

## CHAPTER 153: WIND ENERGY

### Wind Farms

#### §153.01 Wind Energy Conversion Systems Purpose

- (A) Assure the protection of health, safety, welfare, and property rights and values of landowners and residents in Tazewell County.
- (B) Protect the County's ecological environment.
- (C) Assure that any development and production of wind-generated electricity in Tazewell County is safe and effective.
- (D) Facilitate economic opportunities for all County residents.
- (E) Promote the supply of wind energy in support of Illinois' statutory goal of increasing energy production from renewable energy sources.

#### §153.02 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.

#### §153.03 Prohibition

No WECS or substation governed by this ordinance shall be constructed, erected, installed, or located within one and one half miles (1.5) miles of any self-governing municipality unless prior siting approval (approved Special Use, Site Development, and Building Permit issuance) has been obtained from the self-governing municipality for each individual WECS and substation.

#### §153.04 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. Upon special use approval, a Road Use Agreement shall be obtained from the Road Authority prior to the issuance of building permits for any portion of a WECS Project, including any wind turbines, substations or any part thereof. All special use applications require approval of a majority vote of the County Board. WECS and substations are permitted only in the A-1 and A-2 zoning districts by special use upon approval by the County Board and only on sites where seventy-five (75) percent of the site contains soils of having less than a productivity index (PI) of 125. Soils to be tested will be within a quarter mile radius (1320 feet) of where said turbine will be erected.

Average soil PI is 123 in Tazewell County. It is in the tri county comprehensive plan.

"Special Use permit must include an assessment of whether seventyfive percent of the proposed site contains soils with a productivity index of less than 125; soils of this nature are not considered prime farmland. This assessment is a valuable practice that should be continued into the future. We don't feel it is necessary to have soil tests. You are right! Tazewell County has good soil maps.

#### §153.05 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 if such person or entity 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 a 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, machine sheds/work shops, livestock barns, and day care facilities. Primary structure excludes such structures as hunting sheds, storage sheds, pool houses, and unattached garages.

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.

Wind Energy Conversion Systems (WECS): Shall mean all necessary devices that together convert wind energy into electricity, including the rotor, nacelle, blade, 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.

## **§153.06 Special Use Application Requirements**

In addition to the Special Use Permit requirements per the County Zoning Ordinance, a WECS applicant shall at least sixty (60) days prior to filing any special use application, provide to the County Board at a regularly scheduled Board Meeting, descriptions, site plans, studies, reports, certifications, and approvals demonstrating compliance with the Ordinance. All documents provided in the pre-application meeting shall be subject to the Illinois Freedom of Information Act.

**WECS applicant shall allow at least sixty (60) days prior to filing any special use application, to allow adequate time for public comment, and for board members to review information and make knowledgeable decisions. Also, neighboring landowners should be informed to allow more time for public comment and reduce future conflict**

- (A) Prior to the submittal at a County Board meeting required above, a pre-application meeting shall be held with representatives from the Tazewell County Community Development Department, the County Board, the County Highway Department, the impacted township(s), the Tazewell County Soil and Water Conservation District, and all other applicable departments and agencies as determined by the Community Development Department for any developmental WECS projects. The pre-application meeting shall be open to the public and notice provided in a paper of general circulation throughout the County.
- (B) In addition to a Special Use Permit application required, a WECS applicant shall submit a “WECS Project Summary,” including:
- (1) A general description of the project, including its approximate name plate generating capacity, the actual equipment manufacturer(s), type(s) of WECS, maximum 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 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, along with documentation showing that each property owner agrees to the filing of the Special Use 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 completed by a third party with no vested interest in the project (including but not limited to: natural resource areas; bird and bat migration paths; shadow flicker; noise levels; and vibration levels). Modeling for shadow flicker and noise impact must be conducted under worst case weather and atmospheric conditions and during daylight and darkness (i.e. frozen ground, high humidity, no vegetation, day) and submit documentation evidencing compliance with all applicable FAA requirements.
  - (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) Financial Assurance that the WECS project can be developed as proposed.
  - (10) The applicant shall immediately notify the County Community Development Department of any changes to this information, which would occur while the Special Use Permit application is

pending. Applicant will also provide at that time any other information normally required by the County as part of its Zoning Ordinance.

- (11) If the applicant, owner, or operator proposes to make a change in the project, after submittal to the County Board as set forth in the first paragraph of this §153.06 the special use application, including moving a turbine siting, then the special use hearing shall be continued until a date at least thirty (30) days after the change was provided the Zoning Board of Appeals at an open meeting.
- (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.
- (D) The applicant, upon submittal of an application for a WECS Special Use Permit, shall submit a certified check to the Tazewell County Community Development Department in the amount of one hundred thousand dollars (\$100,000) made payable to Tazewell County. This amount shall be placed in FDIC-insured money-market accounts and will be used to cover the County's cost incurred during the special use application review process and public hearings; including, but not limited to, costs of experts and attorneys retained by the County and the cost of any appeals or judicial review. Should the actual costs to the County exceed the cost deposit, the applicant shall remit additional funds as outlined in the applicable fee schedule within fifteen (15) days of the receipt of written notice from the Tazewell County Community Development Department. The County may stay the processing of an application or continue any hearings until additional funds have been paid.

