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FORD COUNTY
ZONING ORDINANCE

APPENDIX A
STANDARDS FOR
WIND ENERGY
CONVERSION SYSTEMS

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APPENDIX A
STANDARDS FOR WIND ENERGY CONVERSION SYSTEMS

- I. INTRODUCTION**
 - A. TITLE**
 - B. PURPOSE**

- II. DEFINITIONS**

- III. APPLICABILITY**

- IV. PROHIBITION**

- V. SPECIAL USE PERMIT APPLICATION**

- VI. DESIGN AND INSTALLATION**
 - A. DESIGN SAFETY CERTIFICATION**
 - B. CONTROLS AND BRAKES**
 - C. ELECTRICAL COMPONENTS**
 - D. COLOR**
 - E. TURBINE CONSISTENCY**
 - F. COMPLIANCE WITH THE FEDERAL AVIATION ADMINISTRATION**
 - G. LIGHTING**
 - H. WARNINGS**
 - I. CLIMB PREVENTION**
 - J. HEIGHT**
 - K. BLADE CLEARANCE**
 - L. SETBACKS**
 - M. DRAINAGE REPAIR**
 - N. PRE AND POST WELL INSPECTIONS**
 - O. PROPERTY VALUES**
 - P. COMPLIANCE WITH ADDITIONAL REGULATIONS**
 - Q. USE OF PUBLIC ROADS**
 - R. TERMS**

- VII. OPERATION**
 - A. MAINTENANCE**
 - B. INTERFERENCE**
 - C. COORDINATION WITH FIRE DEPARTMENT**
 - D. MATERIALS HANDLING, STORAGE AND DISPOSAL**

- VIII. NOISE LEVELS**

- IX. SHADOW FLICKER**

- X. BIRDS BATS, AND WILDLIFE**

- XI. PUBLIC PARTICIPATION**

- XII. LIABILITY INSURANCE AND INDEMNIFICATION**

- XIII. DECOMMISSIONING PLAN**
- XIV. DISPUTE RESOLUTION**
- XV. REMEDIES**
- XVI. CONSTRUCTION PERMIT FEES**
- XVII. PUBLIC NUISANCE**
- XVIII. SEVERANCE**

I. INTRODUCTION

A. *Title*

This Ordinance shall amend the Ford County Zoning Ordinance and be known, cited and referred to as Appendix A Standards for Wind Energy Conversion System.

B. *Purpose*

This Ordinance is adopted for the following purposes:

1. To assure that any development and production of wind-generated electricity in Ford County is safe and effective.
2. To facilitate economic opportunities security and stability of Ford County.
3. To allow the supply of wind energy in support of Illinois' statutory goal of increasing energy production from renewable energy sources.

II. DEFINITIONS

- A.** "Applicant" means the entity or person who submits to the County, pursuant to Section V of this Ordinance, an application for the special use permit for any WECS.
- B.** "Board" means the Ford County Board as it exists on the date of adoption of this Appendix A Standards for Wind Energy Conversion System, and as it shall be constituted in the future.
- C.** "County" means Ford County, Illinois, a body corporate and politic.
- D.** "Financial Assurance" means reasonable assurance from a credit worthy party, examples of which include a surety bond, trust instrument, cash escrow, or irrevocable letter of credit, or whose credit is rated by Moody's at no less than A. (reviewed on an annual basis).

- E.** “Operator” means the entity responsible for the day-to-day operation and maintenance of the WECS, including any third-party subcontractors.
- F.** “Owner” means the entity or entities with a direct equity interest in the WECS(s), including their respective successors and assigns. Owner does not mean (i) the property owner from whom land is leased for locating the WECS (unless the property owner has an equity interest in the WECS); or (ii) any person holding a security interest in the WECS(s) 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(s) at the earliest practicable date.
- G.** “Professional Engineer” means a qualified individual who is licensed as a professional engineer in Illinois.
- H.** (Right of Way) A general term denoting land, property, or interest therein, usually a strip acquired for or devoted to transportation purposes.
- I.** “Primary Structure” means, for each property, the structure that one or more persons occupy the majority of time on that property for either business or personal reasons. Primary Structure includes structures such as residences, commercial buildings, hospitals, churches, schools and day care facilities. Primary Structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.
- J.** “Wind Energy Conversion System” (“WECS”) means all necessary facilities that together convert wind energy into electricity and deliver that electricity to a utility’s transmission lines, including, but not limited to, the rotor, nacelle, generator, WECS Tower, electrical components, WECS foundation, transformer, electrical cabling from the WECS Tower to the substations(s)/switchyard(s), communications facilities, transmission lines, poles, and/or towers, operations and maintenance building, and other related devices, facilities, and equipment.
- K.** “WECS Project” means the collection of WECS as specified in the special use permit application pursuant to Section V of this Ordinance;
- L.** Rotor Diameter – is the diameter of the circle created by rotating turbine blade tips.
- M.** Shadow Flicker - means alternating changes in light intensity caused by the moving blade of a wind power generator casting shadows on the ground and stationary objects.
- N.** Sub-Station – means the apparatus that connects the electrical collections system of the WECS(s) and increases the voltage for connection with the utility’s transmission lines.
- O.** “WECS Tower” means the support structure to which the nacelle and rotor are attached.

