

ORDINANCE NO. 102

**AN ORDINANCE AMENDING THE MITCHELL COUNTY ZONING
ORDINANCE (ORDINANCE 17) REGARDING PROVISIONS
REGULATING COMMERCIAL WIND ENERGY CONVERSION
SYSTEMS (C-WECS) AND BATTERY ENERGY STORAGE SYSTEMS
(BESS)**

NOW, THEREFORE, BE IT ORDAINED by the Mitchell County Board of Supervisors that the Mitchell County Zoning Ordinance (Ordinance 17) is hereby amended as follows:

SECTION 1. Article 1.08, Definitions is hereby amended (Numbering is amended as applicable so that terms remain in alphabetical order.) as follows:

1. dBA – decibels (measure of sound intensity or “strength”) as measured using an A-weighted filter (“centered” around 1,000 Hz- thus when used discriminates against low frequencies; primarily measures in the 500-10K Hz range).
2. Agreement – A written contract that legally binds the signatory parties to the terms of a contract.
3. Agricultural Impact Mitigation Plan – A required plan detailing strategies to avoid or mitigate detrimental impact to agricultural land resulting from the construction, operation, maintenance, and/or decommissioning potentially resulting from a land use as required in this Ordinance.
4. Applicant – Any person, firm, corporation, partnership, association, trust, or other entity, who has directly or through an agent, submitted an application for a use which requires compliance with the regulations within this Ordinance.
5. Battery Energy Storage System (BESS) – One or more devices, assembled together, capable of storing energy in order to supply electrical energy for later use. The energy may be used onsite or distributed into the electrical grid.
6. Building, Occupied – A dwelling, school, hospital, church, public library, retail store, place of business, or other building used for public gathering.

7. Commercial Battery Energy Storage System (C-BESS) – One or more devices, assembled together, capable of storing energy in order to supply electric energy for the primary purpose of wholesale or retail sales of generated electricity, and which is proposed either as part of a commercial solar energy system or wind farm or that is proposed as a standalone project. This includes all accessory equipment necessary for energy storage, including but not limited to, inverters, transformers, cooling equipment, switching gear, metering equipment, transmission tie-lines, other power interconnection facilities, and/or a project substation.
8. Commercial Wind Energy Conversion System (C-WECS) – The equipment that converts and then stores or transfers energy from the wind into useable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, or other component used in the system, which has a rated nameplate capacity of more than six hundred (600) kilowatts (kW) and is intended for the primary purpose of wholesale or retail sales of generated electricity.
9. Confinement Feeding Operation Building shall have the same meaning as found in Iowa Code 459.102(15).
10. Decommissioning Funds Agent – A person, who is not the development owner, operator, or applicant for a development, who is responsible for maintaining and releasing all decommissioning funds.
11. Decommissioning Funds – Funds in the form of a performance bond, escrow account, surety bond, letter of credit, corporate guarantee, or other form of financial assurance that is approved by the Zoning Administrator that are set aside for the sole purpose of decommissioning a development after the end of its useful life.
12. Developer – The person or entity responsible for the construction or carrying out of a project.
13. Easement – A legal interest in land, as defined in a document recorded in the office of the County Recorder, granted by the owner to another person or entity, which allows that person(s) or entity(ies) the use of all or a portion of the owner’s land, generally for a stated purpose, including, but not limited to, access or placement of utilities.
14. Feeder line – Any power line that carries electrical energy from one or more wind turbine or individual transformers associated with individual wind turbines or any other type of utility-scale electrical generation facility to the point of interconnection with the electric power grid, or in the case of interconnection with the high voltage transmission systems, the point of interconnection shall be the substation serving a C-WECS or any other type of utility-scale electrical generation facility.
15. Landowner – A person or commercial entity that has ownership rights of land and is listed on the tax assessment roles as responsible for tax payments on a property.

16. Landowner, Non-Participating – Any landowner except those on whose property has or is proposed to have all or a portion of a development project located on it pursuant to an agreement with a developer or operator or except those that agree to participate as part of a development pursuant to an agreement with a developer or operator.
17. Landowner, Participating – Any landowner whose property has or is proposed to have all or a portion of a development project located on it pursuant to an agreement with a developer or operator. A landowner may participate in a development pursuant to an agreement to become a participant with a developer or operator as may otherwise be permitted under the regulations of this Ordinance.
18. Meteorological (MET) Tower – A tower which is erected primarily to measure wind speed and direction or other atmospheric or weather data.
19. Operator – The entity responsible for the day-to-day operation and maintenance of a specific land use or project.
20. Permit Holder – The person or entity that assumes responsibility for meeting the requirements and conditions attached to a Zoning Certificate, Special Exception Permit, or any other lawful approval issued by the Zoning Administrator, Board of Adjustment, Board of Supervisors or other authorizing entity for the purpose of constructing, operating, or maintaining a project as issued or granted under the authority of the Mitchell County Zoning Ordinance.
21. Property Line – The legal boundary between separately owned real estate parcels, and between privately owned parcels and publicly owned land or public right-of-way.
22. Project – Any man-made change to improved or unimproved real estate, including but not limited to a building or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials. A “Project” does not include routine maintenance of existing building or facilities.
23. Project Area – The taxable parcel or group of taxable parcels on which a project is located.
24. Public Conservation Areas – Land owned by County, State, or Federal agencies and managed for conservation and/or preservation purposes, including but not limited to, Wildlife Management Areas, Conservations Areas, Preserves, Wildlife Refuges, Waterfowl Refuges, and Waterfowl Production Areas, as defined by Iowa Department of Natural Resources (IDNR). 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 Conservations Areas do not include land enrolled in the Conservation Reserve Program (CRP). However, CRP land located within a Public Conservation Area as defined does not negate the status of a Public Conservation Area.

25. Public Recreation Area – Parks, public hunting land, and other such areas that have been set aside by the County, State, or Federal Government for use and enjoyment by the public, but which do not meet the definition of Public Conservation Areas.
26. Repowering – The replacement of electrical generation equipment at an existing project site or the installation of new parts or equipment to an existing renewable energy facility or battery energy storage system (BESS) facility in order to increase energy production, reduce load, increase service capacity, or extend the useful life of the facility.
27. Shadow Flicker – The alternating changes in light intensity caused when the blades of an operating C-WECS unit passes between the sun and the ground or other objects resulting in casting a readily observable moving shadow across the ground or other objects.
28. Special Exception – A use or structure that would not be appropriate generally or without restriction throughout the zoning division or district but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, morals, order, comfort, convenience, appearance, prosperity, or general welfare as may be permitted under specific standards outlined within this Ordinance and as may be approved under such standards and conditions granted by the Mitchell County Board of Adjustment.
29. Small Battery Energy Storage System (S-BESS): One or more devices attached to or located inside or outside of the principal building footprint, assembled together, capable of storing energy in order to supply electrical energy to serve primarily the energy needs onsite.
30. Small Wind Energy Conversion System (S-WECS): A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than six hundred (600) kilowatts (kW) and which is intended to primarily reduce onsite consumption of utility-supplied electricity.
31. Substation – An electrical construction designed to collect and modify electrical energy on the electrical utility grid system.
32. Transmission line – The electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.
33. Waiver – An allowance established by an agreement between a participating landowner and a developer supported by required additional documentation as specified by this Ordinance, which serves to allow a condition not otherwise allowed by this Ordinance. A waiver shall only be permitted for instances that are specifically permitted within this Ordinance and do not otherwise violate the requirements of this Ordinance.
34. Wildlife Monitoring and Mitigation Plan – A required plan intended to mitigate risk to avian and bat populations during the construction and operation phases of a land use as required in this Ordinance.

35. Wind Turbine Generator – Also referred to as a “Wind Turbine,” A device designed to extract kinetic energy from the wind and supply it in the form of electrical energy that is connected to the electrical transmission grid or local distribution grid and includes but is not limited to the nacelle, blade or rotor, tower, and pad transformer, if any.
- Blade and Rotor Hub: An element of a wind turbine, which acts as a part of an airfoil assembly, thereby extracting through rotation, kinetic energy directly from the wind.
 - Ground Clearance: The vertical distance between the surface of the tower foundation and the lowest point of the turbine rotor plane.
 - Hub Height: The vertical distance between the surface of the tower foundation and the center of the turbine hub, where the blades are attached.
 - Foundation: The tower support structure, above and/or below grade that supports the entire weight of the wind turbine generator.
 - Nacelle: A cover housing that contains all of the generating components in a wind turbine, including the generator, gearbox, drive train, and brake assembly.
 - Total Height: The vertical distance between the surface of the tower foundation and the highest point of the turbine rotor plane at the tip of the blade.
 - Tower: The support structure, above grade, that supports the nacelle and rotor assembly.
36. Zoning Certificate – Also referred to as a “Zoning Permit” or “Building Permit.” A written statement of approval by Mitchell County authorizing the construction and/or use of land, buildings, or structures, consistent with the requirements of the Mitchell County Zoning Ordinance.

