted filter undermeasures sound intensity by 50.5 dB while C-weighted filtering undermeasures by only 6.2 dB. As C-WECS, and IWTs: 1) have the highest sound intensities in the ILFN range, 2) which produce some of the most adverse effects and 3) are being placed having larger energy-producing ratings that contain proportionally higher ILFN content, it is essential that characterization of lower-frequency noise content be quantified and regulated.

ILFN Refers to Infrasound Low-Frequency Noise. This includes "infrasound" (0-20 Hz) combined with "low-frequency" sound (20-200 Hz) when referring to noise emissions on the lowest range of the sound spectrum.

Lmax - means “maximal sound level” and is a descriptor of the highest sound level measure during a single noise event in which the sound level changes value as time goes on. It is not the same as the Lpk or peak sound level (which does not use A or C weighting, nor is a time-constant applied).

(fast) – means a value measured by a specific type of sound level (dB) meter. “Fast” reflect the type of meter (fast, slow or impulse) and corresponds to a 125 msec time constant (precise collection interval (in msec) used by meter). Such sound meters are standardized, are readily available and, like A and C weighting, are “standard” on acoustical measuring equipment. Whereas, for the most part, rural Madison County is a quiet rural residential area that has background night noise levels that are below 25 dBA, therefore, a night-time noise emission level at non-participating properties for any facility permitted for industrial wind turbines

shall not exceed 40 dBA Lmax (fast response) AND shall not exceed 60 dBC Lmax (fast response). Both of these regulatory limits will be observed at the Property Line for all Non-Participating Landowners which could be affected by wind project noise.

Noise shall not exceed 40 dBA Lmax (fast) as the desired maximal (day or night) noise limit to protect from adverse effects of audible (closer-originating) noise.

Noise shall not exceed 60 dBC Lmax (fast) as the desired maximal (day or night) noise limit to protect from adverse effects of infrasound, low-frequency noise (ILFN) that contributes to sleep disturbance, among other effects and can travel much farther than audible sound. Wind turbine noise, at any time of the day or night, cannot exceed the above specified limits at any point along a non-participating Property Line (not the nearest residence) to be in compliance. Both limit regulations are essential to more fully protect exposed residents.

R. Noise Complaints Resolution

Any decision on Regulations, Complaints or Compliance Tests will be conducted by a qualified acoustician selected by and approved (in public meeting) by the County Supervisors. Such decision will provide public access to the acoustician's prior training and experience and review of their competence (if requested) through independent review. The acoustician shall be without any economic nor "collaborative" relationship with any utility/energy company, utility/energy affiliates, utility/energy subsidiaries, utility/energy lobby groups, utility/energy associations/guilds, or the Applicant/Developer/Owner. The Applicant/Developer/Owner has no control over the selection of the acoustical consultant.

Any testing cost that is required for dBA analysis shall be paid out of an escrow account established by a \$25,000 fee paid by the Applicant/Developer/Owner when the application is permitted. The Applicant/Developer/Owner will maintain that level of funding for the duration of the project life until all components are removed by replenishing the escrow account on a monthly basis.

If a complaint is submitted, the Applicant/Developer/Owner must cooperate by providing all SCADA data for the 24-hour period surrounding the complaints time and date. The Applicant/Developer/Owner must also agree, as part of the permit, that they will cooperate with the acoustician conducting the test, including operating the wind turbines in the mode(s) the acoustician wishes to test, including on/off tests that may also require testing of wind turbines not near the complainant's property.

Performing Acoustician and Applicant/Developer/Owner shall use the validation/complaint measurement procedure: ANSI S12.9 Part 3 (R2013) "Short Term Measurements with an Observer Present. The S12.9 Part 3 "On/Off" test protocol must be followed. Once a complaint is filed, all wind turbines within 3 miles must be operated in NRO-Mode 5 at night. That mode shall be continued until resolution of the complaint by independent acoustician evaluation (as above described). Should the Applicant/Developer/Owner elect to appeal any finding that they are not in compliance, the NRO-Mode 5 nighttime will be continued until the appeal is resolved.

If post-construction measurements exceed appliance noise limits and compliance, the Applicant/Developer/Owner will comply within thirty (30) days, if not compliant within thirty (30) days the owner will cease operation of said C-WECS, IWTs, until compliant.

