

RESOLUTION 2023 - 03

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF KIOWA COUNTY, COLORADO, AMENDING THE KIOWA
COUNTY ZONING AND PLANNING REGULATIONS**

WHEREAS, pursuant to C.R.S. §30-28-101, *et. seq.* and in particular, C.R.S. §§30-28-111 and 30-28-133, the Kiowa County Land Use Board proposed revisions to the Kiowa County Zoning and Planning Regulations to add setback regulations for wind, solar, battery storage and transmission line facilities for the unincorporated territory of Kiowa County, and pursuant to C.R.S. §30-28-112, provided the proposed additions to the Board of County Commissioners; and,

WHEREAS, pursuant to C.R.S. §30-28-112, the Kiowa County Board of County Commissioners (the “Board”) conducted a public hearing on the proposed additions to the Kiowa County Zoning and Planning Regulations and after due consideration of comments at the public hearing directed preparation of proposed additions to the Kiowa County Zoning and Planning Regulations to establish setback regulations for wind, solar, battery storage and transmission line facilities; and,

WHEREAS, pursuant to C.R.S. §30-28-116, from time to time, the Board of County Commissioners may amend provisions of the Kiowa County Zoning and Planning Regulations, when first submitted for the approval, disapproval, or suggestions of the County Planning Commission; and,

WHEREAS, the staff has drafted proposed setback regulations for wind, solar and transmission line facilities to be considered as additions Kiowa County Zoning and Planning Regulations; and,

WHEREAS, public notice of a May 11, 2023 hearing before the Board was given by publication in a newspaper of general circulation in the County as required by C.R.S. § 30-28-116; and,

WHEREAS, the Board conducted a public meeting on May 11, 2023, after due public notice, to consider setback regulations for wind, solar, battery storage and transmission line facilities to be considered as additions to the Kiowa County Zoning and Planning Regulations; and,

WHEREAS, at the public hearing, testimony was taken from all persons appearing and wishing to give testimony; and,

WHEREAS, the Board has considered the public need, legal authority and purpose of the land use regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF KIOWA COUNTY, COLORADO, AS FOLLOWS:

SECTION 1. FINDINGS.

- A. The proposed additions to the Kiowa County Zoning and Planning Regulations meet the criteria for addition to the Kiowa County Zoning and Planning Regulations as Sections 10-110, 10-111, 10-112 and 10-113.

SECTION 2. ADOPTION AND EFFECTIVE DATE.

- A. The proposed additions of Section 10-110, Section 10-111, Section 10-112 and Section 10-113 to the Kiowa County Zoning and Planning Regulations, attached as Exhibit A, are hereby adopted.
- B. The proposed additions shall take effect upon the date of adoption, unless otherwise indicated.

SECTION 3. INTERPRETATION.

- A. This Resolution shall be interpreted and construed so as to effectuate its purpose as set forth hereinabove.

Upon roll call the vote was:

Commissioner Oswald yes
Commissioner Robertson yes
Commissioner Lening yes

INTRODUCED, PASSED AND ADOPTED this 29 day of June, 2023.

