

STATE OF ILLINOIS)
)SS
COUNTY OF DEKALB)

ORDINANCE 2018-50

**AN ORDINANCE ADOPTING
A WIND ENERGY CONVERSION SYSTEM ORDINANCE
FOR DEKALB COUNTY**

WHEREAS, the DeKalb County Board has determined the need for regulations governing the construction, installation, and operation of wind energy conversion systems; and

WHEREAS, the Planning and Zoning of the DeKalb County Board has drafted a Wind Energy Conversion System Ordinance to address this need; and

WHEREAS, the DeKalb County Community Development Department, under the direction of the Planning and Zoning Committee of the DeKalb County Board, has prepared and submitted an application for a Zoning Text Amendment for the adoption of a Wind Energy Conversion System Ordinance; and

WHEREAS, following due and proper notice by publication in the Daily Chronicle not less than fifteen (15) nor more than thirty (30) days prior thereto, the DeKalb County Hearing Officer conducted two public hearings on September 24, 2018, at 1:00 pm and 6:00 pm, at which forty-six (46) members of the public asked questions and made comments regarding the Draft Wind Energy Conversion Systems Ordinance; and

WHEREAS, based on the testimony given at the public hearing, the Hearing Officer has forwarded to the Planning and Zoning Committee findings and a recommendation that the requested Draft Wind Energy Conversion Systems Ordinance be approved, with three (3) elements of the draft ordinance recommended for further consideration by the Planning and Zoning Committee, as set forth in the Report of Proceedings and Recommendation of the DeKalb County Hearing Officer, dated October 18, 2018; and

WHEREAS, the Planning and Zoning Committee of the DeKalb County Board has reviewed and considered the Draft Wind Energy Conversion Systems Ordinance proposed the Text Amendment, and the recommendations of the Hearing Officer, and having moved to amend the proposed language in response to the recommendations of the Hearing Officer and concerns raised at the public hearing, and has forwarded a recommendation to the DeKalb County Board that the proposed Wind Energy Conversion Systems Ordinance, be adopted; and

WHEREAS, the DeKalb County Board has determined that it is in the best interests of the citizens of the County to amend the DeKalb County Zoning Ordinance to adopt the Wind Energy Conversion Systems Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF DEKALB COUNTY, ILLINOIS, as follows:

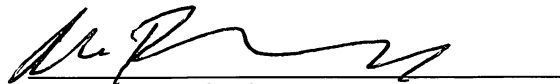
SECTION ONE: The Findings above and the recommendations of the Planning and Zoning Committee are hereby adopted as the findings and conclusions of the DeKalb County Board.

SECTION TWO: The DeKalb County Wind Energy Conversion Systems Ordinance, Exhibit "A" appended hereto, is hereby adopted, effective as of December 1, 2018.

SECTION THREE: Section 4.02.C.1 of the DeKalb County Zoning Ordinance shall be amended to include Wind Energy Conversion Systems into the list of Special Uses allowed in the A-1 District.

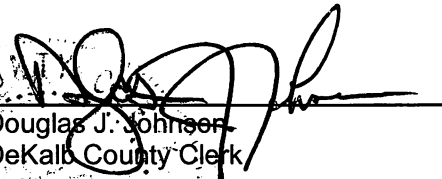
SECTION THREE: This Ordinance shall be in full force and effect upon its adoption by the County Board of DeKalb County, Illinois.

PASSED BY THE COUNTY BOARD THIS 21TH DAY OF November 21, 2018, A.D.

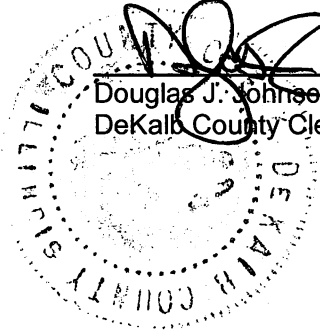


Mark Pietrowski, Jr.
Chairman, DeKalb County Board

ATTEST:



Douglas J. Johnson
DeKalb County Clerk



A. Wind Energy Conversion Systems

1. Purpose

- a. It is the purpose of this section to:
 - 1) Assure the protection of health, safety, welfare, and property values for all DeKalb County residents and landowners.
 - 2) Assure that any development and production of wind-generated electricity in DeKalb County is safe and effective.
 - 3) Facilitate economic opportunities for local residents.
 - 4) Promote the supply of wind energy in support of Illinois' statutory goal of increasing energy production from renewable energy sources.