S. Shadow Flicker

A report prepared by a qualified third-party using the most current modeling software available establishing that no Occupied Residence will experience more than thirty (30) hours per year, or more than thirty (30) minutes per day, of Shadow Flicker at the nearest external wall based on a "real world" or "adjusted case" assessment modeling. The report must show the locations and estimated amount of shadow flicker to be experienced at all Occupied Residences as a result of the individual Turbines in the Project.

No amount of Shadow Flicker may fall on or in a Non-Participating Landowner's property. Shadow Flicker received on a Non-Participating Landowner's Property requires that the offending turbine(s) be installed with the Optional Shadow Flicker System resulting in Zero Shadow Flicker on a Non-Participating Landowner's Property. The Optional Shadow Flicker System will stop the C-WECS blades rotating during times when shadow flicker crosses a Non-Participating Landowner's property.

The owner or resident of an Occupied Residence may waive the shadow flicker limits established above, which waiver must be in a written instrument signed by all owners, residents, and included with the Application.

T. Vibrations

C-WECS, IWTs, shall not create vibrations that are detectable by human(s) on Non-Participating Landowner's properties. Documentation of increased sediment in water wells shall be considered evidence of vibration.

U. Safety

- a) All wiring between wind turbines and the C-WECS project substation shall be underground at a minimum depth of ten (10) feet
- b) Wind turbine towers shall not be climbable up to fifteen feet above ground level
- c) Access doors to all equipment on each site shall be locked unless being serviced
- d) Appropriate warning signage shall be placed on wind turbine towers, electrical equipment, and C-WECS entrances
- e) Manufacturer's engineer or other qualified engineer shall certify that the wind turbine, foundation and tower design of the C-WECS is within accepted professional standards, given local soil and climate conditions
- f) Each C-WECS shall be equipped with both a manual and automatic braking device capable of stopping the C-WECS operation in high winds within 80% of design limits of the braking system

- g) For all guyed towers, visible and reflective objects, such as plastic sleeves, reflectors or tape, shall be placed on the guy wire anchor points and along the outer and innermost guy wires up to a height of eight (8) feet above the ground. Visible fencing shall be installed around anchor points of guy wires.
- h) An unredacted Health & Safety Instructions Manual for make, model, and type of turbine from the manufacturer of said turbine permitting, must be presented to the county to have on file and must be made available to the public at time of application. No other generalized statement, document, or manual is acceptable. This Health & Safety Instructions manual must be specific to the make, model, and type of Turbine permitted and contain the Evacuation and Danger Zone measurement for the specific turbine permitting. The Applicant/Developer/Owner must comply with all requirements of turbine safety therein.
- i) All spent lubricants and cooling fluids shall be properly and safely removed in within thirty (30) from the site of the C-WECS. These shall not be disposed of at any county landfill, dump or waste management site, nor on any private or public property.
- j) Signs displaying emergency contact information in case of fire must be posted.

V. Voltage

The Applicant/Developer/Owner shall be responsible for compensation to residents of property including livestock, health, or other damage by stray voltage caused by a C-WECS. Applicant/Developer/Owner shall demonstrate C-WECS prohibits any detectable stray voltage, surge voltage, and power from entering ground.

W. Height and Number Limitations

- a) The Total Height of any C-WEC, IWT, Turbine in Madison County shall not exceed 500 feet.
- b) No Project shall have more than 51 total Turbines. Projects shall not be split in order to avoid this restriction.
- c) At no time shall the total number of permitted and installed C-WECS in Madison County exceed 51 turbines.

X. Operational, Maintenance, and Issue Resolution

Each C-WECS and MET tower location must be kept and maintained in good repair and condition at all times. If a C-WECS is not maintained in operational and reasonable condition or poses a potential safety hazard, the Applicant/Developer/Owner shall take expeditious action to correct the situation, including C-WECS removal. The Applicant/Developer/Owner shall keep a maintenance log on each C-WECS and must provide the complete log to the county within thirty (30) days of request.

Y. Repair Policy Documentation

Applicant/Developer/Owner must provide a detailed policy and process book for the repair, replacement, and removal of malfunctioning, defective, worn, or non-compliant C-WECS. Sections of the process book should consider any ordinance requirements or C-WECS performance deficiency.