- P.** “WECS Tower Hub Height” means the distance from the center of the rotor hub to the top surface of the WECS Tower foundation.
- Q.** “WECS Tower Tip Height” means the distance from the rotor blade at its highest point to the ground at base of the WECS foundation.
- R.** MET Towers – Meteorological Tower means those towers which are erected primarily to measure wind speed and direction plus other data relevant to siting and operation of WECS Projects. For purposes of this ordinance, Meteorological Towers do not include towers and equipment used by airports, the Illinois Department of Transportation, or other similar applications or government agencies, to monitor weather conditions.
- S.** Commencement of Commercial Operation or Date of Operation shall mean the first date on which the project produces electrical power, transmitted from the first operating turbine onto the power grid.
- T.** Participating Landowner - A landowner in Ford County that has entered into a contractual agreement with a wind company that is applying for a Special Use Permit.

III. APPLICABILITY

This Ordinance governs the special use of WECS(s) and WECS Projects that generate electricity to be sold to wholesale or retail markets and private owners of WECS(s) over 100kw who locate the WECS(s) on their own property for their own personal use.

IV. PROHIBITION

No WECS or Substation governed by Section III of this Ordinance shall be constructed, erected, installed, or located within Ford County unless prior Special Use Permit Application has been approved for each individual WECS Tower or Substation pursuant to this Ordinance. Upon special use approval a Road Use Agreement shall be obtained from the Road Authority prior to the issuance of any building permits for, WECS Project or Substation or any part thereof.

V. SPECIAL USE PERMIT APPLICATION

- A.** To obtain special use approval, the Applicant must first submit a special use permit application to the Ford County Zoning Officer. This application must be submitted in English.
- B.** The special use permit application shall contain or be accompanied by the following information:
 - 1.** A WECS Project summary, including: (1) a general description of the project, including its name plate generating capacity; the potential equipment manufacturer(s), type(s) of WECS(s), maximum number of

WECS, and approximate name plate generating capacity of each WECS; the maximum height of the WECS Tower(s) and maximum diameter of the WECS(s) rotor(s); the general location of the project; and (2) a description of the Applicant, Owner and Operator, including their respective business structures.

2. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s).
 3. A site plan for the installation of 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(s), electrical cabling from the WECS Tower to the Substation(s), ancillary equipment, third party transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.
 4. All required studies, including but not limited to shadow flicker, noise impact, flood plain maps and wildlife impact, reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance; studies for shadow flicker and noise impact using computer modeling must be conducted under worse case weather and atmospheric conditions. (ie. Frozen ground, high humidity, no vegetation) and submit documentation evidencing compliance with all applicable FAA requirements.
 5. A color sample shall be submitted and approved by the Board at the time the Applicant applies for a Special Use Permit under this Ordinance.
 6. Financial Assurance that the project can be developed as proposed; and
 7. Any other information normally required by the County as part of its Zoning Ordinance.
 8. The developer will commit to comply with, for the duration of the project, the Illinois law on wind energy conservation system assessment (35 ILCS 200/10 605). In case the state of Illinois lowers the assessment, the developer will continue to pay an amount equal to the property taxes assessed under the initial act (35 ILCS 200/10 605). In case the state of Illinois increases the assessment, the developer will pay property taxes according to such increased program.
 9. Decommissioning Plan
- C. The Applicant shall notify the Board of any changes to the information provided in Section V(B) within thirty (30) days of said changes being identified.

- D. The applicant shall pay a flat fee of fifty thousand dollars (\$50,000). For this fee, the Ford County Zoning Officer will review the application, get the necessary reviews by the Ford County State's Attorney or their appointed Special Assistant State's Attorney and engineering consultants, publish the legal notices, hold the Zoning Board of Appeals Hearing, and send their recommendations, with their findings of fact to the Board for final approval. If the County's expenses exceed fifty thousand dollars (\$50,000) including but not limited to any and all costs and fees for all outside consultants and attorneys, the applicant will be billed and shall reimburse the County of Ford within thirty (30) days.