2. **Applicability:** This ordinance governs the siting of wind energy conversion systems (WECS) and substations that generate electricity to be sold to wholesale or retail markets.
3. **Prohibition:** No WECS or substation governed by this ordinance shall be constructed, erected, installed, or located within DeKalb County unless prior siting approval (approved Special Use, Site Development, and Building Permit issuance) has been obtained for each individual WECS and substation pursuant to this ordinance.
4. **Special Use Requirements:** In addition to the standards and criteria established herein, no Special Use Permit shall be granted for the use(s) listed below unless evidence is presented to establish that the standards and criteria set forth herein have been met.
5. **Definitions:** The following words and terms when used in the interpretation and administration of this section shall have the meaning set forth herein except where otherwise specifically indicated:

Applicant: Shall mean the entity or person who submits to the County an application for the siting of any WECS or substation.

Financial Assurance: Shall mean reasonable assurance from a credit-worthy party; examples of which include a surety bond, trust instrument, cash escrow, or irrevocable letter of credit.

Operator: Shall mean the entity responsible for the day-to-day operation and maintenance of the WECS and substations, including any third-party subcontractors.

Non-participating Property: Any property within the WECS project other than participating property.

Owner: Shall mean the entity or entities with an equity interest in the WECS, including their respective successors and assignees. Owner does not mean (1) the property owner from whom the land is leased for locating the WECS, unless the property owner has an equity interest in the WECS, or (2) any person holding a security interest in the WECS solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the WECS at the earliest practicable date.

Participating Landowner: A landowner whose property (or portion thereof) is currently leased or proposed to be leased for the production, siting, or development of an WECS and all landowners who have waived their rights to the setbacks provided in this section.

Participating Property: A property where a WECS is located or proposed to be located pursuant to an agreement with the owner/operator.

Professional Engineer: Shall mean a qualified individual who is licensed as a professional structural engineer in the State of Illinois.

Primary Structure: Shall mean, for each property, the structure that one or more persons occupy the majority of the time on that property for either business or personal reasons. Primary structure includes structures such as residences, commercial buildings, hospitals, and day care facilities. Primary structure excludes such structures as hunting sheds, storage sheds, pool houses, unattached garages, and barns.

Substation: shall mean the apparatus that connects the electrical collection system of the WECS and increases the voltage for connection with the utility's transmission lines.

Waiver: The waiver document shall be notarized, recorded, run with the parcel(s) of record and terminate at the termination of the wind energy project as part of the decommissioning plan. For purposes of a Municipal Waiver a signed and recorded resolution will suffice to meet the waiver requirements.

Wind Energy Conversion Systems (WECS): Shall mean all necessary devices that together convert wind energy into electricity, including the rotor, nacelle, generator, WECS tower, electrical components, WECS foundation, transformer, and electrical cabling from the WECS tower to the substation.

WECS Project: Shall mean the collection of WECS(s) and substations specified in the siting approval application pursuant to this ordinance.

WECS Tower: Shall mean the support structure to which the nacelle and rotor are attached.

WECS Tower Height: Shall mean the distance from the rotor blade at its highest point to the top surface of the WECS foundation.

- 6. Special Use Application Requirements:** In addition to the Special Use Permit requirements per Section _____, a WECS applicant shall meet with County representatives in a pre-application meeting and submit to DeKalb County descriptions, site plans, studies, reports, certifications, and approvals demonstrating compliance with the Ordinance.
- a. A pre-application meeting shall be held with representatives from the Community Development Departments, the County Highway Department, the impacted township(s), the DeKalb County Soil and Water Conservation District and all other applicable departments and agencies as determined by the Community Development Department.
 - b. In addition to a Special Use Permit application per Section _____, a WECS applicant shall submit to the DeKalb County Community Development Department a "WECS project Summary," including, to the extent available:
 - 1) A general description of the project, including its approximate name plate generating capacity, the potential equipment manufacturer(s), type(s) of WECS, number of WECS and name plate generating capacity of each WECS, the maximum height of the WECS tower(s) and the maximum diameter of the WECS rotors.
 - 2) A description of the general location of the project.
 - 3) A description of the applicant, owner, and operator, including their respective business structures (business form).