Z. Complaint Resolution

It is the intent of this ordinance to provide a mechanism to address and resolve complaints. Complaints of noncompliance with the requirements of this ordinance shall be resolved in the following manner:

- a) Complaints shall be submitted to the Madison County Board of Supervisors in writing from the affected property owner, or written designee, including name, address, contact information, and specific complaint. The written complaint shall include the specific section of the ordinance which is believed to be violated. The Supervisor shall cause the complaint to be added to the agenda of the next Madison County Board of Supervisors' meeting in accordance with the procedure for setting the agenda.
- b) The Supervisor shall submit to the Applicant/Developer/Owner of record notice of all written complaints to the county within three (3) days of receipt of any complaint. Upon receipt of complaint the Applicant/Developer/Owner shall operate the Turbine(s) subject to the complaints in the NRO-Mode 5 until complaint is investigated/reviewed by the Madison County Board of Supervisors and a decision is made. Complaints received by the county and the date of any Madison County Board of Supervisors' meeting where complaints may be considered shall be communicated to the Applicant/Developer/Owner at least 10 days prior. The notice shall state that the Madison County Board of Supervisors may determine that the C-WECS is in violation of its permit and is therefore a nuisance and may be ordered out of service until the Applicant/Developer/Owner can demonstrate compliance with the requirements of this ordinance.
- c) Upon review, if the Madison County Board of Supervisors, by an affirmative vote of the majority of the members present, deems a complaint sufficient to warrant an investigation, the Madison County Board of Supervisors shall notify the Applicant/Developer/Owner of the C-WECS that an investigation has been requested by the Madison County Board of Supervisors.
- d) Applicant/Developer/Owner shall be required as a condition of the operation to fund an escrow account for investigation of complaints for, but not limited to, Shadow Flicker, Adverse Sound Character, stray voltage, noise, and signal interference in the amount of \$25,000.00 to be used at the discretion of the county Madison County Board of Supervisors. When the escrow account balance is below \$10,000.00 the county shall notify the Applicant/Developer/Owner and the Applicant/Developer/Owner shall replenish the account to the amount of \$25,000.00 within fourteen (14) days of notification.

- e) If C-WECS is found in violation of this ordinance, the Applicant/Developer/Owner shall take immediate action to bring the C-WECS into compliance. If the Applicant/Developer/Owner fails to bring the operation into compliance within thirty (30) days, the county may seek any relief at law or equity to abate the nuisance and may also issue a municipal civil infraction citation. Each violation shall result in a \$1000.00 fine per turbine subject to the complaint. Each day of non-compliance shall be a separate offense.
- f) Any C-WECS found by the Madison County Board of Supervisors to be in violation of this ordinance set forth herein shall be considered a nuisance and the C-WECS operations shall cease until such time as the C-WECS Applicant/Developer/Owner can demonstrate compliance with the requirements of this ordinance and Discontinued/Decommissioning section 4.

SECTION 4: DISCONTINUATION / DECOMMISSIONING

A C-WECS, IWT, or any component thereof shall be considered a "discontinued use," if the individual C-WEC, IWT has not functioned in a continuous six (6) month period or has not generated 2000 hours of electricity within one continuous year. Once declared to be a discontinued use, the Components, C-WECS, IWT shall be promptly dismantled and removed from the property in accordance with the Decommissioning regulations of this ordinance. Each Project shall have a Decommissioning Plan approved by the BOA, sent to the Madison County Board of Supervisors for final consideration and approval. Such Plan shall contain:

- a) A description of the Project Components, and a sequence and description of the activities required to remove same in compliance with this section.
- b) A report prepared by a qualified third-party (to be approved by the Board in advance) setting forth the procedures and estimated net cost associated with the removal of the Components and returning all public roads, including hard surface roads, to the same or better condition as before decommissioning. All C-WECS and accessory facilities shall be removed completely, including but not limited to concrete, steel, cables, wires, conduit, below ground level within one hundred eighty (180) days of the discontinuation of use at the complete financial cost of the Owner/Entity. Nothing shall be disposed of within the county, including on private or public lands, or at private or public waste management sites/dumps/landfills.
- c) A Cash Escrow Account shall be opened by the Applicant/Developer/Owner with the Madison County Treasurer for decommissioning costs, prior to construction and upon the approval of the C-WECS Construction Permit. Cash, in Escrow, the amount per C-WECS, IWT will be evidenced in the form of two separate quotes for complete & full removal of all above and below ground components of a C-WECS, returning the property to its pre-turbine condition, prepared by qualified