VI. DESIGN AND INSTALLATION

A. *Design Safety Certification*

1. MET towers, WECS(s) and the WECS Project shall conform to applicable industry standards, including those of the American National Standards Institute ("ANSI"). Prior to the issuance of construction permits, Applicant shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories ("UL"), Det Norske Veritas ("DNV"), Germanischer Lloyd Wind Energy ("GL"), or an equivalent third party. All turbines shall be new equipment commercially available; no used or experimental equipment shall be approved by the Zoning Enforcing Officer or the Zoning Board of Appeals without the issuance of a variance.
2. Following the granting of the special use permit under this Ordinance, a Professional Engineer shall certify, as part of the construction 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 fail-safe mode. Stall regulations shall not be considered a sufficient braking system for over-speed protection.

C. *Electrical Components*

All electrical components of the WECS in the WECS Project shall conform to applicable codes and standards. Standards including but are not limited to Nation Electric Code, ANSI, UL and International Electric Commission.

D. *Color*

WECS towers and blades shall be painted white or gray or another non-reflective, unobtrusive color. Color sample shall be submitted and approved by the Board at

the time the Applicant applies for a Special Use Permit under this Ordinance.

E. *Turbine Consistency*

To the extent feasible, the project shall consist of turbines of similar design and size, including tower height. All turbines shall rotate in the same direction.

F. *Compliance with the Federal Aviation Administration*

The WECS in the WECS Project shall comply with all applicable FAA requirements and submit documentation evidencing compliance with all applicable FAA requirements.

G. *Lighting*

Projects shall utilize minimal lighting. No exterior tower lighting other than normal security lighting shall be permitted except as may be required by the FAA. All WECS Projects are required to use ADLS (aircraft detection lighting system) or equivalent system to reduce the impact of nighttime lighting on nearby residents, communities and migratory birds in accordance with the FAA Advisory circular: 70/7460-IL section 14.1. In the event lighting is required by the FAA, any outage of said lighting due to power outage or storms, must be reported to the FAA, as in a NOTAM (Notice to Airman).

H. *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 15 feet from the ground.
3. No wind turbine generator tower or anemometer tower or site shall include any advertising sign, but logos of the Owner or Operator or the wind turbine generator manufacturer shall not be considered “advertising” for the purpose of this Ordinance.
4. At each entrance of a WECS Tower per Ford County ESTB regulations Owner/Operator shall place an eight-foot, six-inch (8’ 6”) above-ground galvanized post and shall include a blue sign with three-inch (3”) letters and/or numbers in white. The sign/plate shall be eight inches by eighteen inches (8” x 18”) and shall be maintained and visible at all times and shall be in compliance with current highway sign standards.
5. Warning signs identifying underground wire locations shall be placed and maintained at all road crossings.

I. *Climb Prevention*

All WECS Towers must be unclimbable by design or protected by anti-climbing devices such as:

- A. Fences with locking portals at least six feet high; or
- B. Anti-climbing devices 12 feet vertically from the base of the WECS Tower; or
- C. Locked doors and interior ladders.

J. *Height*

WECS Tower Tip Height shall not exceed five hundred - (500) feet.

K. *Blade Clearance*

The minimum distance between the ground and any protruding blades(s) utilized on a WECS shall be fifty (50) feet, as measured at the lowest point of the arc of the blades.

L. *Setbacks*

1. From property lines upon which a primary structure is located, all WECS Towers shall be set back a distance of) not less than two thousand, two hundred fifty (2,250) feet as follows: For non-participating landowners, the distance will be measured in a straight line from the center of the WECS Tower Foundation to the nearest point of the property line of the non-participating owner's property. Participating and non-participating property owners may waive this setback requirement, but in no instances shall a WECS tower be located closer than one thousand (1,000) feet, as measured from the center of the WECS Tower Foundation to the nearest point of a Primary Structure existing at the time of the execution of the waiver.
2. All WECS Towers shall be set back a distance of at least two and sixty-four hundredths (2.64) times the WECS Tower Tip Height or one thousand – three hundred and twenty feet (1320') whichever is greater from adjacent non-participating property lines without a primary structure, established as of the date of approval of the special use permit, unless waived in writing by the affected adjacent property owner(s). Distance shall be measured from such adjacent property line to the center of the WECS Tower foundation.
3. No WECS Tower shall be sited within one- and one-half miles of the corporate limits of any incorporated municipality without waiver of this restriction being executed by the governing body of that municipality.