- 4) A general business plan outlining all major WECS related events that will take place over the useful life of the WECS project.
 - 5) The names, addresses, and phone numbers of the applicants, owners, operators, and all property owners included in the application.
 - 6) A site plan for the installation of the WECS showing the planned location of each WECS tower, guy lines, and anchor bases (if any), primary structure(s), property lines including identification of adjoining properties, setback lines, public access roads and turnout locations, substations, electrical cabling from the WECS tower to the substations, ancillary equipment, third party transmission lines, and layout of all structures within the geographical boundaries of the setback established in this Ordinance.
 - 7) All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this ordinance (including but not limited to: natural resource areas; bird and bat migration paths; shadow flicker; noise levels; and vibration levels).
 - 8) A visual simulation including scale elevations of the proposed WECS and perspective drawings or photographic representations showing the WECS spatially accurate to the landscape and surrounding land uses.
 - 9) The applicant shall notify the Community Development Department of any changes to this information that occur while the Special Use Permit application is pending.
- c. For Special Use Permit applications involving multiple WECS towers, only one application is required. Although processed as one Special Use, each tower within a WECS Special Use shall be charged the established Special Use fee.

7. Design and Installation

a. Design Safety Certification:

- 1) WECS shall conform to applicable industry standards, including those of the American National Standards Institute (ANSI). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories (UL), Det Norske Veritas (DNV), Germanischer Lloyd Wind Energie (GL), or an equivalent third-party.
- 2) Following the granting of siting approval and a Special Use Permit under this Ordinance, a professional structural engineer shall certify, as part of the Building Permit application that the foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.

- b. **Controls and Brakes:** All WECS 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 failsafe mode. Stall regulation shall not be considered a sufficient braking system for over speed protection.

- c. **Electrical Components:** All electrical components of the WECS shall conform to applicable local, state, and national codes, and relevant national and international standards e.g., ANSI and International Electrical Commission.
- d. **Color:** Towers and blades shall be painted white or gray or another non-reflective, unobtrusive color. No advertisement or signs shall be allowed.
- e. **Compliance with the Federal Aviation Administration (FAA):** The applicant for the WECS shall comply with all applicable FAA requirements. Evidence of compliance shall be submitted with the siting request.
- f. **Warnings**
 - 1) A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
 - 2) Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of fifteen (15) feet from the ground.
- g. **Climb Prevention:** All WECS towers must be un-climbable by design or protected by anti-climbing devices including, but not limited to:
 - 1) Fences with locking portals at least six (6) feet in height, but no greater than seven (7) feet in height; or
 - 2) Anti-climbing devices twelve (12) feet vertically from the base of the WECS tower.
- h. **Setbacks:** All WECS towers shall provide the following minimum Setbacks:
 - 1) All WECS towers shall be setback a distance of not less than six (6) times the height of the WECS tower from all property lines. A participating landowner may waive this setback requirement, but in no case shall a WECS be located closer to a primary structure than one and one-tenth (1.1) times the height of the WECS tower.
 - 2) All WECS towers shall be setback a distance of not less than two (2) times the height of the WECS tower from all roadways, third-party transmission lines, and communication towers.
 - 3) All WECS towers shall be setback a distance of not less than three (3) miles from a municipality. A municipality may waive this setback requirement through the issuance of a formal statement from the municipality approving such a waiver. The applicant shall then submit a copy of the statement as part of their application. Additionally, a site plan specifically identifying: the location of the three (3) mile base setback; the locations of all WECS towers proposed to be within the this (3) mile area; and, the distance each proposed WECS tower within this three (3) mile area will be from the municipal boundaries.
 - 4) All WECS towers shall be setback a distance of not less than one and one-half (1.5) miles from a forest preserve.
 - 5) The applicant does not need to obtain a variance from the County upon waiver by either the County or property owner of any of the above setback requirements. Any waiver of any of the above setbacks shall run with the land and be recorded as part of the chain of title in the deed of the subject property.