third-parties acceptable to the Madison County Board of Supervisors. The total of Cash/Escrow per Turbine shall be the average of two independent demolition/removal quotes. Cash/Escrow must be paid to the Madison County Treasurer upon approval of permits and before construction begins. Cash/Escrow must be reviewed yearly to accommodate rate of inflation. Additional monies may need to be added by the Applicant/Developer/Owner due to rate of inflation and changing expenses related to components disposal and ground reclamation condition. If escrow account needs additional monies the Applicant/Developer/Owner has fourteen (14) business days after receiving notice to comply or the C-WECS will be determined to be discontinued use and removal will commence immediately.

- d) An update to this decommissioning plan shall be submitted to the Madison County Zoning Administrator every three (3) years.
- e) The county reserves the right to require additional information or components to the plan as the county deems necessary to ensure that an adequate proposal is in place to decommission the LUS-SES project in its entirety and that adequate funds are available in the cash/escrow account.

SECTION 5: ANCILLARY AGREEMENTS/PROCEDURES

Issuance of a C-WECS Construction Permit is strictly conditioned on the Applicant/Developer/Owner executing and providing the following:

A. Roads

Prior to construction Applicant/Developer/Owner shall identify all roads to be used for the purpose of transporting C-WECS, substation parts, concrete, components and/or equipment for construction, operation or maintenance of the C-WECS and obtain applicable weight and size permits from the impacted road authority(ies) prior to construction.

- a) Prior to construction Applicant/Developer/Owner shall conduct a pre-construction survey, in coordination with the impacted local road authority(ies) to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility. All roads, including county owned hard surface road(s) are to be graded and inspected by the County Engineer, well documented with photos and detailed information of pre-construction condition.
- b) The Applicant/Developer/Owner shall be responsible for ongoing road maintenance and dust control measures identified by the county engineer during all phases of construction. Restoring or paying damages as agreed to by the applicable road authority(ies) sufficient to restore the road(s) including county owned hard surface road(s) and bridges to pre-construction conditions to the extent caused by the construction of the C-WECS. Financial security in a manner approved by the Madison County Attorney's Office shall

be submitted covering one hundred thirty percent (130%) the estimated costs of all required improvements. The Applicant/Developer/Owner shall enter into a road use agreement with Madison County prior to the start of construction.

- c) The Applicant/Developer/Owner shall comply with all IDOT road and safety requirements; signage shall not be removed nor road path or layout changed without permission from the zoning administrator and county roads

B. Drainage System

The Applicant/Developer/Owner shall be responsible for immediate repair of damage to public drainage systems to the extent caused by the construction, operation or maintenance of the C-WECS.

Prior to construction of the C-WECS project, all existing drainage tile must be inspected by means of robotic camera and the imagery submitted to the Madison County Zoning Administrator to establish a baseline condition of tile. Any damaged or inoperable tile shall be repaired prior to construction of C-WECS project and such repairs shall be documented and a report submitted to the landowner and the Madison County Zoning Commission office, indicating the location, nature and satisfactory completion of such repairs. Supports shall be constructed to preserve any drainage field tile and/or drainage system. While the C-WECS is in operation, all drain tile shall be inspected every three (3) years in the fashion noted above and all video footage and a report of any damage or failure shall be submitted to the Madison County Zoning Administrator. Any tile failure shall be corrected within sixty (60) days of discovery and such repairs shall be documented and a report submitted to the landowner and county indicating the location, nature and satisfactory completion of such repairs. The county reserves the right to have the building inspector or other agent of the county present at the time of repair. While the C-WECS is in operation, as well as during decommissioning, if any repair is not completed within sixty (60) days of the reported damage/failure, the project shall be fined \$1000.00 per infraction per day, and shall be retroactive to the date of the initial report of damage/failure until final completion date.

C. An Emergency Response Plan

Provided by Applicant/Developer/Owner and approved by the BOA. Said Plan shall contain response procedures to be followed in the event of a fire, collapse, personal injury, or other emergency at a Project. The Plan shall contain 24 hour emergency contact information for the Project.