4. All WECS Towers shall be set back a distance of one- and one-half miles (1.5) from the legally established boundaries, as of the date of approval of the special use permit, of any municipality which enforces its own government. Distance shall be measured from the closest municipal boundary line to the center of the WECS Tower foundation.
5. All WECS Towers shall be set back a distance of at least one and one tenth (1.10) times the WECS Tower Tip Height from the nearest above-ground third party transmission lines, telephone lines and communication towers, in existence as of the date of approval of the special use permit, unless waived in writing by the affected property owner(s) and utility company. Distance shall be measured from the center of the WECS Tower foundation to the closest point on such above-ground public electric power line, third party transmission line, telephone line and center of the base of the communication tower.
6. All WECS Towers shall be set back a distance of at least one and one tenth (1.10) times the WECS Tower Tip Height from the nearest edge of the existing Right of Way of public roads as of the date of approval of the special use permit. Distance shall be measured from the center of the WECS Tower foundation to the nearest edge of the road Right of Way of such public road in existence as of the date of approval of the special use permit. The Township Road Commissioner or County Highway Engineer may waive this setback requirement as to roads within their respective jurisdictions.
7. The Applicant does need to obtain a variance or other approval from the County upon written waiver by the applicable State, County, Township, utility company or property owner(s) of any of the above setback requirements. Any waiver of any of the above setback requirements shall run with the land and be filed with the application and be recorded within thirty (30) days as part of the chain of title in the deed of the subject property.

M. *Drainage Repair*

The Owner or Operator will repair waterways, drainage ditches, field tiles, or any other infrastructures damaged by the Applicant, Owner or Operator during construction and maintenance phases- within fourteen (14) days of notification, field conditions permitting or obtaining knowledge of the fact that Applicant, Owner/Operator caused such damage. For non-participating landowners, any damages to drainage caused by owner/operator will be at the expense of the project owner for the lifetime of the project.

N. *Pre and Post Well Inspections*

A pre-construction well water test within one mile of the project will be done by the WECS Tower company/operator/owner through the Ford County Health Dept. If within the first year after Commencement of operation any well shows

noticeable fluctuation or changes in quality of water, it shall be considered an emergency situation and the Wind Company shall provide clean water to the affected homes during the investigation and repair.

O. *Property Values:*

A property value impact study shall be performed by a qualified real estate appraiser to determine the effects on property and home values in the surrounding areas. The subsection shall include the qualifications of the individual and company that completed the study. The study shall include, but not limited to:

- A. Information regarding the existing property and home values within a distance of 1 mile of the WECS project. The information should be based upon a survey of property values based on transactions occurring within the past five years. Where transaction data is unavailable, tax assessments shall be used provided they are adjusted to account for local differences between market values and assessed values;
- B. An analysis of the proposed facility's impact on property values within the distances identified in this section; and
- C. A description and analysis of factors relating to the proposed site that may impact property values in the area along with a description of the design features and operating procedures that will be used to minimize that impact on property values if any.

P. *Compliance with Additional Regulations*

Nothing in this Ordinance is intended to preempt other applicable state and federal laws and regulations.

Q. *Use of Public Roads*

An Applicant, Owner, or Operator proposing to use any county, municipality, township or village road(s), for the purpose of transporting WECS or Substation parts and/or equipment for construction, operation, or maintenance of WECS(s) or Substations(s), shall, prior to the issuance of construction permits:

- A. Identify all such public roads; and
- B. Identify all agencies involved; and
- C. Complete a Road Use Agreement: enter into legal agreement concerning road upgrade and maintenance with each of the affected jurisdictions; and
- D. Obtain applicable weight and size permits from relevant government agencies prior to construction and/or maintenance activities.

- E. Conduct a pre-construction or pre-maintenance baseline survey to determine existing road conditions and Right of Way for assessing potential future damage; and
- F. Expectations of the Road Authority when road reconstruction is involved.
- G. Easement on private property will be the sole responsibility of the applicant, owner or operator.
- H. Outline of time schedule including any and all provisions of the Ford County Engineer approval.
- I. Outline any and all permits required for entrance off the Road Authority Roads.
- J. Secure Financial Assurance, in a reasonable amount agreed to by the Ford County Highway Engineer and Road Authority for the purpose of repairing any damage to public roads caused by constructing, operating or maintaining the WECS.
- K. Reasonable dust control measures as determined in the sole discretion of the Board, the Ford County Highway Engineer and/or the Township Road Commissioner shall be required during construction of the WECS.