COUNTY OF KIOWA
STATE OF COLORADO
BY AND THROUGH ITS BOARD OF
COUNTY COMMISSIONERS

Donald Oswald
Donald Oswald, BOCC Chair



Delisa T. Weeks
Delisa Weeks, Clerk of the Board

Date: 6-29-23

EXHIBIT A

10-110

Setback Requirements for Wind Energy Systems

A. Definitions.

- (1) *1041 Permitted Area* means area of development approved by the Board as evidenced by an approved and issued 1041 permit.
- (2) *Board* means the Board of County Commissioners of Kiowa County, Colorado.
- (3) *Boundary* means the official line that legally delineates where one property ends and another begins.
- (4) *Land Parcel* means an area of land with a particular ownership.
- (5) *Nonparticipating Landowner* means a landowner whose Land Parcel is not subject to a transmission, solar or wind option or an easement agreement with the holder of a 1041 permit for the construction of a transmission, solar or wind facility.
- (6) *Occupied Residence* means a structure or portion of a structure which at the time the 1041 Permit is approved by the Permit Authority is used for housing human beings. This term includes structures used for schools, day care centers, nursing homes, or residential-style facilities.
- (7) *Other Structures* means structures used at the time the 1041 Permit is approved by the Permit Authority for housing animals, crops, goods or business inventory.
- (8) *Outer Boundary* means the boundary encompassing the entirety of the project for which a 1041 permit is approved and issued by the Board.
- (9) *Participating Landowner* means a landowner whose Land Parcel is subject to a transmission, solar or wind option or an easement agreement with the holder of a 1041 permit for the construction of a transmission, solar or wind facility.
- (10) *Pooled Land Parcel* means land parcels owned by more than one owner or joint owners joined for the purpose of developing the land through additional uses on more than one Land Parcel.

- (11) *Roadway* means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and shall include the entire width of every way for which Kiowa County, Colorado receives Highway User Tax Funds pursuant to C.R.S. §43-4-201, *et seq.*
- (12) *Setbacks* means the minimum open space required.
- (13) *Transmission Line* means a set of conductors that is designed to transfer the power from the generating station or collector substation to a far-end substation that is located near the load centers, in the most efficient and secure way and used by electrical power systems to transfer electricity between any two distant points.
- (14) *Tip Height* means the distance from the rotor blade at its highest point to the top surface of the WES foundation.
- (15) *Wind Energy System (WES)* means a system that converts wind energy into another form of energy, such as electricity. WES shall include any combination of the following with the exception of those solely serving local agricultural operations:
 - (a) A mill or machine operated by wind acting on oblique vanes or sails that radiate from a horizontal shaft;
 - (b) A surface area such as a blade, rotor, or similar device, either variable or fixed, from utilizing the wind for electrical power;
 - (c) A shaft, gearing, belt, or coupling utilized to convert the rotation of the surface area into a form suitable for driving a generator, alternator, or other electricity-producing device;
 - (d) The generator, alternator, or another device to convert the mechanical energy of the surface area into electrical energy;
 - (e) The tower, pylon, or other structure upon which any, all or some combination of the above are mounted (the “*Tower*”); and
 - (f) Other components not listed above but associated with the normal construction, operation, and maintenance of a wind energy conversion system.

- B. The Setbacks as set forth in this Section 10-110 shall not apply to a Land Parcel or a Pooled Land Parcel of any Participating Landowner.
- C. If the WES is located on a Land Parcel with a Boundary adjacent to the corporate limits of an incorporated municipality, the Setback requirements of the incorporated municipality, as of the 1041 Application date, shall apply to the WES if more strict than the Setback requirements of this Section 10-110.
- D. Setbacks: The following Setbacks, measured from the center of the base of the Tower to the Boundary, shall apply:
- (1) No WES Tower shall be located such that the distance between the center of the base of the Tower and the adjacent corporate limits of an incorporated municipality is less than 1.0 mile (5280').
 - (2) No WES Tower shall be located such that the distance between the center of the base of the Tower and the adjacent corporate limits of an unincorporated municipality is less than one third of a mile (1760').
 - (3) No WES Tower shall be located such that the distance between the center of the base of the Tower and the Outer Boundary line of the 1041 Permitted Area is less than 1.2 times the Tip Height of the WES.
 - (4) No WES Tower shall be located such that the distance between the center of the base of the Tower and the nearest Boundary of the Land Parcel of a Nonparticipating Landowner is less than 1.2 times the Tip Height of the WES.
 - (5) No WES shall be located such that the distance between the center of the base of the Tower and an Occupied Residence located on the Land Parcel of a Nonparticipating Landowner is less than the greater of 1.2 times the Tip Height or one third of a mile (1,760') from the Nonparticipating Landowner's Residence.
 - (6) No WES shall be located such that the distance between the center of the base of the Tower and Other Structures located on the Land Parcel of a Nonparticipating Landowner is less than 1.2 times the tip height from the Other Structures.
 - (7) No WES shall be located such that the distance between the center of the base of the Tower and the nearest point of any Roadway is less than 1.2 times the Tip Height of the WES.