D. An unredacted Health & Safety Instructions Manual for make, model, and type of turbines in the project from the manufacturer(s)

This must be presented to the county to have on file and must be made available to the public at time of application. No other generalized statement, document, or manual is acceptable. This Health & Safety Instructions manual must be specific to the make, model, and type of Turbine permitted and contain the Evacuation and Danger Zone measurement for the specific turbine permitting. The Applicant/Developer/Owner must comply with all requirements of turbine safety therein.

SECTION 6: TRANSFERABILITY OF A C-WECS CONSTRUCTION PERMIT

- a) No construction activities on a Project may begin until a C-WECS Construction Permit has been issued, except as permitted in Section 2 A.
- b) Any material violation of any provision of this Ordinance that remains uncured after thirty (30) days written notice from the County to the Permit Holder shall be grounds for revocation of the C-WECS Construction Permit.
- c) If construction on the Project has not begun within 18 months from the date of issuance of the C-WECS Construction Permit, the C-WECS Construction Permit shall be automatically revoked without further action by the County. In such event, no work on the Project may take place unless and until a new C-WECS Construction Permit is issued following the original complete application process, meaning going through the application process providing all required information, Madison County Zoning Commission public hearing, recommendations and decision, a public hearing by the BOA and approval/denial and finally to the Madison County Board of Supervisors, and any portion of the Project, such as MET tower, driveways or roads, etc., then completed shall be deemed a discontinued use.
- d) Only the holder of the C-WECS Construction Permit (Permit Holder) shall own the Project, and such holder shall be the entity responsible for observing all requirements of this Ordinance. The Permit Holder shall be responsible to maintain all Components of the C-WECS in good repair, and in compliance with this Ordinance and the Ancillary Agreements listed in Section 5 above.
- e) No C-WECS Construction Permit shall be transferred or assigned, voluntarily or involuntarily, without the written approval of the Madison County Board of Supervisors, which consent may be withheld unless and until the said Board is satisfied that a proposed transferee has the financial and operational responsibility to assume all obligations required of the Permit Holder under this Ordinance and the Ancillary Agreements listed in Section 5 above. Requests for approval of a C-WECS Construction Permit transfer shall be directed to the Madison County Zoning Administrator at which time the Madison County Zoning Administrator will present it to the Madison County Board of Supervisors.

SECTION 7: MISCELLANEOUS

Condemnation Waiver

Issuance of a C-WECS construction permit shall be conditioned on the permit holder's enforceable promise, supported by the consideration of the issuance of the C-WECS construction permit, that the permit holder shall never use, or seek to use, eminent domain to acquire any real property interests to construct or operate the project, or to construct new or expand existing, transmission lines.

Legal fees

In any action brought by the County against the Permit Holder of a C-WECS Construction Permit to enforce the provisions of this Ordinance, the County shall be entitled to recover its reasonable attorney fees and court costs as may be awarded by the court.

SECTION 8: LIABILITY INSURANCE

The Applicant/Developer/Owner of the C-WECS project shall maintain a current and general liability policy covering bodily injury and property damage with limits of at least five (5) million dollars per occurrence and twenty (20) million dollars in the aggregate. The Applicant/Developer/Owner of the C-WECS project shall maintain this policy for the lifetime of the C-WECS project and submit a copy of the same to the Madison County Zoning Administrator at each renewal. Madison County and its officials shall be named as additional insureds.

SECTION 9: SEVERABILITY CLAUSE

If any of the provisions of this Ordinance are for any reason illegal or void, then the lawful provisions of this Ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the Ordinance contained no illegal or void provisions.

SECTION 10: REPEALER

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 11: LEGAL AUTHORITY

Madison County reserves the right to exercise Iowa Code 331.301 at any time to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, general welfare, and convenience of its residents. As updated information, concern, and plausible evidence are established, Madison County reserves the right to amend or repeal regulations to protect the residents of Madison County. All C-WECS, IWTs, Turbines, turbine projects, project substations, and any upgrades to existing Turbines or turbine projects, including the Macksburg Project in Madison County, and all C-WECS, IWTs, Turbines, or turbine projects, planned, permitted or not permitted, not erected, not placed, or uncompleted, including the Arbor Hill Project in Madison County, any existing or future easements, shall observe the this Commercial Wind Energy Conversion Systems Ordinance.

SECTION 12: DATE OF EFFECT

This Ordinance shall become effective upon its passage by the Madison County Board of Supervisors in accordance to our county ordinances and published as required by Iowa Code §331.302(8)