SECTION 2. Article 1.17, “AG - Agricultural District” is hereby amended as follows:

1. Add the following under Section 3, “Accessory Uses:”
 - f. Small Battery Energy Storage Systems (S-BESS)
2. Add the following under Section 4, “Special Exceptions:”
 - p. Small Wind Energy Conversion Systems (S-WECS)
 - q. Commercial Wind Energy Conversion Systems (C-WECS)
 - r. Commercial Battery Energy Storage Systems (C-BESS)

SECTION 3. Article 1.18, “AG-D - Agricultural Development District” is hereby amended as follows:

1. Add the following under Section 3, “Accessory Uses:”
 - g. Small Battery Energy Storage Systems (S-BESS)

2. Add the following under Section 4, “Special Exceptions:”

- o. Small Wind Energy Conversion Systems (S-WECS)
- p. Commercial Wind Energy Conversion Systems (C-WECS)
- q. Commercial Battery Energy Storage Systems (C-BESS)

SECTION 4. Article 1.19, “CN - Conservation District” is hereby amended as follows:

1. Add the following under Section 4, “Special Exceptions:”

- j. Commercial Battery Energy Storage Systems (C-BESS), provided the use is co-located with a substation

SECTION 5. Article 1.20, “RS – Residential Single-Family District” is hereby amended as follows:

1. Add the following under Section 3, “Accessory Uses:”

- e. Small Battery Energy Storage Systems (S-BESS)

2. Add the following under Section 4, “Special Exceptions:”

- i. Small Wind Energy Conversion Systems (S-WECS)
- j. Commercial Battery Energy Storage Systems (C-BESS), provided the use is co-located with a substation

SECTION 6. Article 1.21, “RM – Residential Multi-Family District” is hereby amended as follows:

1. Add the following under Section 3, “Accessory Uses:”

- f. Small Battery Energy Storage Systems (S-BESS)

2. Add the following under Section 4, “Special Exceptions:”

- i. Small Wind Energy Conversion Systems (S-WECS)
- j. Commercial Battery Energy Storage Systems (C-BESS), provided the use is co-located with a substation

SECTION 7. Article 1.22, “Mobile Home District” is hereby amended as follows:

1. Add the following under Section 3, “Accessory Uses:”

- d. Small Battery Energy Storage Systems (S-BESS)

2. Add the following under Section 4, “Special Exceptions:”
 - f. Small Wind Energy Conversion Systems (S-WECS)
 - g. Commercial Battery Energy Storage Systems (C-BESS), provided the use is co-located with a substation

SECTION 8. Article 1.23, “AC – Arterial Commercial District” is hereby amended as follows:

1. Add the following under Section 3 “Accessory Uses:”
 - g. Small Battery Energy Storage Systems (S-BESS)
2. Add the following under Section 4, “Special Exceptions:”
 - c. Small Wind Energy Conversion Systems (S-WECS)
 - d. Commercial Battery Energy Storage Systems (C-BESS), provided the use is co-located with a substation

SECTION 9. Article 1.24, “LI - Light Industrial District” is hereby amended as follows:

1. Add the following under Section 3, “Accessory Uses:”
 - c. Small Battery Energy Storage Systems (S-BESS)
2. Repeal Section 4, “Special Exceptions” and replace with the following:”

Special Exceptions. Certain uses may be permitted in the LI District as determined by the Zoning Administrator subject to specific conditions and requirements intended to make them compatible with and acceptable to adjacent uses as imposed by the Board of Adjustment under a granted Special Exception Permit. Such uses shall include but not be limited to the following:

- a. Small Wind Energy Conversion Systems (S-WECS)
- b. Commercial Wind Energy Conversion Systems (C-WECS)
- c. Commercial Battery Energy Storage Systems (C-BESS)

SECTION 10. Article 1.25, “HI - Heavy Industrial District” is hereby amended as follows:

1. Add the following under Section 4, “Accessory Uses:”
 - c. Small Battery Energy Storage Systems (S-BESS)
2. Add a new Section 9, “Special Exceptions” as follows:

Special Exceptions. Certain uses, not including those under Permitted Uses and similarly permitted as Special Exceptions in the LI District, may be permitted in the HI District as determined by the Zoning Administrator subject to specific conditions and requirements intended to make them compatible with and acceptable to adjacent uses as imposed by the Board of Adjustment under a granted Special Exception Permit. Such uses shall include but not be limited to the following:

- a. Small Wind Energy Conversion Systems (S-WECS)
- b. Commercial Wind Energy Conversion Systems (C-WECS)
- c. Commercial Battery Energy Storage Systems (C-BESS)

SECTION 11. Article 1.27, “Supplementary District Regulations” is hereby amended as follows:

1. Add the Section 16, “Small Wind Energy Conversion Systems (S-WECS)” as follows”
 16. Small Wind Energy Conversion Systems (S-WECS). Any proposal for a new S-WECS shall require a Special Exception Permit granted by the Board of Adjustment and conform any conditions as granted and to the following requirements:
 - a. Generation Capacity, Total Number, and Total Height.
 - i. Generation Capacity. No S-WECS wind turbine generator shall exceed greater than a 600-kW nameplate capacity.
 - ii. Total Number. No more than one (1) S-WECS wind turbine generator shall be located on a single parcel.
 - iii. Total Height. No S-WECS wind turbine shall exceed a total height of greater than one hundred fifty (150) feet. Any wind turbine generator proposed with a total height of greater than one hundred fifty (150) feet in height shall be considered a Commercial Wind Energy System (C-WECS) under the provisions of this Ordinance.
 - b. Property Line Setback. S-WECS wind turbine generators shall be set back a minimum distance of 115% of the total height from all property lines.
 - c. Ground Clearance. S-WECS wind turbine generators shall have a minimum ground clearance of twenty (20) feet.
 - d. Industry Standards. S-WECS wind turbine generators shall conform to all applicable industry standards, including, but not limited to, braking systems, electrical components, and safety standards.
 - e. Plans and Specifications. A qualified engineer licensed in the State of Iowa shall approve all plans and specifications, including, but not limited to, suitability for construction in existing soil condition at the proposed location of the wind turbine generator.

- f. Color and Finish. S-WECS wind turbine generators shall be a non-obtrusive color such as white, off-white, or gray. Finishes shall be matte or non-reflective.
- g. Signage. Signs shall be prohibited to be located on an S-WECS wind turbine generator, except those necessary for safety purposes or that are needed to meet industry standards.
- h. Lighting. S-WECS wind turbine generators shall not be artificially lighted unless required by the Federal Aviation Administration or other applicable entity.
- i. Climbing Apparatus and Unauthorized Access. Wind turbines shall not be climbable up to fifteen (15) feet above ground level. Access doors to all equipment on each site shall be locked to prevent unauthorized access unless being serviced.
- j. Liability Insurance. There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least one hundred thousand dollars (\$100,000) per occurrence and least one hundred thousand dollars (\$100,000) in the aggregate. Certificates shall be made available to Mitchell County upon application.
- k. Sound. SWECS wind turbine generators shall not exceed fifty (50) decibels (dBA) at the closest portion of any dwelling, occupied building, Public Recreation Area, or Public Conservation Area. Sound levels, however, may be exceeded during short-term events out of anyone's control, such as utility outages and/or severe windstorms. To document decibel level if there is a complaint regarding an operational system, at the discretion of the Zoning Administrator, the Permit Holder shall commission a report conducted by a qualified, independent third party providing operating sound pressure level measurements from a reasonable number of sampled locations at the outside wall of the nearest dwelling, occupied buildings, or applicable protected location to demonstrate compliance with this standard.
- l. End of Useful Life and Decommissioning. S-WECS wind turbine generators shall be removed at the expense of the landowner within one (1) year after the end of the useful life of the wind generator. The wind turbine generator shall be presumed to be at the end of its useful life if, for a continuous period of one (1) year, it has generated no electricity.
- m. Utility Company Approval. No S-WECS wind turbine generators shall be installed until evidence has been given that the utility company has authorized interconnection of the small wind energy system to its electric distribution or transmission, under an agreement offered by the utility. Properties not connected to the public utility system shall be exempt from this requirement.