- i. **Height Restriction:** No WECS tower shall be greater than five hundred (500) feet in height.
- j. **FAA Obstruction Marking and Lighting Requirements:** All WECS towers shall be fitted with Aircraft Detection Lighting Systems (ADLS), or a comparable technology, suitable for meeting the FAA obstruction marking and lighting requirements.
- k. **Compliance with Additional Regulations:** Nothing in this ordinance is intended to preempt other applicable state or federal laws and regulations.
- l. **Use of Public Roads:**
 - 1) Road Agreement: A road agreement that includes all effected jurisdictions (municipal, township, county, state, etc.) must be agreed upon by all parties and recorded with the DeKalb County Recorder's Office. A signed agreement must be recorded prior to the issuance of the first Building Permit. The agreement shall include, but not be limited to:
 - a) An applicant, owner, or operator proposing to use any DeKalb County roads for the purpose of transporting WECS or substation parts and/or equipment for construction, operation, or maintenance of the WECS or substations, shall:
 - i. Identify all such public roads; and
 - ii. Obtain applicable weight and size permits from the relevant government agencies prior to construction.
 - b) To the extent an applicant, owner, or operator must obtain a weight or size permit from the County, the applicant, owner, or operator shall:
 - i. Bring all roads used up to at least an 80,000 lbs. load limit by the end of construction; and
 - ii. Secure financial assurance, in a reasonable amount agreed to by the relevant parties, for the purpose of repairing any damage to public roads caused by constructing, operating, or maintaining the WECS.

8. Operation

- a. **Maintenance:**
 - 1) The owner or operator of the WECS must submit, on an annual basis, a summary of the operation and maintenance reports to the Community Development Director. In addition to the above annual summary, the owner or operator must furnish such operation and maintenance reports as the County reasonably requests.
 - 2) Any physical modification to the WECS that alters the mechanical load, mechanical load path, or major electrical components shall require recertification under Section ____ of this ordinance. Like-kind replacements shall not require recertification. Prior to making any physical modification (other than like-kind replacements) the owner or operator shall confer with a third-party certifying entity identified in Section ____ to determine whether the physical modification requires recertification.
- b. **Interference:**

- 1) Prior to the construction of any wind turbines, the owner or operator shall conduct a study to establish the baseline status of all RF/EMF transmissions in the area of the turbines, with copies of the study to be supplied to the County.
 - 2) The applicant shall provide the applicable microwave transmission providers and local emergency service providers (e.g.: 911 operators) copies of the project summary and site plan, as set forth in Section _____. The applicant shall provide evidence that any potential interference has been resolved to the satisfaction of the providers.
 - 3) If, after construction of the WECS, the County receives a written complaint related to the abovementioned interference, the County shall have the right to draw upon the Enforcement Fund to investigate and mitigate the complaint.
- c. **Flicker:** Zero flicker/shadow flicker shall occur beyond the property line of any participating property.
- d. **Coordination with Local Fire Departments:**
- 1) The applicant, owner, or operator shall submit to the local fire department(s) a copy of the project site plan.
 - 2) Upon request by the fire department(s), the owner or operator shall cooperate with the fire department(s) to develop the fire department's emergency response plan.
 - 3) Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.
- e. **Materials Handling, Storage, and Disposal:**
- 1) All solid wastes related to the construction, operation, and maintenance of the WECS shall be removed from the site promptly and disposed of in accordance with all federal, state, and local laws.
 - 2) All hazardous materials related to the construction, operation, and maintenance of the WECS shall be handled, stored, transported, and disposed of in accordance with all federal, state, and local laws.

9. Sound Limits:

a. **Audible Sound Limits**

- 1) No WECS shall be located so as to cause an exceedance of the pre-construction/operation background sound levels by more than 5 dBA. The background sound levels shall be the L_{90A} sound descriptor measured during a pre-construction noise study during the quietest time of the evening or night. All data recording shall be a series of contiguous ten (10) minute measurements. Measurements shall cover a minimum of 30 minutes. The ten (10) minute period with the lowest L_{90A} levels shall be used for this test. L_{90A} results are valid only when L_{10A} results are no more than 15 dBA above L_{90A} for the same time period. Noise sensitive sites are to be selected based on predicted worst-case sound emissions (in L_{EQA} and L_{EQC}) which are to be provided by developer.
- 2) Test sites are to be located along the property line(s) of the receiving non-participating property(s).