- (8) Transmission lines shall comply with the Setback set forth in Section 10-112.
- (9) Upon the request of a Participating Landowner or Nonparticipating Landowner, when issuing a 1041 Permit the Board may approve a lesser setback distance than those which are set forth in Section 10-110(D)(1)-(7) after considering factors which include, but are not limited to, the technical needs of the applicant; the feasibility of alternate locations; the nature and proximity of nearby buildings, structures, and Roadways; the unoccupied nature of an existing building; comments of the Nonparticipating Landowner; and the potential for adverse impacts that noise, shadow, flicker, and other features may have on the adjacent land uses.

10-111

Setback Requirements for Solar Energy Facilities

A. Definitions.

- (1) *Board* means the Board of County Commissioners of Kiowa County, Colorado.
- (2) *Boundary* means the official line that legally delineates where one property ends and another begins.
- (3) *Land Parcel* means an area of land with a particular ownership.
- (4) *Nonparticipating Landowner* means a landowner whose Land Parcel is not subject to a transmission, solar or wind option or an easement agreement with the holder of a 1041 permit for the construction of a transmission, solar or wind facility.
- (5) *Occupied Residence* means a structure or portion of a structure which at the time the 1041 Permit is approved by the Permit Authority is used for housing human beings. This term includes structures used for schools, day care centers, nursing homes, or residential-style facilities.
- (6) *Other Structures* means structures used at the time the 1041 Permit is approved by the Permit Authority for housing animals, crops, goods or business inventory.
- (7) *Participating Landowner* means a landowner whose Land Parcel is subject to a transmission, solar or wind option or an easement agreement with the holder of a 1041 permit for the construction of a transmission, solar or wind facility.

- (8) *Pooled Land Parcel* means land parcels owned by more than one owner or joint owners joined for the purpose of developing the land through additional uses on more than one Land Parcel.
- (9) *Roadway* means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and shall include the entire width of every way for which Kiowa County, Colorado receives Highway User Tax Funds pursuant to C.R.S. §43-4-201, *et seq.*
- (10) *Setbacks* means the minimum open space required.
- (11) *Solar Energy Facility (SEF)* means any electric generating facility whose main purpose is to supply electricity, consisting of one or more Solar Collectors and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities, with the exception of those solely serving local agricultural operations.
- (12) *Solar Collectors* means a solar energy conversion system that converts solar energy into electricity through the use of panels.
- (13) *Transmission Line* means a set of conductors that is designed to transfer the power from the generating station or collector substation to a far-end substation that is located near the load centers, in the most efficient and secure way and used by electrical power systems to transfer electricity between any two distant points.

B. The Setbacks as set forth in this Section 10-111 shall not apply to a Land Parcel or a Pooled Land Parcel of any Participating Landowner.

C. If the SEF is located on a Land Parcel with a Boundary adjacent to the corporate limits of an incorporated municipality, the Setback requirements of the incorporated municipality, as of the 1041 Application date, shall apply to the SEF if more strict than the Setback requirements of this Section 10-111.

D. Setbacks: The following setbacks shall apply:

- (1) No SEF shall be located less than 0.25 of a mile (1320') of the corporate boundary of an incorporated municipality.
- (2) No SEF shall be located such that the distance between Solar Collectors and other accessory structures and buildings, including

substations, meteorological towers, electrical infrastructure, and other appurtenant structures and facilities and an Occupied Residence located on the Land Parcel of a Nonparticipating Landowner is less than 0.25 of a mile (1320') from the Nonparticipating Landowner's Residence.

- (3) No SEF shall be located such that the distance between Solar Collectors and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, and other appurtenant structures and facilities and Other Structures located on the Land Parcel of a Nonparticipating Landowner is less than fifty (50) feet from the Nonparticipating Landowner's Boundary.
- (4) SEF shall be located in compliance with the Kiowa County Road Standards.
- (5) Transmission Lines shall comply with the Setback set forth in Section 10-112.
- (6) Upon the request of a Participating Landowner or Nonparticipating Landowner, when issuing a 1041 Permit the Board may approve a lesser setback distance than those which are set forth in Section 10-111.D(1)-(4) after considering factors which include, but are not limited to, the technical needs of the applicant; the feasibility of alternate locations; the nature and proximity of nearby buildings, structures, and Roadways; the unoccupied nature of an existing building; comments of the Nonparticipating Landowner; and the potential for adverse impacts on the adjacent land uses.