SECTION 12. Add new Article 1.27A, “Commercial Wind Energy Conversion Systems Requirements” to read as follows:

1. Intent and Special Exception. The purpose of this Article is to establish minimum requirements and regulation potentially resulting from the construction, erection, placement, location, maintenance, modification, operation, and discontinuance and/or decommissioning of commercial wind energy conversion systems (C-WECS) in Mitchell County in furtherance of the purpose and intent of the Mitchell County Zoning Ordinance. C-WECS shall require a Special Exception Permit to be granted by the Mitchell County Board of Adjustment as provided for in Articles 1.31 and 1.32. All C-WECS shall meet the minimum requirements and procedures of this Article and such other conditions as may be deemed necessary by the County Board of Adjustment to mitigate potentially unforeseen impacts from the use.
2. Procedure. All requests for Special Exception Permit for C-WECS shall conform to the following procedures in addition to the regular Special Exception procedures:
 - a. Pre-Application Conference. At a minimum of ninety (90) days prior to making application, the Applicant shall meet with the Zoning Administrator and County Engineer to discuss the Applicant’s plans and identify any potential concerns in advance of filing the formal application.
 - b. Application Period of Review. Once submitted, the Planning and Zoning Office shall have a period not exceeding fifteen (15) business days to review that all required documentation has been submitted with the application. If all required materials have been submitted, the Zoning Administrator shall provide formal acceptance to the Applicant stating the application includes all required documentation and is officially accepted. If any required documentation has not been submitted with the application, the Zoning Administrator shall provide notification to the Applicant that the application is not accepted and note any deficiencies with said application or documentation.

Upon formal acceptance of the application, staff shall have a period not to exceed ninety (90) days to review the application for all requirements. The first public hearing shall be scheduled prior to the end of the Period of Review. The Zoning Administrator shall provide a copy of the application to the following local officials for review and recommendation:

- Mitchell County Conservation Director and Conservation Board
- Mitchell County Engineer
- Mitchell County Auditor
- Mitchell County Emergency Management Coordinator
- Mitchell County Sheriff
- Osage Municipal Airport, as applicable
- Other relevant personnel as determined by the Zoning Administrator

- c. **Public Information Meeting.** A minimum of thirty (30) days and a maximum of ninety (90) days prior to the first scheduled public hearing, the Applicant shall host a Public Information Meeting about the relevant information regarding the proposed Project. The meeting shall be held in Mitchell County at a place adequate in size to serve the anticipated attendance.

The meeting shall be advertised in the official county newspapers of record once a week for the two weeks prior to the meeting. The ad in the newspaper shall be a minimum size of 1/4 page. The ad shall include as a minimum the name of the proposed project, a contact person for the proposed project, the location of the proposed project, the time and place of the meeting, and a description of the proposed project.

Notice shall be given by ordinary mail to all property and landowners located within one (1) mile of the Project Area a minimum of seven (7) days prior to the meeting. Said notice shall also be provided to the Planning and Zoning Office in advance of said meeting to be posted to the County website and social media, as applicable.

The Applicant shall provide documentation to the Zoning Administrator that all of these requirements have been met.

- d. **Planning and Zoning Commission.** Prior to the public hearing before the Board of Adjustment, a public hearing shall be held before the Mitchell County Planning and Zoning Commission for study and recommendation to the Board of Adjustment. Notice for said hearing shall follow all required procedures and public notification requirements for the Planning and Zoning Commission under Iowa Code 335.
 - e. **Public Hearing Notification.** Notice for all required public hearings shall be given by ordinary mail to all property and landowners located within one (1) mile of the project area for the proposed Project.
 - f. **Zoning Certificate.** Following granting of a Special Exception Permit by the Board of Adjustment, a Zoning Certificate shall be required as provided for in Article 1.29 of this Ordinance for each wind turbine, meteorological tower, substation, and any other C-WECS structure or location, including laydown yards, associated with the Project prior to construction.
3. **Application.** A minimum of eighteen (18) physical copies and a digital copy of the application and all application materials shall be submitted to the Planning and Zoning Office for any proposed wind farm or C-WECS structures. In making application for a Special Exception, the Applicant shall file the following in addition to the application and required fees:

- a. The name, address, EIN of the Applicant, as well as the proposed Owner or Operator of the Project, including the contact information (name, address, telephone, and email) of their authorized representatives. The Applicant shall designate the entity who will be the Permit Holder of the Special Exception Permit if different from the Applicant.
- b. Project details, including the name of the Project, and the anticipated number, type, generating capacity, tower height, rotor diameter, and total height of the Turbines. Project details shall number each wind turbine using a sequential numbering system identifying each individual wind turbine.
- c. A list of the names and addresses of all landowners (i) located within the Project Area, and (ii) located within one (1) mile of the Project Area. Said list shall be verified by the Mitchell County Auditor's Office.
- d. A Site Plan(s) illustrating the following:
 - i. Location and GPS coordinates of each proposed wind turbine generator or C-WECS structure;
 - ii. Project Area;
 - iii. Property lines;
 - iv. All associated equipment and infrastructure, including substations, battery energy storage systems (BESS), meteorological and ADLS towers, service roads, laydown yards, turnout locations, electrical cabling or transmission lines, and other associated equipment or infrastructure;
 - v. Setbacks from all nonparticipating property lines, road right-of-way, railroad right-of-way, utility lines, pipelines, communication towers, and other wind turbine generators
 - vi. Distance from all dwellings and occupied buildings within one thousand, eight hundred (1,800) feet of each proposed Turbine and C-WECS structure;
 - vii. Distance from Public Conservation Areas and Public Recreation Areas within one thousand eight hundred (1,800) feet of each proposed wind turbine;
 - viii. If applicable, the location of the FEMA regulated special flood hazard area (100-year floodplain or area with 1% chance of flooding in a given year).
- e. If the Applicant is not the site owner, written authorization from the site owner or evidence of lease agreement from all participating landowners.
- f. Any FAA, FCC, or other required state or federal permits or approvals that are necessary for the project. The Applicant 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.
- g. An acoustical analysis conducted by an independent third party

- h. A shadow flicker analysis conducted by an independent third party
 - i. Emergency Response Plan
 - j. Agricultural Impact Mitigation Plan
 - k. Wildlife Monitoring and Mitigation Plan
 - l. Certificate of Liability Insurance
 - m. Decommissioning, Abandonment, and Site Restoration Plan
 - n. Evidence of financial security
 - o. Description and examples of all warning signs and devices.
 - p. Evidence of request and application for FAA approval and FCC licensure for use of aviation detection lighting systems (ADLS) and ADLS equipment documentation, as applicable
 - q. Evidence or affidavit of all setback waiver easement agreements, if applicable.
 - r. Evidence or affidavit of all shadow flicker waiver easement agreements, if applicable
 - s. Evidence or affidavit of all sound waiver easement agreements, if applicable
 - t. Such additional information as the Zoning Administrator may require due to the unique circumstances with a proposed project. Applicants are encouraged to have ongoing discussions with the Zoning Administrator and County Engineer during preparation of the Application.
4. Siting, Safety, and Design Standards. The following minimum standards shall be required, except as otherwise provided in this Ordinance. *
- a. Setbacks. Setbacks shall be regulated as follows:
 - i. All C-WECS or wind turbines shall demonstrate compliance with the following setbacks at the time of Application. All measurements shall be made from the center point of the tower base to the closest point of the protected location or structure.