R. Term

Notwithstanding any other provisions of the Ford County Zoning Ordinance, a special use permit for a WECS shall be effective and may be relied upon so long as construction of the WECS is commenced within 36 months from date of approval of the special use permits associated with the WECS Project. If updated studies are in compliance with the current Ford County Zoning Ordinance Appendix A, a single one-year extension may be granted by the Board approval without further ZBA public hearing.

VII. 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 County. In addition to the above annual summary, the Owner or Operator must furnish such operation and maintenance reports as the County reasonably requests.
2. It being understood that nothing in this Section VII. shall be construed as to require any Owner or Operator of the WECS to violate any non-disclosure or confidentiality covenant that the Owner or Operator may have with any of (i) equipment supplier(s), (ii) the purchasers of electricity and/or environmental attributes

from the WECS, or (iii) any debt or equity financier of the WECS.

3. Any physical modification to the WECS that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification under Section VI(A)(1) of this Ordinance from the original third-party certifying entity of the WECS (ie: NV, GL, UL, etc.). Then the Owner or Operator of the WECS shall obtain such recertification. Like-kind replacements shall not require recertification. Prior to making any physical modification (other than a like-kind replacement), the Owner or Operator shall confer with a relevant third- party certifying entity identified in Section VI(A)(1) of this Ordinance to determine whether the physical modification require re-certification.
4. Any variation to foundations and/or tower structures from the approved Special Use Permit with the exception of like-kind replacement constitutes a new project and a new Special Use Permit procedure.

B. Interference.

1. The Applicant shall provide the applicable microwave transmission providers and local emergency service provider(s) (911 operators) copies of the project summary, a pre-construction baseline study of all properties within a 5-mile radius of all WECS in the WECS Project, and site plan, as set forth in Section V(B)(1) and V(B)(3) of this Ordinance. The baseline study shall include radio communication services (commercial stations as well as emergency county communications), television (satellite and over the air antenna reception), and internet reception. The baseline study shall be paid for by the applicant and approved by the Board. To the extent that the above provider(s) demonstrate a likelihood of interference with its communications resulting from the WECS(s), the Applicant shall take measures to mitigate and eliminate such anticipated interference. If, after construction of the WECS, the Owner or Operator receives a written complaint related to the above- mentioned interference, or any other type of interference with the regulated airwaves, the Owner or Operator shall take all steps required to mitigate and eliminate such complaint being brought to the Board. All interference issues must first be taken to the Owner or Operator for consideration before The Owner or Operator shall respond to the complaint within thirty (30) days.(Refer to Section XV Remedies contained herein)
2. If, after construction of the WECS, the Owner or Operator receives a written complaint related to interference with radio communication services or any other regulated airwave (commercial stations as well as emergency county

communications), local broadcast, residential television (satellite and over the air antenna reception), and internet reception, the Owner or Operator shall respond to the complaint within thirty (30) days--and provide a copy of its response to the Ford County Zoning Officer (Refer to Section XV Remedies contained herein)

C. *Coordination with Local Fire Department*

1. Prior to commencement of construction, the Applicant, Owner or Operator shall submit to the local fire department(s) a copy of the site plan.
2. Prior to the issuance of construction permits, the Owner or Operator shall cooperate with the local fire department to develop and implement a fire protection plan in coordination with local emergency response authorities to ensure that all the appropriate emergency services agencies are cognizant of actions required in the event of a fire or other emergency at the WECS Project. The Owner or Operator shall be responsible for any on site emergencies and any costs incurred related to their WECS Project. In addition, the Owner or Operator of the WECS Project shall provide training for, and the necessary equipment to, local emergency response authorities and their personnel so that they can properly respond to a potential emergency at the WECS Project. Proof of training shall be provided and paid for by the Applicant.
3. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

D. *Materials Handling, Storage and Disposal*

1. At the expense of the Owner/Operator all wastes related to the construction, operation and maintenance of the WECS in the WECS Project shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.
2. At the expense of the Owner/Operator all hazardous materials related to the construction, operation and maintenance of the WECS in the WECS Project shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.