10-112

Setback Requirements for Transmission Lines and Facilities

A. Definitions.

- (1) *1041 Permitted Area* means area of development approved by the Board as evidenced by an approved and issued 1041 permit.
- (2) *Board* means the Board of County Commissioners of Kiowa County, Colorado.
- (3) *Boundary* means the official line that legally delineates where one property ends and another begins.
- (4) *Land Parcel* means an area of land with a particular ownership.

- (5) *National Electrical Safety Code (NESC)* means the American national standard for the safety of electric supply (power) and communication utility systems installed and maintained under qualified control by public or private utilities.
- (6) *Occupied Residence* means a structure or portion of a structure which at the time the 1041 Permit is approved by the Permit Authority is used for housing human beings. This term includes structures used for schools, day care centers, nursing homes, or residential-style facilities.
- (7) *Other Structures* means structures used at the time the 1041 Permit is approved by the Permit Authority for housing animals, crops, goods or business inventory.
- (8) *Outer Boundary* means the boundary encompassing the entirety of the project for which a 1041 permit is approved and issued by the Board.
- (9) *Participating Landowner* means a landowner whose Land Parcel is subject to a transmission, solar or wind option or an easement agreement with the holder of a 1041 permit for the construction of a transmission, solar or wind facility.
- (10) *Pooled Land Parcel* means land parcels owned by more than one owner or joint owners joined for the purpose of developing the land through additional uses on more than one Land Parcel.
- (11) *Power Plant* means (a) any electrical generating facility regardless of power source or generating capacity, including but not limited to wind, solar, or geothermal generating facilities, which utilizes more than five (5) acres of land; (b) any electrical generating facility which has a generating capacity of ten (10) megawatts or more regardless of how much acreage is utilized; and (c) any addition to, or modification of, any existing electrical generating facility which addition or modification has the effect of increasing the existing design capacity of the facility by a combined ten (10) megawatts or more; and (d) any facilities appurtenant to any of the foregoing specifically including but not limited to meteorological towers utilized for the measurement of meteorological data in connection with any generating facility.
- (12) *Roadway* means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and shall include the entire width of every way for which Kiowa County, Colorado

receives Highway User Tax Funds pursuant to C.R.S. §43-4-201, *et seq.*

- (13) *Setbacks* means the minimum open space required.
- (14) *Substation* means any facility designed to provide switching, voltage transformation, or voltage control required for the transmission of electricity.
- (15) *Transmission Line* means a set of conductors that is designed to transfer the power from the generating station or collector substation to a far-end substation that is located near the load centers, in the most efficient and secure way and used by electrical power systems to transfer electricity between any two distant points.
- (16) *Transmission Lines and Facilities (TLF)* means any Transmission Line and appurtenant facilities which emanate from a Power Plant or Substation and terminate at a Substation, with the exception of those solely serving local agricultural operations.

- B. The Setbacks as set forth in this Section 10-112 shall not apply to a Land Parcel or a Pooled Land Parcel of any Participating Landowner.
- C. If the TLF is located on a Land Parcel with a Boundary adjacent to the corporate limits of an incorporated municipality, the Setback requirements of the incorporated municipality, as of the 1041 Application date, shall apply to the TLF if more strict than the Setback requirements of this Section 10-112.
- D. Setbacks: The following setbacks shall apply:
 - (1) No TLF shall be located such that the distance between the TLF and the Boundary of an incorporated municipality is less than the distance required by the NESC.
 - (2) No TLF shall be located such that the distance the TLF and the Outer Boundary of the 1041 Permitted Area is less than the distance required by the NESC.
 - (3) No TLF shall be located such that the distance between the TLF any Occupied Residence or Other Structure is less than the distance required by the NESC.
 - (4) No TLF shall be located such that the distance between TLF any Roadway is less than the distance required by the NESC.