- 3) A 5dB penalty is applied for tones or when the sound emissions fluctuate in amplitude or frequency over time in reasonable synchronicity with the blade revolution.

b. Low Frequency Sound Limit

- 1) The sound levels from the wind turbine at the receiving property shall not exceed the lower of either:
 - a) $L_{EQA} - L_{90A}$ greater than 20 dB outside or inside any occupied structure, or
 - b) A maximum not-to-exceed sound level of 50 dBC.
- 2) These limits shall be assessed using the same nighttime and wind/weather conditions required in Section 9.a.1.
- 3) Turbine operating sound immissions (dBA and dBC) shall represent worst case sound immissions for the stable nighttime conditions with low winds at ground level and winds sufficient for full operating capacity at the hub.

c. Requirements:

- 1) All instruments must meet ANSI or IEC Type 1 Precision sound level meter performance specifications.
- 2) Procedures must meet ANSI S12.9, Part 3, ANSI S12.100 and other applicable ANSI standards.
- 3) Measurements must be made when ground level winds are 2m/s (4.5 mph) or less. Leaf rustle, insect, bird, and other sounds not properly considered as part of the steady background sound shall be excluded. Wind shear in the evening and night often result in low ground level wind speed and nominal operating speeds at wind turbine hub heights.
- 4) IEC 61400 procedures are not suitable for enforcement of these requirements. ANSI standards shall be followed for testing and modeling procedures.

10. Enforcement:

a. Enforcement Fund

- 1) The applicant shall provide proof that the necessary amount and form of financial security has been received by the County in the form of an escrow account that names DeKalb County as the Beneficiary.
- 2) The applicant shall also provide identification of and procedures for DeKalb County to access the financial security.
- 3) This security shall maintain an amount of at least \$10,000.
- 4) The County shall have access to the Enforcement Fund secured by the escrow account in a bank of the County's choosing if:
 - a) The DeKalb County Sheriff's Office accrues costs due to the acquisition of equipment and/or training necessary to verify that a WECS Tower is operating within the standards of this ordinance, or
 - b) DeKalb County, or any of its offices and officials, accrues costs in the investigation, prosecution, and/or enforcement of a violation of these standards.

- 5) Whenever this security is accessed by County, or its offices and officials, the owner/operator must recapitalize this security within three (3) months of the date it was accessed. Failure to recapitalize the security shall be considered a cessation of the operation.
 - 6) The applicant and/or WECS owner shall grant perfected security in the escrow account by use of a control agreement establishing the County as an owner of record pursuant to the Secured Transit Article of the Uniform Commercial Code, 810 ILCS 9/101 et seq.
 - 7) The escrow agent shall release the Enforcement Funds when the WECS owner or operator has demonstrated and DeKalb County concurs that decommissioning has been satisfactorily completed, or upon written approval of the County to implement the decommissioning plan.
 - 8) Any interest accrued on the escrow account that is over and above \$10,000 shall go to the WECS owner.
 - 9) The County shall be listed as a debtor but shall not be responsible for any claims against the WECS owner and/or operator.
 - 10) Upon establishment of the Enforcement Fund, the DeKalb County Sheriff's Office shall acquire the necessary equipment and training to be able to verify whether a WECS tower is in violation of these operational standards. The costs accrued by the Sheriff's Office in acquiring this equipment and training shall be recovered from the Enforcement Fund.
 - a) No building permit shall be issued for a WECS tower approved by a Special Use until such time as the Sheriff's Office has established that they deputies trained and equipped to verify that the WECS towers are operating within the standards of this ordinance.
 - b) The Sheriff's Office may also draw upon the Enforcement Fund to recover the costs to replace damaged or outdated equipment, and for the continued training of officers.
- b. **Procedures:**
- 1) Complaints alleging that a WECS tower is operating in violation of the standards of this ordinance shall be forwarded to the DeKalb County Sheriff's Office.
 - 2) The Sheriff's Office shall have access to the site of any WECS to investigate any reported violation(s) of the operational standards of this Section.
 - 3) Upon report of an alleged violation, the DeKalb County Sheriff's Office shall investigate the complaint. If upon investigation, the Deputies find that the tower to be in apparent violation, a report containing the findings of the investigation shall be forwarded to the Community Development Department for the scheduling of a Code Violation Hearing.
 - a) The use of third-party consultants may be called upon in the determination of whether a particular tower is in violation. Any costs accrued through the use of said third-party consultant shall be recovered from the Enforcement Fund.