<u>Protected Area</u>	<u>Setback Requirement</u>
Non-Participating Property Lines	The greater of 600 feet or 125% of the Total Height
Dwellings/Occupied Buildings	The greater of 1,450 feet or 210% of the Total Height
Confinement Feeding Operation Buildings	The greater of 600 feet or 125% of the Total Height
Utility Lines or Pipeline Right-of-Way	The greater of 600 feet or 125% of the Total Height
Public/Private Road and Railroad Right-of-Way	The greater of 600 feet or 125% of the Total Height
Public Drainage District Open Ditch Right-Of-Way	300 feet
Public Drainage Buried Tile (Centerline)	300 feet
Public Recreation Area	½-mile
Public Conservation Area	½-mile
FEMA-regulated Special Flood Hazard Area (100-year floodplain/1% chance to flood)	The greater of 600 feet or 125% of the Total Height
Woodlands greater than 40 acres that <u>is not</u> a Public Conservation Area	1,450 feet
Incorporated City Limits	1 mile

- ii. Setbacks for Other C-WECS Structures. Meteorological and ADLS towers shall be set back a minimum distance of the greater of 600 feet or 125% of the Total Height of the tower from all non-participating property lines, buildings, road right-of-way, railroad right-of-way, or utility lines, as measured from the center point of the tower base to the closest point of the protected location or structure. Substations, buildings, and other associated C-WECS structures shall comply with the setback requirements of the respective district.
- iii. Setback Waivers. Wind turbine generators or other C-WECS structures may be closer than the respective setback standards upon agreement with an affected landowner. However, in no instance shall a wind turbine generator be permitted to be closer than 1,000 feet from the closest portion of a dwelling or occupied building. Said Agreement shall be in the form of a setback waiver easement agreement and officially recorded in the Mitchell County Recorder's Office. Evidence or affidavit of any applicable setback waiver easement agreement shall be provided at the time of Application.

- iv. Minor Location Modifications. After approval and issuance of a Special Exception Permit but prior to the issuance of a Zoning Certificate for a wind turbine generator or Special Exception Permit, the Applicant may make request to the Zoning Administrator in writing for a minor location adjustment of no greater than fifty (50) feet from the originally approved location without requirement of submitting a new application. At the time of request, the Applicant shall provide an amended site plan as was required at the time of application.

The Zoning Administrator shall verify any requested minor location modification meets all applicable setback requirements. The Zoning Administrator shall approve said minor location modification if all setback requirements are met. Any location modification of a wind turbine generator or C-WECS structure of greater than fifty (50) feet from the originally approved location shall require a new application as required in this Ordinance.

b. Airport Setbacks.

- i. The following landing areas shall be considered for purposes of this Ordinance. Airports, if prior to the initial filing date of an officially submitted application, are in operation and have been officially registered with the Federal Aviation Administration (FAA) Master Record for a minimum of one (1) year with the (FAA) shall be considered:

- (1) A public use airport as defined in Iowa Code Sections 329.1(1) and Iowa Administrative Code Rule 761-720.2 or;

- (2) A private use airport as defined in Iowa Code Section 329.1(1) and Iowa Administrative Code Rule 761-720.2.

- ii. The setback distance for airports shall be governed by the rules and regulations of the FAA and/or any laws or rules of the State of Iowa that are applicable.

- c. Color and Finish. Wind turbine shall be painted a non-reflective color. Blades may be black in order to facilitate de-icing. Finishes shall be matte or non-reflective. At C-WECS sites, the design of any buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening, and landscaping, that will blend the C-WECS to the natural setting and existing environment. Exceptions may be made for MET Towers, where concerns exist relative to aerial spray applicators or aerial safety concerns.

- d. Tower Configuration. All wind turbines, which are part of a C-WECS project, shall be installed with a tubular, monopole type tower. Meteorological towers shall include highly visible markings consistent with Appendix A of the FAA's Advisory Circular for Obstruction Marking and Lighting. MET Towers may be guyed. 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.
- e. Lighting. C-WECS sites shall not be artificially lighted, except to the extent required by the Federal Aviation Administration (FAA) or other applicable authority. Lighting, including lighting intensity and frequency of strobe, shall adhere to, but not exceed, requirements established by FAA permits & regulations. Red strobe lights are preferred for nighttime illumination to reduce impacts on migratory birds. Red pulsating incandescent lights should be avoided. Exceptions may be made for MET Towers where concerns exist relative to aerial spray applicators.

Each project shall be required to be designed, constructed, and operated with operational Aircraft Detection Lighting Systems (ADLS), unless otherwise denied by the FAA or Federal Communication Commission (FCC), using a radar-based detection system to reduce the impact of nighttime lighting on nearby communities and migratory birds. The ADLS system shall be in accordance with the guidance set forth in the current edition of the Federal Aviation Administration Circular AC70/7460-1L, Obstruction Marking and Lighting. The Applicant shall provide evidence of request for use of ADLS with the FAA and for FCC licensure at the time of application and shall otherwise provide documentation in the case the use of ADLS is denied by the FAA or FCC.

- f. Signage. All signs shall be prohibited other than the manufacturer or installer's identification sign and appropriate warning or safety signs (or as otherwise authorized by Mitchell County). A sign shall be placed in a highly visible location of each C-WECS structure that identifies a name and phone number of whom to contact in case of emergency. All wind turbines and C-WECS structure sites shall be required to have individual E-911 rural address signs at each access road.
- g. 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 be buried to a minimum depth of four (4) feet.

- h. **Waste Disposal.** Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged, or worn parts, components, 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. The Permit Holder of a C-WECS project shall work with the Iowa Waste Exchange to identify end users for any component recycling materials as necessary, consistent with the Decommissioning Plan and including any decommissioned C-WECS components during any repowering. Mass storage of decommissioned components shall be prohibited within Mitchell County except for the purpose of recycling components using a local business within the County.
- i. **Minimum Ground Clearance.** The blade tip of any wind turbine shall, at its lowest point, have a ground clearance of no less than 40 feet.
- j. **Signal Interference.** The Applicant shall minimize and mitigate any potential interference with electromagnetic communications, including but not limited to, Global Positional Satellite (GPS) reception, weather or navigation radar, radio, telephone, cell phone, or television signals caused by any wind turbine or C-WECS structure. The Applicant shall be responsible for resolution of substantial electrical interference issue caused by operation of the C-WECS project. The Applicant shall notify all communication tower operators within five miles of the proposed C-WECS location upon application.
- k. **Agency Permits and Approvals.** The Applicant shall be responsible for meeting and obtaining all required permits and approvals from applicable local, state, and federal agencies. The Applicant shall provide a copy of said permits and approvals to the Planning and Zoning Office once obtained. Where any requirements conflict with any requirements within this Ordinance, the most restrictive shall govern.
- l. **Electrical Codes and Standards.** All C-WECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.
- m. **Height, Spacing, and Project Site Limitations.**
 - i. **Total Height.** The Total Height of any wind turbine, meteorological tower, or tower for ADLS shall not exceed six hundred fifty (650) feet or as specified in a Determination of No Hazard by the FAA, whichever is lesser.

Substations, buildings, or other C-WECS structures shall comply with the height requirements of the respective district.
 - ii. **Project Size.** No project shall have more than one hundred twenty-five (125) total wind turbines.

- n. **Braking Systems.** The design and installation of all braking systems shall conform to current and applicable industry standards. All wind turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.
- o. **Climbing Apparatus and Unauthorized Access.** Wind turbines shall not be climbable up to fifteen (15) feet above ground level. Access doors to all equipment on each site shall be locked to prevent unauthorized unless being serviced.
- p. **Sound.** Sound shall be regulated as follows:
 - i. **Maximum Sound Levels.** Audible noise shall not exceed fifty (50) decibels (dBA) at the closest portion of any dwelling or occupied building, Public Recreation Area, or Public Conservation Area. Sound levels, however, may be exceeded during short-term events out of anyone's control, such as utility outages and/or severe windstorms.
 - ii. **Pre-Construction Acoustical Analysis.** Upon Application and at the Applicant's expense, the Applicant shall provide a pre-construction acoustical analysis conducted by a qualified, independent third-party demonstrating compliance with sound requirements at the time of application. Said acoustical analysis shall assume maximum anticipated conditions with no obstruction to sound waves.
 - iii. **Sound Waivers.** C-WECS may exceed maximum sound levels upon agreement with an affected landowner. Said agreement shall be in the form of a sound waiver easement agreement stating the maximum allowable sound pressure levels agreed upon and officially recorded in the Mitchell County Recorder's Office. Evidence or affidavit of any applicable sound waiver easement agreement shall be provided at the time of application.
- q. **Shadow Flicker.** Shadow flicker shall be regulated as follows:
 - i. **Maximum Shadow Flicker Levels.** Shadow flicker produced by any wind turbine under normal operating conditions shall not exceed thirty (30) hours per year at the closest portion of any dwelling or occupied building.
 - ii. **Pre-Construction Shadow Flicker Analysis.** Upon Application and at the Applicant's expense, the Applicant shall provide a pre-construction shadow flicker analysis conducted by a qualified, independent third-party demonstrating compliance with shadow flicker requirements at the time of application. Said shadow flicker analysis should assume maximum anticipated conditions with no obstructions to a cast shadow.