- (5) Upon the request of a Participating Landowner or Nonparticipating Landowner, when issuing a 1041 Permit the Board may approve a lesser setback distance than those which are set forth in Section 10-110(D)(1)-(4) after considering factors which include, but are not limited to, the technical needs of the applicant; the feasibility of alternate locations; the nature and proximity of nearby buildings, structures, and Roadways; the unoccupied nature of an existing building; comments of the Nonparticipating Landowner; and the potential for adverse impacts that noise, shadow, flicker, and other features may have on the adjacent land uses.

10-113

Setback Requirements for Battery Storage or Battery Energy Storage Systems

A. Definitions.

- (1) *Battery Storage or Battery Energy Storage Systems (BESS)* means devices that enable energy from renewables, like solar and wind, to be stored and then released when the power is needed most.
- (2) *Board* means the Board of County Commissioners of Kiowa County, Colorado.
- (3) *Boundary* means the official line that legally delineates where one property ends and another begins.
- (4) *Land Parcel* means an area of land with a particular ownership.
- (5) *Nonparticipating Landowner* means a landowner whose Land parcel is not subject to a transmission, solar or wind option or an easement agreement with the holder of a 1041 permit for the construction of a transmission, solar or wind facility.
- (6) *Occupied Residence* means a structure or portion of a structure which at the time the 1041 Permit is approved by the Permit Authority is used for housing human beings. This term includes structures used for schools, day care centers, nursing homes, or residential-style facilities.
- (7) *Other Structures* means structures used at the time the 1041 Permit is approved by the Permit Authority for housing animals, crops, goods or business inventory.
- (8) *Participating Landowner* means a landowner whose Land parcel is subject to a transmission, solar or wind option or an easement

agreement with the holder of a 1041 permit for the construction of a transmission, solar or wind facility.

- (9) *Pooled Land Parcel* means land parcels owned by more than one owner or joint owners joined for the purpose of developing the land through additional uses on more than one Land Parcel.
- (10) *Roadway* means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and shall include the entire width of every way for which Kiowa County, Colorado receives Highway User Tax Funds pursuant to C.R.S. §43-4-201, et seq.
- (11) *Setbacks* means the minimum open space required.
- (12) *Transmission Line* means a set of conductors that is designed to transfer the power from the generating station or collector substation to a far-end substation that is located near the load centers, in the most efficient and secure way and used by electrical power systems to transfer electricity between any two distant points.

B. The Setbacks as set forth in this Section 10-113 shall not apply to a Land Parcel or a Pooled Land Parcel of any Participating Landowner.

C. If the Battery Storage or BESS is located on a Land Parcel with a Boundary adjacent to the corporate limits of an incorporated municipality, the Setback requirements of the incorporated municipality, as of the 1041 Application date, shall apply to the BESS if more strict than the Setback requirements of this Section 10-113.

D. Setbacks: The following setbacks shall apply:

- (1) No Battery Storage or BESS shall be located less than 0.25 of a mile (1320') of the corporate boundary of an incorporated municipality.
- (2) No Battery Storage or BESS shall be located such that the distance between the Battery Storage or BESS and an Occupied Residence located on the Land Parcel of a Nonparticipating Landowner is less than 0.25 of a mile (1320') from the Nonparticipating Landowner's Residence.
- (3) No Battery Storage or BESS shall be located such that the distance between the Battery Storage or BESS and Other Structures located on the Land Parcel of a Nonparticipating Landowner is less than fifty(50) feet from the Nonparticipating Landowner's Boundary.

- (4) Battery Storage or BESS shall be located in compliance with the Kiowa County Road Standards.
- (5) Transmission Lines shall comply with the Setback set forth in Section 10-112.
- (6) Upon the request of a Participating Landowner or Nonparticipating Landowner, when issuing a 1041 Permit the Board may approve a lesser setback distance than those which are set forth in Section 10-113.D(1)-(4) after considering factors which include, but are not limited to, the technical needs of the applicant; the feasibility of alternate locations; the nature and proximity of nearby buildings, structures, and Roadways; the unoccupied nature of an existing building; comments of the Nonparticipating Landowner; and the potential for adverse impacts on the adjacent land uses.