E. *Production Reporting*

The Owner/Operator shall notify the Board in writing of the date of commencement of commercial operation. Once the WECS Project is operational, the Owner or Operator shall provide quarterly production reports (January 15, April 15, and October 15 of each

year) to the County Board for each turbine. If a turbine is considered non producing electricity for 6 (six) months, the Owner or Operator must provide a remedy to get the turbine back in working order within six (6) months. The applicant shall update the Board on the progress of this issue every thirty (30) days. The Board, in its sole discretion, may grant an extension to the six (6) month deadline. The Board shall be notified in writing of any turbine that has not generated power for a six (6) month period and an explanation why. When a minimum of 50% of the WECS turbines have not been producing electricity for 6 (six) months, the Board can declare a WECS Project to be decommissioned. When a project is decommissioned, all WECS shall be removed.(This requirement may NOT be waived.);

VIII. NOISE LEVELS

Noise levels from each WECS or WECS Project shall be in compliance with applicable Illinois Pollution Control Board (IPCB) regulations. The Applicant, through the use of a qualified acoustic professional, as part of the special use application process, shall appropriately demonstrate compliance with the above noise requirements. This will be presented as a graph (plot) of physical distance and db contour mapplot at one-foot intervals. The cost of this is paid for by the applicant no noise levels shall exceed IPCB regulations at the property line of a primary structure and shall not exceed 40 Laeq at a primary structure, between the hours of nine P.M. (9:00 P.M.) and six A.M. (6:00 A.M.). The non-participating property owner may waive this requirement. When a resident sends a written complaint to the Board and explaining their noise related problem and is deemed relevant as stated in VIII - Noise Levels above an acoustic engineer firm licensed in the state of Illinois shall be hired by the County to conduct acoustic sound studies. This study shall be paid for by the owner of the WECS facility to determine compliance. A written complaint to the Board that is deemed credible by the Board shall refer to XV. Remedies.

If noise exceeds IPCB noise levels measured from a non-participating landowner's property line or low frequency levels above 40 Laeq according to WHO standards for rural nighttime noise levels found at any structure during nighttime hours, then:

- A.** The participating landowner where nuisance turbine is located is notified of the non-compliance.
- B.** Owner/Operator shall be required to shut down the problem turbine(s).
- C.** If after fifteen (15) days following the complaint, the problem is not resolved the county shall refer to the State's Attorney for enforcement under "Remedies".
- D.** If a resolution cannot be met, the turbine(s) in question must be

turned off during the time period that the turbine is in default. If the problem is not resolved in sixty (60) days, the County has the authority to decommission said turbine(s) at the WECS Owner's expense.

IX. SHADOW FLICKER

With the use of shadow mitigation technology, there shall be zero hours per year of shadow flicker allowed on a non-participating landowner's primary Structure. The non-participant landowner and/or participant may waive this requirement. If the shadow flicker is present, said turbine(s) will be shut down during periods where shadow flicker encroaches onto a non-participating landowner's primary structure. Shadow mitigation Technology shall be used on all non-participating areas determined as modeling dictates. After receiving a written complaint to the Board; refer to the Dispute Section.

X. BIRDS, BATS AND WILDLIFE

The Applicant, through the use of a qualified professional at their expense, such as an ornithologist or wildlife biologist, shall conduct an avian habitat study, as part of the special use application process, to determine impact of the installation of WECS(s) will have on birds, bats and wildlife. A copy of said study shall be provided to the County and the Ford County Soil and Water Conservation with the Special Use Application. The Applicant must take action to mitigate such adverse impacts on habitat and migration. Prior to the substantial completion of the physical aerial erection of the wind turbines, the Applicant shall develop the reasonable satisfaction of the Illinois Department of Natural Resources ("IDNR") and the United States Fish and Wildlife Service ("USFWS") (to the extent the IDNR and the USFWS choose to participate in the process), a professional monitoring program of reasonable duration and scope, consistent with common practice in the wind power industry, to assess a migratory bird mortalities resulting from the operation of the WECS Project. The monitoring program shall be undertaken at the Owner's expense and shall be performed at the direction of a qualified independent professional to be mutually agreed upon by the aforesaid parties in good faith. Such monitoring program shall commence upon the substantial completion of the physical aerial erection of the wind turbine generators, unless otherwise mutually agreed to by the Applicant, IDNR and USFWS (to the extent the IDNR and the USFWS choose to participate in the process). If the results of the monitoring program demonstrate the need, the Applicant of the WECS Project shall work with IDNR and USFWS (to the extent the IDNR and the USFWS each, respectively, choose to participate) to develop an appropriate response, including the potential further study and implementation of practicable mitigation measures that may either directly or indirectly minimize migratory bird mortality or increase bird populations. The Applicant shall review and consider and shall decide to follow the guidelines suggested by the Illinois Department of Natural Resources ("IDNR") and United States Fish and Wildlife Services ("USFWS") Endangered Species Consultation Program. All WECS towers shall be set back

at least one and one-half (1.5) miles from any identified active eagle's nest. Special consideration shall be given to NRI and LESA reports when citing turbines.