- iii. Shadow Flicker Waiver. C-WECS may exceed maximum shadow flicker standards upon agreement with an affected landowner. Said agreement shall be in the form of a shadow flicker waiver easement agreement and officially recorded in the Mitchell County Recorder's Office. Evidence or affidavit of any applicable shadow flicker waiver easement agreement shall be provided at the time of application.
- r. Ice Detection. All wind turbines shall be equipped with ice sensors, and the Permit Holder shall ensure that all wind turbines are programmed to automatically stop when ice is detected. Wind turbines shall not be permitted to operate until free of ice and danger of ice throw has passed.
- s. Safety from Hazards. Wind Turbine models shall be designed to International Electrotechnical Commission (IEC) Standard 61400 or a more updated standard if published by the IEC.
- t. Emergency Response Plan. The Applicant shall submit a copy of the Emergency Response Plan at the time of application. The Permit Holder shall also submit a copy of the site plan(s) of the C-WECS development and said Emergency Response Plan to the Mitchell County Emergency Management Coordinator and applicable local first responders for any approved C-WECS project. Said plan shall contain response procedures to be followed in the event of a fire, personal injury, or other emergency at a C-WECS development and procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures. The plan shall contain twenty-four (24) hour emergency contact information for the C-WECS development.
- u. Emergency Response Training. The Applicant and/or Permit Holder shall contact and develop a training program for emergency response in consultation with the Mitchell County Emergency Management Coordinator and local first responders. At the discretion of the Mitchell County Emergency Management Coordinator, the Permit Holder shall be required to provide training sessions or standard emergency equipment to local first responders.

5. Infrastructure and Land Use Protection Requirements

- a. Contact Person and Change of Ownership. The Applicant shall provide and maintain a phone number, electronic mailing address, and physical mailing address and identify a responsible person for the Zoning Administrator to contact when needed. Said information shall be provided to the Zoning Administrator and kept current with the Planning and Zoning Office. Any granted Special Exception Permit for a C-WECS project is transferrable to any future owner of said C-WECS project and subject to all requirements of this Ordinance and the granted permit. The Applicant and any future owner shall provide notification to the Zoning Administrator prior to a change of ownership of any C-WECS project.

b. Roads. Prior to construction, the Applicant shall enter into agreement with Mitchell County and shall meet all of the following requirements at a minimum, in addition to all requirements of the Mitchell County Engineer's Office as established in the Road Use Agreement:

- i. The Applicant shall develop a construction plan identifying proposed construction routes, intersection modifications, or other necessary road right-of-way modifications. Construction routes shall be used as directed and approved by the Mitchell County Engineer. The Mitchell County Engineer shall have the right to review and approve all road, road right-of-way, and intersection modifications for construction purposes prior to construction.
- ii. The Applicant shall conduct a pre-construction survey, at its expense and in coordination with the Mitchell County Engineer, to determine existing road, road right-of-way, and bridge conditions. The survey shall include photographic or video documentation and shall be provided to the Mitchell County Engineer prior to construction.
- iii. The Applicant shall be responsible for restoring and paying for any damage to road, road-right-of-way, and bridges to pre-construction or better condition.
- iv. The Applicant shall be responsible for making reasonable efforts to apply dust control on applicable gravel-surfaced roads or at construction sites to prevent fugitive dust from becoming a nuisance as regulated by Iowa Code, Chapter 657 (or as amended) and Iowa Administrative Code 567—Chapter 23.3 (or as amended).
- v. The Applicant shall be responsible to obtain all oversize permits as required by the Mitchell County Engineer and/or the State of Iowa.

c. Drainage Systems

- i. Public Drainage Systems. Prior to construction, the Applicant shall follow all established procedures of Mitchell County and state law regarding public drainage infrastructure and right-of-way that may be affected by a proposed C-WECS. The Applicant and/or Permit Holder shall be responsible for the immediate repair of any damage to public drainage infrastructure resulting from the construction, operation, or maintenance of a C-WECS.
- ii. Private Drainage Systems. The Applicant and/or Permit Holder shall be responsible for immediate repair of damage to private drainage systems stemming from construction, operation, or maintenance of the C-WECS. Such damage shall be repaired as soon as feasible and on a schedule agreeable to the affected landowner.

d. Agricultural Impact Mitigation Plan (AIMP)

i. The Applicant shall submit an AIMP detailing strategies to avoid or mitigate detrimental impact to agricultural land resulting from the construction, operation, maintenance, and/or decommissioning of the C-WECS project. The primary goals of the AIMP are long-term protection of soil health and farming feasibility within the Project Area. An emphasis is placed on minimizing the area of project disturbance and limiting impact to surface and subsurface drainage, during both construction and decommissioning.

ii. The AIMP shall include, but not be limited to:

(1) Project overview. Provide general background, list of project components, and the expected construction timeline.

(2) Site Selection Narrative. A narrative generally detailing the reasoning why each proposed location was selected for each wind turbine and C-WECS structure shall be included as a component of the AIMP. Said narrative shall address factors including wishes of the participating landowner, impact of ordinance requirements and other governmental requirements, and efforts to mitigate agricultural impact, including efforts to avoid siting on highly productive soils (CSR2 75 and above), addressing soil type including Karst soils, avoidance of siting near IDNR-identified sinkholes, and suitability for a secure structural foundation. The Applicant shall make a good faith effort to avoid siting locations that include highly productive soils.

(3) Environmental/Agricultural Monitoring

a. On-site monitoring to be conducted by a qualified, independent third-party environmental/agricultural professional during construction.

b. Report of findings to be submitted to the County monthly during construction

c. Independent third party professional responsible for verification and monitoring of:

i. Soil segregation, stockpiling, backfilling, re-spreading methods

ii. Trenching, directional boring & foundation installation

- iii. Compaction avoidance and de-compaction practices
- iv. Grading plan adherence
- v. Wet weather conditions planning
- vi. Drain tile system
- vii. Erosion and sediment control measures

(4) Grading Plan. A grading plan shall be submitted as a component of the AIMP and include all proposed changes to the landscape of the site (e.g., clearing, grading, topographic changes, tree removal, etc.).

(5) Best Management Practices during Construction and Decommissioning. Best Management Practices (BMPs) shall be included that demonstrate Low Impact Development (LID) measures that the Applicant will take during construction or decommissioning. Those measures should identify topsoil type and depth for preservation and reapplication, reduce or mediate compacted soils, utilize trenchless technologies, and minimize soil disturbance.

(6) Subsurface Drain Tile Survey, Avoidance & Mitigation Plan

- a. Documentation and mapping of existing drain tile systems within the entire project area including elevation, location, and size of tile inlet and outlets. Mapping should include current and proposed underground conduit locations/easements.
- b. Plan for relocation, removal, or restoration of tile damaged during construction.
- c. Description of long-term maintenance and plan for ongoing review of existing and newly constructed tile systems (if applicable).

(7) Pre-Construction and Decommissioning Soil Health Analysis

- a. Prior to construction, a soil analysis shall be conducted and assessed by a qualified, independent third-party professional to establish baseline soil health.

b. Required sampling protocol:

i. Pre-Construction Baseline Survey

1. One sampling location per wind turbine site, drop zones (if distinct from wind turbine site), and a representative sample of access roads based on soil mapping unit as identified in the USDA Soil Survey.
2. Two samples shall be collected from each sampling location (for example, the plow layer from 0 to 8 inches and subsoil from 8 to 16 inches).
3. Each sample shall consist of a minimum of 10 subsamples collected from disparate locations surrounding the sample location in each zone. Samples shall be analyzed for soil health and soil chemical parameters during the same seasonal period and at the same sampling locations, prior to construction, to establish a baseline.
4. In-field assessment resource evaluations shall be performed in conjunction with soil health testing for the purpose of tracking compaction, soil organic matter, and aggregate stability indicators.
5. Soil sample analyses shall utilize a laboratory testing program that includes standard chemical analysis for Phosphorous, Potassium, Calcium, Sulfur, pH, Cation Exchange Capacity (CEC), base saturation, and organic matter, and soil health analyses for soil respiration, wet aggregate stability, and active (permanganate oxidizable) carbon.

ii. Decommissioning or Project Modification survey

1. Same sampling protocols as pre-construction baseline survey.
2. Independent third-party evaluation and report on soil condition changes against baseline data.