- b) The Deputies will log the hours spent, fuel used, etc., which will then be used to determine the costs to investigate the complaint. Any costs accrued by the Sheriff's Office in the investigation, prosecution, and enforcement of the operational standards of this Section shall be recovered from the Enforcement Fund.
- 4) Code Hearing:
 - a) Upon receipt of the report from the DeKalb County Sheriff's Office, the Community Development Department shall schedule a Code Violation Hearing regarding the apparent violation(s).
 - b) Notice of the Code Violation Hearing shall be sent to the property owner, and the owners and operators of the WECS.
 - c) If the Code Violation Hearing Officer finds the WECS tower to be in violation of the operational standards of this ordinance:
 - i. The owner/operator of the WECS shall have fifteen (15) days to bring the WECS tower into compliance to the satisfaction of the County.
 - ii. A fine per violation per incident shall be assessed upon the property owner by the Code Violation Hearing Officer.
 - iii. The property owner shall also be liable for the Hearing Officer Fee.
 - d) If the tower has not been brought into compliance within fifteen (15) days of being found in violation, then the tower must be shut down until such time as the tower can be brought into compliance. A shut down tower is still subject to the requirements of the Decommissioning portion of this ordinance.
 - e) If the WECS tower continues to operate after the fifteen (15) day time period without having been brought into compliance, the sixteenth (16th) day shall constitute the beginning of an additional separate violation, and shall constitute a default under this ordinance.
 - f) If a WECS tower has been shut down as a result of a finding of violation, and is subsequently restarted without first having been brought into compliance, this shall constitute the beginning of an additional separate violation, and shall constitute a default under this ordinance.
- 11. Birds:** A qualified professional, such as an ornithologist or wildlife biologist shall conduct an avian habitat study, as part of the Special Use Permit application approval process to determine if the installation of WECSs will have a substantial adverse impact on birds. The applicant must take reasonable action to mitigate such adverse impacts on habitat and migration.
 - a. All WECS towers must be setback at least one and one-half (1.5) miles from any identified eagles nest.
 - b. All WECS projects must be equipped with an Identiflight Aerial Detection System, or an equivalent system thereto.
- 12. Public Participation:** Nothing in the ordinance is meant to augment or diminish existing opportunities for public participation such as public hearings and open meetings.

- 13. Liability Insurance:** The owner or operator of the WECS shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate.
- 14. Decommissioning and Site Reclamation Plan Requirement:** At the time of the Special Use application, the County and the applicant, owner, and/or operator must formulate a decommissioning and site reclamation plan to ensure that the WECS project is properly decommissioned. The decommissioning and site reclamation plan shall be binding upon all successors of title to the land. A signed decommissioning and site reclamation plan must be submitted to the Community Development Director prior to the granting of the Special Use Permit.

The applicant or subsequent project operator shall ensure that the WECS facilities are properly decommissioned within 12 months of the end of the project life or the facility abandonment. The applicant or subsequent project operator's obligations shall include removal of all equipment and physical materials (concrete, rebar, etc., but excluding fill), negotiable by the landowner with a minimum equal to the amount set in the signed AIMA agreement, and the restoration of the area as near as practicable to the same condition prior to construction.

- a. **A decommissioning and site reclamation plan shall be prepared by an independent Illinois Certified Professional Engineer and shall include:**
- 1) Provisions describing the triggering events for decommissioning the WECS project;
 - 2) A description of the methodology and cost to remove all above ground and below ground WECS facilities of the approved Special Use Permit;
 - 3) Provisions for the removal of all above ground and below ground WECS facilities of the approved Special Use Permit;
 - 4) Methodology and cost to restore all areas used for construction, operation, and access to a condition equivalent to the land prior to the WECS construction;
 - 5) A work schedule and a permit list necessary to accomplish the required work;
 - 6) Methodology to identify and manage any hazardous or special materials;
 - 7) Proof that the necessary amount and form of financial security has been received by the County in the form of an escrow account that names DeKalb County as the Beneficiary. The amount of security shall be equal to the positive difference between the total cost of all decommissioning and restoration work and the net salvage value of all removed WECS equipment or materials, plus a twenty-percent contingency. To determine that amount, the WECS owner and the DeKalb County Board shall:
 - a) Obtain bid specifications provided by a professional structural engineer;
 - b) Request estimates from construction/demolition companies capable of completing the decommissioning of the WECS project; the DeKalb County Engineer, and an independent engineer of the County's choosing, the Director of Community Development will review all estimates and make a