XI. PUBLIC PARTICIPATION

Nothing in the Ordinance is meant to augment or diminish existing opportunities for public participation in the County's consideration of the special use application.

XII. LIABILITY INSURANCE AND INDEMNIFICATION

- A.** Commencing with the issuance of Special Use Application, the Applicant, Owner or Operator of the WECS(s) shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$3 million per occurrence and ten million (\$10,000,000.00) in the aggregate. Such insurance may be provided, pursuant to a plan of self-insurance, by a party with a net worth of \$50 million or more. The County shall be named as an additional insured with the designation of primary and non-contributory on the policy to the extent the County is entitled to indemnification in accordance with Section XII.B. Workman's Compensation on all employees shall be maintained. Owner/Operator shall maintain and provide a copy of Certificate of Liability Insurance yearly and file with the County.
- B.** Applicant, Owner or Operators shall defend, indemnify and hold harmless the County and its officials, employees and agents (collectively and individually, the "Indemnified Parties") from and against any and all claim, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees, except to the extent arising in whole or in part out of the negligence or intentional acts of such Indemnified Parties (such liabilities together known as "liability") arising out of Applicant, Owner or Operators selection, construction, operation and removal of the WECS in the WECS Project and affiliated equipment including, without limitation, liability for property damage or personal injury (including death), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the County's other indemnification rights available under the law. In the event of a lawsuit against the Board or the citizens of Ford County, if the courts deem it a frivolous lawsuit, the Applicant, owner/Operator of the WECS project suing shall be responsible for all the Ford County and private citizens legal fees. Venue for all disputes shall be in Ford County.

XIII. DECOMMISSIONING PLAN

Prior to the issuance of Special Use Applications, Owner or Operator shall prepare a Decommissioning Plan and shall be financially responsible for implementation of the Decommissioning Plan, said plan shall include the following elements:

- A.** Description of the triggering events for decommissioning of the WECS Project, which shall include, but not be limited to any wind turbine generator and/or any equipment not being used or generating electricity for a continuous period of six months.
- B.** Removal of all above-ground structures, debris and cabling, and all physical material pertaining to the project improvements and provisions for the removal of underground foundations down to a depth of 5 feet below the soil surface and hauled to a certified concrete recycling facility. Access drives(lanes) may be left in place if the owner of the property waives the removal of such. Any waivers(including but not limited to setbacks, removal, etc.) between landowners and the Owner or Operator shall in no way cause the Board or Ford County employees to be liable in any way. Any waiver of any of the removal of such access drives shall run with the land and be recorded as part of the chain of title in the deed of the subject property. No WECS Tower shall be left standing, and all materials shall be handled and disposed of according to local, State and Federal Law.
- C.** Provisions for the restoration of the soil surface and vegetation to the same condition that existed immediately before construction of such improvements. Items required to be repaired after decommissioning are required but not limited to county and township roads, bridges and culverts. An independent professional engineer shall be present to ensure drainage tiles, waterways, culverts, etc. are repaired as work progresses for any county, and township properties. All storm water management, floodplain, and other surface water codes and ordinances shall be followed.
- D.** An estimate of the decommissioning costs and salvage value, certified by a Professional Engineer with expertise in decommissioning wind farms before approved by the Board, which shall be updated and submitted to the Ford County Zoning Enforcing Officer every two years; from the commencement of commercial operation.
- E.** Financial Assurance, secured by the Owner or Operator, for the purpose of adequately performing decommissioning, in an amount equal to 110% of the estimate set forth in paragraph D above. The costs associated with the Professional Engineer's certified estimate of the decommissioning costs shall be paid by the Applicant, Owner, or Operator, but in no instance shall it be paid by the County. Fifty