- c. Soil Protection and Compaction Avoidance. Plan should include, at a minimum, a narrative or plan for LID construction practices and methods to be used during each stage of construction for protecting and preserving topsoil. Practices and methods should address, at a minimum, topsoil removal, segregation, stockpiling, replacement during backfill, and re-spreading, grading minimization, compaction prevention, wet weather conditions, and post-construction de-compaction.

All project areas in agricultural production at the time of permit issuance that will not remain in agricultural production shall be seeded with temporary cover within three months of commencement of pre-construction/civil activities (mobilization) if disturbance is not intended to occur within two (2) months.

- d. Erosion and Sediment Control. The Applicant agrees to conduct all roadwork and other site development work in compliance with a national pollutant discharge elimination system (NPDES) permit as required by the Iowa DNR and comply with requirements as detailed by the County Engineer during the AIMP submittal. If subject to NPDES requirements, the Applicant must submit the permit for review and comment, and an erosion and sediment control plan before beginning construction. The plan must include both general "best management practices" for temporary erosion and sediment control both during and after construction and permanent drainage and erosion control measures to prevent damage to local roads or adjacent areas and to prevent sediment-laden run-off into waterways.

- e. Wildlife Monitoring and Mitigation Plan (WMMP).

- i. The Applicant shall submit a WMMP to mitigate risk to avian and bat populations during the construction and operation phases of the project. The purpose and procedures shall be designed to ensure:

- (1) Avian and bat fatalities and secondary effects on wildlife are minimized;
- (2) Project-related actions comply with federal and state wildlife regulations;

- (3) Adequate implementation training is provided to the construction contractor and operations and maintenance staff;
 - (4) Coordination between the project developers and operators, wildlife agencies including Iowa Department of Natural Resources (IDNR), and the Iowa Utilities Commission (IUC) is effective and continuous.
- ii. The WMMP shall include, at a minimum, a narrative including the following:
- (1) Local, state, and federal regulatory framework
 - (2) Site characterization
 - (3) Field studies documenting C-WECS project area wildlife conditions and predict project impact. A baseline study of the avian and bat habitat within the project boundary and a 2-mile perimeter outside the project boundary. It shall be conducted by a third-party licensed professional.
 - (4) Preconstruction/construction avoidance and minimization measures
 - (5) Operation and maintenance procedures
 - a. Post construction avian and bat fatality monitoring conducted by a third-party licensed professional for three years following completion of the project construction phase.
 - b. Upgrades or retrofits to the existing C-WECS project should not result in increased avian/bat collisions. The 3-year monitoring timeline shall restart after 12 months of discontinued operation of any C-WECS project following a repair, retrofit, or repowering event.
 - (6) Quality control and mitigation procedures

- f. Repowering. Prior to repowering any permitted C-WECS project, the Permit Holder shall submit a repowering plan(s) to the Zoning Administrator for review via a Zoning Certificate review as established in Section 1.29 of this Ordinance. The Zoning Administrator may issue a Zoning Certificate under the existing Special Exception Permit if the repowering plan results in no material change of greater than twenty-five percent (25%) of the total C-WECS structures and wind turbine generators in the components or design elements originally permitted. A repowering event does not include replacement or maintenance of C-WECS as previously approved due to weather damage, equipment failure, or a force majeure event.

It shall be considered a material change in the event any wind turbine generator or C-WECS structure is moved from its originally constructed location or results in an increase in total height. The repowering plan(s) shall include updated information for some or all of the reports and plans required to demonstrate compliance under this Ordinance, or as otherwise determined necessary by the Zoning Administrator. In conducting the review required by this Section, the Zoning Administrator may engage and consult with any necessary third-party. No material change shall result in any exacerbated non-conforming structure resulting from an amendment to this Ordinance, except as otherwise permitted by a formal waiver easement agreement as otherwise permitted under this Ordinance with an affected landowner.

In the event plans to repower a permitted C-WECS project materially changes greater than twenty-five percent (25%) of the total C-WECS structures and wind turbine generators of a previously approved project, the Permit Holder shall apply for a new Special Exception as provided for in this Ordinance.

- g. Liability Insurance. There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least ten million dollars (\$10,000,000) per occurrence and ten million dollars (\$10,000,000) in the aggregate. Certificates shall be made available to Mitchell County upon application.
6. Decommissioning, Abandonment, and Site Restoration Plan. The following requirements and procedures shall apply to any permitted C-WECS:
- a. Decommissioning, Abandonment, and Site Restoration Plan. A decommissioning plan shall be submitted with the application. The plan shall include the following:
 - i. The anticipated life of the project.
 - ii. The anticipated manner in which the facility will be decommissioned, including plans to recycle components and dispose of any hazardous materials.
 - iii. The anticipated site restoration activities.

- iv. The estimated decommissioning costs in current dollars.
 - v. The method for ensuring that funds will be available for decommissioning and restoration of the site.
 - vi. Anticipated timeline to complete decommissioning activities and site restoration.
- b. End of Useful Life. The Permit Holder shall, at its expense, complete decommissioning of the C-WECS project or individual wind turbine, within one (1) year after the end of the useful life of the C-WECS project or individual wind turbine. The C-WECS project or individual wind turbine shall be presumed to be at the end of its useful life if no electricity is generated or stored for a continuous period of one (1) year or upon termination of the C-WECS leases/easements unless the Permit Holder is granted an extension by the Board of Adjustment for reasons beyond the Permit Holder's control, such as a force majeure event, the project is in the process of repowering, or any other reason determined by the Board of Adjustment to be reasonable.
- c. Remediation of the C-WECS Project. Disturbed earth resulting from the decommissioning of any C-WECS or wind turbine site shall be returned to its preconstruction status, including removal of infrastructure to a minimum depth of four (4) feet below grade, unless the Participating Landowner requests in writing that the access roads or other areas not be restored.
- d. Cost Estimate of Decommissioning. An independent licensed engineer shall be retained to estimate the total cost of decommissioning of the C-WECS project and associated facilities or wind turbine site. Said estimates shall be submitted to the Zoning Administrator with the initial application and every fifth year thereafter.
- i. The Permit Holder shall post and maintain Decommissioning Funds in an amount equal to one-hundred ten percent (110%) of the total estimated decommissioning costs prior to the end of construction. Decommissioning Funds shall be maintained at one-hundred ten percent (110%) of the total estimated decommissioning costs with any increase of the total estimated decommissioning costs as may be updated every fifth year. Proof of recertification of the financial surety instrument shall be submitted to the County annually.

- ii. Decommissioning Funds shall be maintained in the form of cash, certificate of deposit, performance bond, escrow account, surety bond, letter of credit, corporate guarantee, or other form of financial assurance as agreed to by the Zoning Administrator. Any financial document evidencing the maintenance of Decommissioning Funds shall include provisions for releasing the funds to Mitchell County in the event decommissioning is not completed in a timely manner. Decommissioning Funds as may otherwise be required by the Iowa Utilities Board shall be considered sufficient, provided that such funding meets the requirements of this Section.
 - iii. No transfer or assignment of the Special Exception Permit shall be effective without a corresponding transfer or assignment of the obligations and financial security required under the Decommissioning, Abandonment, and Site Restoration Plan.
 - e. Failure to Complete Decommissioning. If the Permit Holder does not complete decommissioning within the periods described above, then the Decommissioning Fund Agent shall release the Decommissioning Funds to Mitchell County, and the Zoning Administrator shall take necessary measures to complete decommissioning. The funds shall be released to Mitchell County after a thirty (30) day written notice is provided to the Decommissioning Fund Agent indicating decommissioning has not occurred within the applicable time period.
 - f. Release of Decommissioning Funds. The Decommissioning Fund Agent shall release Decommissioning Funds to the Permit Holder, as applicable, when the said Permit Holder has demonstrated, and the Zoning Administrator concurs that decommissioning has been satisfactorily completed; or upon written approval of the Zoning Administrator to continue the procedures of the Decommissioning, Abandonment, and Site Restoration Plan and complete decommissioning.
- 7. Complaint Procedures. In lieu of Article 1.39, the following complaint procedures shall be followed:
 - a. Contact Person and Complaint Log. The Applicant and/or Permit Holder shall provide and maintain a phone number, electronic mailing address, and physical mailing address and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project. This information shall be provided to the Zoning Administrator upon request and updated as necessary. A complaint log shall be maintained and provided to the Zoning Administrator upon request. It shall document the date and subject matter of the complaint, the name of the person making the complaint, if known, and what steps were taken to investigate and address the complaint.