recommendation to the DeKalb County Board for an acceptable estimate. DeKalb County reserves the right to pursue other estimates;

- c) Certification of the selected estimate by a professional structural engineer. All costs to secure the estimates will be funded by the WECS owner.
 - 8) A provision that the terms of the decommissioning plan shall be binding upon the WECS owner or operator and any of their successors, assigns, or heirs;
 - 9) Confirmation by affidavit that the obligation to decommission the WECS facilities is included in the lease agreement for every parcel included in the Special Use application. A list of all landowners should be kept current and affidavits shall be secured from future WECS owners and landowners stating their financial understanding;
 - 10) A provision that allows the County to have legal right to transfer applicable WECS material to salvage firms;
 - 11) Identification of and procedures for DeKalb County to access the financial assurances; and
 - 12) A provision that DeKalb County shall have access to the site, pursuant to reasonable notice to affect or complete decommissioning. A portion of the escrow account will be required to be held for one year past the decommissioning to settle any potential disputes.
- b. **Provisions triggering the decommissioning of any portion of the WECS project due to abandonment:**
- 1) Inactive construction for twelve (12) consecutive months or if there is a delay in obtaining electrical certification for twelve (12) consecutive months, unless a signed document is provided by the utility company claiming responsibility for the delay.
 - 2) If no electricity is generated by an individual turbine or the entire project for twelve (12) consecutive months after electricity is initially generated, unless proof is provided that new parts have been ordered and will be received within six (6) months. The DeKalb County Community Development Director or his/her designee shall have access to records in order to determine the electric generation of every turbine.
 - 3) The company dissolves or chooses to walk away from the project.
 - 4) The principal company dissolves or chooses to walk into disrepair, is in threat of collapsing or any other health and safety issue.
- c. **Provisions for the removal of structures, debris, and cabling; both above and below the soil surface:**
- 1) Items required to be removed include, but are not limited to: turbines; transformers; foundation pads; electrical collection systems and transporters; underground cables; fencing; access roads and culverts. A landowner must sign an agreement if they wish for the access roads or culverts to remain.
- d. **Provisions for the restoration of soil and vegetation:**

- 1) All affected areas shall be inspected, thoroughly cleaned, and all construction related debris shall be removed.
 - 2) Items required to be restored include but are not limited to: windbreaks; waterways; site grading; drainage tile systems; and, topsoil to former productive levels.
 - a) In work areas involving decommission from expansion of turbine crane pads, widening access roads, or any other work areas, the topsoil must be first removed, identified, and stored separate from other excavated material for later replacement as applicable.
 - b) The below-surface excavation area shall be filled with clean sub-grade material of similar quality to that in the immediate surrounding area.
 - c) All sub-grade material will be compacted to a density similar to surrounding grade material.
 - d) All unexcavated areas compacted by equipment used in decommissioning shall be de-compacted in a manner that adequately restores the topsoil and sub-grade material to the proper density consistent and comparable with the surrounding area.
 - e) Where possible, the topsoil shall be replaced to its original depth and surface contours.
 - f) Any topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of the effective site.
 - 3) Disturbed areas shall be reseeded to promote re-vegetation of the area to a condition reasonably similar to the original condition. A reasonable amount of wear and tear is acceptable.
 - 4) Restoration measurements shall include: leveling, terracing, mulching, and other necessary steps to prevent soil erosion; to ensure establishment of suitable grasses and forbs; and to control noxious weeds and pests.
 - 5) Items required to be repaired after decommissioning include but are not limited to: roads; bridges; and culverts.
 - 6) An independent drainage engineer shall be present to insure drainage tiles, waterways, culverts, etc. are repaired as work progresses.
 - 7) A soil erosion control plan shall be approved by the County Engineer and the DeKalb County Soil and Water Conservation District.
 - 8) All stormwater management, floodplain, and other surface water codes and ordinances shall be followed.
- e. **Estimating the Costs of Decommissioning:**
- 1) Costs shall include but not be limited to engineering fees, legal fees, accounting fees, insurance costs, decommissioning and site restoration.
 - 2) When factoring the WECS salvage value into decommissioning costs, the authorized salvage value may be deducted from decommissioning costs if the following standards are met:

- a) The net salvage value shall be based on the average salvage price of the past five (5) consecutive years, this includes any devaluation costs.
 - b) The maximum allowable credit for the salvage value of any WECS shall be no more than the estimated decommissioning costs of removal of the above ground portions of that individual WECS or up to seventy percent (70%) of the total estimated decommissioning costs, whichever is greater.
 - 3) Adjustments to the financial assurance amount that reflect changes in the decommissioning costs and salvage values shall be resubmitted every five (5) years and shall be adjusted for inflation and other factors. The escrow account shall be adjusted accordingly within six (6) months of receiving the updated information as determined by an Illinois professional engineer. Failure to provide financial assurance as outlined herein shall be considered a cessation of operation.
 - 4) When determining salvage values – demolition costs, transportation costs, and road permits shall be a consideration.
 - 5) If salvage value items are removed prior to decommissioning, then the escrow account must be credited.
- f. **Financial Assurance:**
- 1) The County shall have access to the decommissioning fund secured by the escrow account in a bank of the County's choosing if:
 - a) The WECS operator fails to address a health and safety issue in a timely manner; or
 - b) The WECS operator fails to decommission the abandoned turbine(s) or the entire WECS project in accordance with the decommissioning and site reclamation plan.
 - 2) The applicant and/or WECS owner shall grant perfected security in the escrow account by use of a control agreement establishing the County as an owner of record pursuant to the Secured Transit Article of the Uniform Commercial Code, 810 ILCS 9/101 et seq.
 - 3) The escrow agent shall release the decommissioning funds when the WECS owner or operator has demonstrated and DeKalb County concurs that decommissioning has been satisfactorily completed, or upon written approval of the County to implement the decommissioning plan. Ten percent of the fund shall be retained one (1) year past the decommissioning date to settle any outstanding concerns.
 - 4) Any interest accrued on the escrow account that is over and above the total value as determined by the Illinois professional structural engineer shall go to the WECS owner.
 - 5) The applicant shall identify procedures for DeKalb County to assess the financial assurances, particularly if it is determined that there is a health and/or safety issue with the WECS and the principal company fails to adequately respond as determined by the County Board.

- 6) The County shall be listed as a debtor but shall not be responsible for any claims against the WECS owner and/or operator.
 - 7) The applicant shall agree that the sale, assignment in fact or at law, or other transfer of the applicant's financial interest in the WECS shall in no way effect or change the applicant's obligation to continue to comply with the terms, covenants, and obligations of this agreement and agrees to assume all reclamation liability and responsibility.
 - 8) DeKalb County and its authorized representatives have the right of entry onto the WECS premises for the purpose of inspecting the methods of reclamation or for performing actual reclamation if necessary.
- g. **Remedies:**
- 1) The applicant's, owner's, or operator's failure to materially comply with any of the above provisions shall constitute a default under this ordinance.
 - 2) Prior to implementation of the existing County procedures for the resolution of such default(s), the appropriate county body shall first provide written notice to the owner and operator, setting forth the alleged default(s). Such written notice shall provide the owner and operator a reasonable time period, not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default(s).
 - 3) If the County determines in its discretion, that the parties cannot resolve the alleged default(s) within the good faith negotiation period, the existing county ordinance provisions addressing the resolution of such default(s) shall govern.
- h. **Future Operators:** Future operators, successors, assignees, or heirs shall agree in writing to accept and to conform to all provisions of the Special Use Permit. Prior notice to the County of the intent to sell or transfer ownership shall be done in a timely manner. Such agreement shall be filed with and accepted by the County before the transfer to a new operator, successor, assignees, or heirs shall be effective.