thousand dollars (\$50,000.00) cash per turbine shall be deposited in the cash escrow account within sixty (60) days of the Special Use Permit approval. Then every two (2) years at the time of the Engineers update, fifty thousand dollars (\$50,000.00) per turbine or twenty percent (20%) of the balance whichever is greater shall be deposited ~~in~~ into a cash escrow within sixty days (60) of the Board approval of the estimate and a certified letter is sent to the owner/operator. If the payment is not received, refer to Remedies Section XV. The balance of the estimate shall be secured in another acceptable financial assurance. The WECS Owner/Operator shall grant perfected security in the escrow account by the use of a control agreement establishing the county as owner of record pursuant to the secured transit article of the uniform code (810 ILCS 9ETSEQ). The estimate may include net savings from salvage value. The Financial Assurance shall not decrease over time, but may be increased by the County if necessary to cover the reviewed estimated cost every two years. The Financial Assurance instrument shall be in place before any construction permits are issued; an affidavit to the Ford County Zoning Officer representing that all easements for wind turbines shall contain terms that provide financial assurance, including access to the salvage value of the equipment, and for the property owners to ensure that the WECS and related improvements are properly decommissioned within six (6) months of abandonment or earlier termination of the wind project. After the six (6) month period, any turbines left standing will be deemed a health hazard. At this time all escrow funds will be utilized by the County which will have the right to remove the towers and access any related salvageable materials for the County to sell. Additionally, the County is not obligated to remove the concrete improvements which provide the structural base for the towers, this will be the sole responsibility of the property owner. Further, any costs exceeding the escrow funds relating to decommissioning, will become the sole responsibility of the property owner. If this money is not readily available, this will result in a Lien on the property until the remaining expense is paid in full.

- F.** Identification of and procedures for County access to Financial Assurances updated annually;
- G.** A provision that the terms of the Decommissioning Plan shall be binding upon the Owner or Operator and any of their successors, assigns, or heirs; and
- H.** A provision that any authorized Ford County representative shall have access to the site, pursuant to reasonable written notice, to inspect, monitor and concur until the decommissioning process has been satisfactorily.

XIV. DISPUTE RESOLUTION

- A.** 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.
- B.** The Applicant, Owner and Operator shall have up to sixty (60) days from receipt of written notice of the alleged default(s) to enter into negotiations with the affected party(ies), and to determine the reasonable actions to be taken to reach a mutual resolution. The agreed upon steps to resolution and anticipated timeline shall be shared with the Board in writing.
- C.** Based on the alleged default(s) and required actions to reach a resolution, the Board shall grant the Applicant, Owner or Operator a 30-day cure period, to implement said cure. If after the designated cure period: (i) the Applicant, Owner or Operator has not cured the alleged default, or (ii) the Board determines in its sole discretion, that the parties cannot resolve the alleged default(s) within the 30-day negotiation period, the existing County Ordinance provisions addressing the resolution of such default(s) shall govern. (See XV Remedies)

XV. REMEDIES

- A.** Any violation of this Ordinance shall be an offense punishable by fine not to exceed five hundred dollars (\$500). Each violation shall be a separate offense. Each day a violation occurs or continues shall be a separate offense. A court may set any appropriate per day fine for each day the infraction exists or until such infraction is remedied. It is the goal of the Ordinance to promote structural safety to protect the public, and the court in setting any appropriate fine shall consider the nature of the offense, the degree of public safety involved, the efforts of the County and responsible Owner or Applicant to resolve any infractions quickly and safely. It is the intent that any disputes between the parties be resolved promptly and where possible by informal discussion as outlined elsewhere in this Ordinance.
- B.** In the event of a failure to reasonably comply with Section XIII of this Ordinance, the Board may in their sole discretion refer their alleged violations to the State's Attorney of Ford County for enforcement under this section. The cure period of the alleged default(s). The cure period may be extended by the Board if a reasonable solution is provided for the default/complaint. If the Board grants an extension of the cure period, then the Applicant, Owner or Operator will provide an update on the progress towards resolution every 30 days to the Board; and/or
- C.** If any violation continues for an uninterrupted period of sixty (60) days, the Board may, in its sole discretion, revoke the Special Use Permit for the WECS Project in writing to the Applicant, Owner or Operator, which will trigger decommissioning of the project.

- D.** The Applicant Owner/Operator is liable for payment of cost and fees, including Attorney's fees related to enforcement of this section.

XVI. CONSTRUCTION PERMIT FEES

Upon application for construction of each WECS Tower, payment of a fee for each generator in the WECS Project of fifty thousand dollars (\$50,000) for the first two (2) megawatts and an additional amount of ten thousand dollars (\$10,000) for each additional megawatt the generator is rated for or prorated portion thereof.

XVII. PUBLIC NUISANCE

Any WECS declared to be unsafe by the Board by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage, or abandonment is hereby declared a public nuisance and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedure set forth in this Ordinance.

XVIII. SEVERANCE

If any section, clause, or provision of the Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the validity of the remainder of the Ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.