- b. Mitigation Efforts. Upon receipt of an initial complaint, the Zoning Administrator shall refer an affected landowner to the contact person assigned by the Applicant and/or Permit Holder for public inquiries and complaints. The complainant and Applicant and/or Permit Holder shall make a good faith effort to work together to come to an agreeable solution. The Applicant and/or Permit Holder shall make reasonable efforts to mitigate the issue.
- c. Enforcement and Penalties for Violation. Violations of this Section shall be enforced in accordance with Articles 1.37 and 1.39 once procedures under sub-sections (a) and (b) above have been exhausted. Violation of the provisions of this Section includes failure to comply with any of the requirements, failure to comply with a correction or corrective order, and violations of any other conditions and safeguards established herein or any granted Special Exception Permit.

SECTION 13. Add new Article 1.27B, “Commercial Battery Energy Storage Systems Requirements” to read as follows:

- 1. Intent and Special Exception. The purpose of this Article is to establish minimum requirements and regulation of the construction, erection, placement, location, maintenance, modification, operation, and discontinuance and/or decommissioning of commercial battery energy storage systems (C-BESS) in Mitchell County in furtherance of the purpose and intent of the Mitchell County Zoning Ordinance. C-BESS shall require a Special Exception to be granted by the Mitchell County Board of Adjustment as provided for in Articles 1.31 and 1.32. All C-BESS shall meet the minimum requirements and procedures of this Article.
- 2. Application. In making application for Special Exception Permit, the Applicant shall file the following in addition to the application and required fees:
 - a. Project Description
 - b. Site Plan showing location of the C-BESS project, associated equipment, and transmission lines and showing closest setback and separation distances. If applicable, the location of the FEMA regulated special flood hazard area (100-year floodplain or area with 1% chance of flooding in a given year) shall also be shown.
 - c. Operation and Maintenance Plan
 - d. Equipment specification sheets, diagrams, and engineering certifications
 - e. Landscaping Plan
 - f. Emergency Response Plan
 - g. Decommissioning, Abandonment, and Site Restoration Plan.

- h. Evidence or affidavit of all sound waiver easement agreements, if applicable
3. Setbacks and Siting. C-BESS projects shall be subject to the following setback and siting requirements:
- a. All components of a C-BESS project shall be a minimum of fifty (50) feet from non-participating property lines, road right-of-way, and railroad right-of-way.
 - b. All components of a C-BESS project shall be a minimum of three hundred (300) feet from any dwelling, occupied building, Public Conservation Area, or Public Recreation Area.
 - c. If the C-BESS is to be installed in conjunction with a Commercial Solar Energy System (C-SES) project, the C-BESS shall be sited so as to be located within the interior of the overall project with the banks of solar panels lying between the battery energy storage system and the edges of the project area.
4. Height. C-BESS structures shall comply with the building height limitations for principal structures of the zoning district in which it is located.
5. Fencing. The C-BESS project, including all mechanical equipment, shall be enclosed by an eight (8) foot tall fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.
6. Vegetative Screening. In an effort to mitigate any potential negative effects and reduce the visual impact of the facility, the perimeter of the facility shall be landscaped to create a visual screen from neighboring properties. A Landscaping Plan shall be submitted with the application. Landscaping shall be installed around the exterior perimeter of the use area and fencing in accordance with the following:
- a. The landscaping buffer shall preferably use trees, shrubs, grasses, and forbs that are native to Iowa, or where appropriate, may include naturalized and non-invasive species.
 - b. The landscaping buffer shall use a combination of trees and plants to provide a vegetative screen. Trees shall be at least six (6) feet tall within three (3) years of installation, and shall have a minimum mature height of twelve (12) feet or the height of any fencing, whichever is taller. Landscaping shall be evaluated under leaf-on conditions.
 - c. The planning area shall extend no further than fifty (50) feet beyond the outside of the use area, including the security fence.
 - d. At the discretion of the Board of Adjustment, the minimum mature height of vegetative screening may be modified where the Applicant can show good cause or practical difficulty.

- e. If the C-BESS is being constructed within the landscaping buffer of a larger project, the Board of Adjustment may waive or modify the requirements in this sub-section specific to C-BESS.

2. Safety. The C-BESS project shall comply with the following safety standards:

- a. Signage. The C-BESS shall have signage in compliance with ANSI Z535 and shall include the type of technology associated with said C-BESS, any special hazards associated, the type of suppression system installed in the area of C-BESS, and 24-hour emergency contact information, including reach-back phone number.

As required by the National Electric Code, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

- b. Minimum Clearance. Areas within ten (10) feet of the C-BESS shall be clear of combustible vegetation or other combustible materials or growth.
- c. Fire and Safety Compliance. The Applicant shall be responsible in meeting all standards of the National Fire Protection Association (NFPA) and applicable state and federal fire and safety requirements, including but not limited to NFPA 1, NFPA 70, NFPA 855, and the National Electrical Code (NEC).
- d. Emergency Response Plan. The Applicant shall submit a copy of the site plan of the C-BESS project and Emergency Response Plan to the Mitchell County Emergency Management Coordinator and applicable local fire departments. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and local first responders. The Emergency Response Plan shall include the following information:

- i. Twenty-four (24) hour emergency contact information for the C-BESS project.
- ii. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
- iii. Procedures for inspection and testing of associated alarms, interlocks, and controls.

- iv. Procedures to be followed in response to notifications from the battery energy storage system, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
 - v. Procedures and schedules for conducting drills of said procedures and for training local first responders on the contents of the plan and appropriate response procedures.
 - e. Emergency Response Training. The Applicant shall contact and develop a training program for emergency response with the Mitchell County Emergency Management Coordinator and local first responders. At the discretion of the Mitchell County Emergency Management Coordinator, the Permit Holder shall be required to provide training sessions or standard emergency equipment to local first responders.
- 3. Operations and Maintenance Plan. The Applicant shall describe the ongoing maintenance schedule and operations for the C-BESS project as well as the general upkeep of the equipment.
- 4. Roads. Prior to construction, the applicant shall enter into agreement with Mitchell County and shall meet all of the following requirements at a minimum, in addition to all requirements of the Mitchell County Engineer's Office:
 - a. The Applicant shall develop a construction plan identifying proposed construction routes, intersection modifications, or other necessary road right-of-way modifications. Construction routes shall be via paved roads to the extent feasible. However, the applicant shall use construction routes as directed by the Mitchell County Engineer. The Mitchell County Engineer shall approve all road, road right-of-way, and intersection modifications for construction purposes prior to construction.
 - b. The Applicant shall conduct a pre-construction survey, at its expense and in coordination with the Mitchell County Engineer, to determine existing road, road right-of-way, and bridge conditions. The survey shall include photographic or video documentation and shall be provided to the Mitchell County Engineer prior to construction.
 - c. The Applicant shall be responsible for restoring and paying for any damage to road, road-right-of-way, and bridges to pre-construction or better condition.

- d. The Applicant shall be responsible for making reasonable efforts to apply dust control on applicable gravel-surfaced roads or at construction sites to prevent fugitive dust from becoming a nuisance as regulated by Iowa Code, Chapter 657 (or as amended) and Iowa Administrative Code 567—Chapter 23.3 (or as amended).
- e. The Applicant shall be responsible to obtain all oversize permits as required by the Mitchell County Engineer.

5. Drainage Systems.

- a. Public Drainage Systems. Prior to construction, the Applicant shall follow all established procedures of Mitchell County and state law regarding public drainage infrastructure and right-of-way that may be affected by a proposed C-BESS project. The Applicant and/or Permit Holder shall be responsible for the immediate repair of any damage to public drainage infrastructure resulting from the construction, operation, or maintenance of the C-BESS project.
- b. Private Drainage Systems. The Applicant and/or Permit Holder shall be responsible for immediate repair of damage to private drainage systems stemming from the construction, operation, or maintenance of the C-BESS project. Such damage shall be repaired as soon as feasible and on a schedule agreeable to the affected landowner.

6. Sound. The one-hour average noise generated by the C-BESS components and associated ancillary equipment shall not exceed a noise level of 50 decibels (dBA) as measured from the nearest point of any dwelling or occupied building. Applicants may submit equipment and component manufacturer noise ratings at the time of application to demonstrate compliance. If the ambient sound pressure level exceeds 50 decibels (dBA), the standard shall be the ambient LEQ (equivalent continuous sound pressure level) plus five (5) decibels (dBA).

- a. At the discretion of the Board of Adjustment, the Applicant may be required to provide a baseline noise evaluation study completed by a board certified professional by the Institute of Noise Control Engineering (INCE), or an appropriately licensed professional engineer (PE) prior to construction of the proposed C-BESS project.
- b. To document decibel level if there is a complaint on an operational system, at the discretion of the Zoning Administrator, the Permit Holder shall commission a report providing operating sound pressure level measurements from a reasonable number of sampled locations at the outside wall of the nearest dwelling or occupied buildings to demonstrate compliance with this standard. Said report shall be completed by a board certified professional by the Institute of Noise Control Engineering (INCE) or an appropriately licensed professional engineer (PE).

- c. C-BESS may exceed maximum sound levels upon agreement with an affected property owner. Said agreement shall be in the form of a sound waiver easement agreement and officially recorded in the Mitchell County Recorder's Office. Evidence or affidavit of any applicable sound waiver easement agreement shall be provided at the time of application.
7. Decommissioning, Abandonment, and Site Restoration Plan. The following requirements and procedures shall apply to any permitted C-BESS project:
- a. Decommissioning, Abandonment, and Site Restoration Plan. A decommissioning plan shall be submitted with the application. The plan shall include removal of batteries, buildings, cabling, electrical components, roads, foundations, and all applicable accessory equipment and any other associated facilities as determined by the Zoning Administrator.
 - b. End of Useful Life. The Permit Holder, at its expense, shall complete decommissioning of the C-BESS project within twelve (12) months after the end of its useful life. The C-BESS project shall be presumed to be at the end of its useful life if no electricity is stored for a continuous period of one (1) year unless the Permit Holder is granted an extension by the Board of Adjustment for reasons beyond the Permit Holder's control, such as a force majeure event, the project is in the process of repowering, or any other reason determined by the Board of Adjustment to be reasonable.
 - c. Remediation of the C-BESS Project. The property on which the C-BESS project is located shall be returned to its preconstruction state, unless the participating landowner requests in writing that the access roads or other land surface areas not be restored.
 - d. Cost Estimate of Decommissioning. An independent licensed engineer shall be retained to estimate the total cost of decommissioning the C-BESS project and associated facilities. Said estimates shall be submitted to the Zoning Administrator with the initial application and every fifth year thereafter.
 - i. The Permit Holder shall post and maintain Decommissioning Funds in an amount equal to one-hundred ten percent (110%) of the total estimated decommissioning costs prior to the end of construction. Decommissioning Funds shall be maintained at one-hundred ten percent (110%) of the total estimated decommissioning costs with any increase of the total estimated decommissioning costs as may be updated every fifth year. Proof of recertification of the financial surety instrument shall be submitted to the County annually.

- ii. Decommissioning Funds shall be maintained in the form of cash, certificate of deposit, performance bond, escrow account, surety bond, letter of credit, corporate guarantee, or other form of financial assurance as agreed to by the Zoning Administrator. Any financial document evidencing the maintenance of Decommissioning Funds shall include provisions for releasing the funds to the County in the event decommissioning is not completed in a timely manner. Decommissioning funds as may otherwise be required by the Iowa Utilities Board shall be considered sufficient, provided that such funding meets the requirements of this Section.
 - e. Failure to Complete Decommissioning. If the Permit Holder fails to complete decommissioning within the periods described above, then the Decommissioning Fund Agent shall release Decommissioning Funds to the County, and the Zoning Administrator shall take necessary measures to complete decommissioning. The funds shall be released to the County after a thirty (30) day written notice is provided to the Decommissioning Fund Agent indicating decommissioning has not occurred within the applicable period.
 - f. Release of Decommissioning Funds. The Decommissioning Fund Agent shall release Decommissioning Funds to Permit Holder, as applicable, when the Permit Holder has demonstrated, and the Zoning Administrator concurs, that decommissioning has been satisfactorily completed; or upon written approval of the Zoning Administrator to continue the decommissioning plan and complete decommissioning.
8. Contact Person and Change of Ownership. The Applicant and/or Permit Holder shall provide and maintain a phone number, electronic mailing address, and physical mailing address and identify a responsible person for the Zoning Administrator to contact when needed. Said information shall be provided to the Zoning Administrator and kept current with the Planning and Zoning Office. Any granted Special Exception Permit for a C-BESS project is transferrable to any future owner of said C-BESS project. The Applicant and any future owner shall provide notification to the Zoning Administrator upon change of ownership of any C-BESS.

SECTION 14. REPEALER. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 15. SEVERABILITY. If any section, provision or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION 16. SAVING. The Mitchell County Zoning Ordinance (Ordinance 17) shall remain in full force and effect, save and except as amended by this Ordinance.

SECTION 17. EFFECTIVE DATE. This Ordinance shall be in effect after its final passage, approval, and publication as provided by law.

Motion was made by Supervisor Wherry and seconded by Supervisor Frein that the foregoing Ordinance be adopted.

Ayes: Hartogh, Frein, Wherry

Nays: Hendrickson, Marzen

Absent/Not Voting: _____

Date of First Consideration: 7/8/2025

Date of Second Consideration: 7/15/2025

Date of Third Consideration: 7/22/2025

Ordinance adopted this 22nd day of July, 2025.

Sydney R. Hartogh
Chair, Board of Supervisors
Mitchell County, Iowa

I hereby certify that the foregoing is a full, true, and complete copy of the Ordinance as full, true, and complete as the same remains on file and of Record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Auditor's Office in Osage, Iowa, this 22nd day of July, 2025.

Rachel Foster
Rachel Foster, Auditor
Mitchell County, Iowa

Rachel Foster

From: Amanda Baer
Sent: Tuesday, July 15, 2025 1:40 PM
To: Rachel Foster; Jim Wherry; Mark Hendrickson; Pam Marzen; Sydney Hartogh; Todd Frein
Cc: Aaron Murphy
Subject: FW: Wind and battery ordinance
Attachments: WORKING DRAFT - Mitchell Co C-WECS-BESS Amendment.pdf

Please see the notes from John Robbins below on the changes made and the updated ordinance attached.

Sincerely,

Amanda Baer

Mitchell County Environmental Health Specialist
Mitchell County Zoning Administrator
212 S 5th Street
Osage, Iowa 50461
Phone: 641-832-3943

From: John Robbins <jrobbins@niacog.org>
Sent: Tuesday, July 15, 2025 12:19 PM
To: Amanda Baer <abaer@mitchellcoia.us>
Subject: RE: Wind and battery ordinance

I took the time to thoroughly proofread the document again. As moved by the Supervisors during today's second reading, I made the following non-substantive corrections to minor typos, GUMPS errors for the upcoming third reading.

- Page 3: In the definition of "Meteorological (MET) tower; Replaced "shall mean" with "— A" for consistency with format of other definitions
- Page 8: Under 16, a, ii; add (1) after "one" for consistency
- Page 8: Under 16, e; deleted the "d" in "approved"
- Page 9: Under g; added "ed" to "need"
- Page 14: In the setback table for the dwelling or occupied building setback; deleted "times" to be consistent with the rest of the table
- Page 14: Under ii; added the letter "d" so it is "as measured"
- Page 18: Under p, i; added "or" between the words "dwelling" and "occupied building"
- Page 19: Under 4, u; added the letter "d" in the word "Holder"
- Page 20, Under b, i; added the word "have" to the last sentence in the paragraph
- Page 27, flipped the words "ten" and "percent" so it reads correctly
- Page 34, flipped the words "ten" and "percent" so it reads correctly

I am happy to correct if any other non-substantive typos are found.

Thank you,