These are potential large and lengthy hearings, this is nothing new, many counties have this. It is there to protect tax payers dollars.

- (E) In addition, the WECS operator, upon submittal of an application for a WECS Special Use Permit, shall submit a certified check to the Tazewell County Community Development Department in the amount of one hundred thousand dollars (\$100,000.00) into an Enforcement Fund. This amount shall be placed in an FDIC-insured money-market account and will be used to investigate and enforce mitigation of complaints. These funds shall be returned if the Special Use Permit is denied.

If there is a problem in the future that needs to be rectified, then the money can be drawn from this fund instead of depleting the general county funds. For example, if there is a noise complaint that the county needs to address, you will not have to worry about where you will be able to draw the funds, you will have them in a specific account.

## **§153.07 Design and Installation**

### **(A) Design Requirements:**

- (1) WECS shall conform to applicable industry standards, including those of the American National Standards Institute (ANSI) taking into account local conditions. 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 the greater of three thousand (3,000) feet or six (6) times the height of the WECS tower from all property lines. A participating landowner or non-participating property owner may waive this setback requirement, but in no case shall a WECS be located closer to a primary structure than one and one-half (1.5) times the height of the WECS tower.

The benefit of our proposed setbacks is that more people will be compensated, and it will reduce conflict among neighbors. It is not unheard of for neighbors to sign good neighbor agreements or waive restrictions to allow their neighbors to benefit, while they are compensated for what they too are giving up - such as the safety of their homes and property to a distance of 1 km during a thunderstorm, allowing shadow flicker, or consenting to an increased noise level for example.

There will not be any less towers. Turbines are spaced apart from each other anyways for efficiency. One contract in Tazewell County explains a wind protection area, meaning they need to utilize the wind in this zone for each turbine "a Wind Protection Area, defined as a circular area of land surrounding each wind turbine erected by Developer outside the

Lands, such area having as its center point the geometric center of the base of the wind turbine tower and a radius equal to seven (7) times the nominal diameter of the area swept by the blades of the subject wind turbine” *Rotor diameter’s are roughly 450-500’ for a modern turbine.*

- (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 at least one half (0.5) mile from all large animal shelter buildings. A participating or non-participating landowner may waive this setback requirement.
- (4) All WECS towers shall be at least one and one half (1.5) miles from any public or private school property line.
- (5) All WECS substations shall be setback one thousand five hundred (1,500) feet from the property line of any property containing a primary structure.
- (6) The applicant does need to obtain a variance 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.

- (I) **Height Restriction:** No WECS Tower Height shall be greater than five hundred (500) feet. The minimum distance between the ground and any protruding blade(s) utilized on a WECS shall be fifty (50) feet, as measured at the lowest point of the arc of the blades.

*A height limit must be put in place. A larger tower is not out of the question, but that should be the exception and not the rule. With a special use permit, the wind companies can apply for anything. A 500 foot height restriction also keeps them out of FAA airspace. WECS over 499 ft require aeronautical studies. The 600 foot tall turbines have only been in the Midwest for a couple of years, maintaining limit will help ensure that cell service and GPS service is maintained in rural communities.*

- (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. ADLS future advancement shall warrant new installation of equipment to lessen environmental light pollution and visual nocturnal disturbance.

*This will benefit of all residents of Tazewell County. FAA requires a flashing red light on any structure over 200’. ADLS will minimize the disruption to the night and follows all FAA guidelines.*

- (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 affected jurisdictions (municipal, township, county, state, etc.) must be agreed upon by all parties and recorded with the Tazewell County Recorder’s Office. A signed agreement must be recorded prior to the issuance of the first Building Permit. The road agreement shall include, but not be limited to:

- (a) An applicant, owner, or operator proposing to use any public 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 who have jurisdiction over the roads 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 during the WECS project up to at least an eighty thousand (80,000) lbs. load limit by the end of construction; and  
 All roads used by the wind companies will be connected from the main roads. There will be no isolated roads. It is important that they are brought up to proper weight limits because there will be continuous maintenance and unplanned maintenance. Each time they will need to come out with heavy equipment. It should be at the cost of the developer to maintain the roads, such as it is in the existing Rail Splitter roads.
  - 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.

(M) **Turbine Location:** No turbine or substation shall be moved more than fifty (50) feet in any direction from the location set forth in the special use application.

The studies submitted by the wind companies in their application should be properly planned and homework done ahead of time. Moving a tower will impact the results of such studies and parameters by which they were potentially approved; such as noise, shadow, or soil samples. One example of a need to move 50' would be to avoid field tile.

**§153.08 Operation**

- (A) 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.
- (B) Any physical modification to the WECS that alters the mechanical load, mechanical load path, or major electrical components shall require reapplication for a Special Use under 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 an independent third-party certifying engineer and provide that information to the County to assist in determining whether the physical modification requires reapplication. The final determination of whether a modification requires a new Special Use application shall be the decision of the County Board. This includes any WECS battery energy storage systems constructed, erected, installed, or located within Tazewell County.
- (C) **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, satellite, and internet transmissions and interference 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. 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 any of the abovementioned interferences, the County shall have the right to investigate and enforce the mitigation of the complaint.

- (D) **Flicker:** Zero shadow flicker shall occur beyond the property line of any participating property. If, after construction of the WECS, the County receives a written complaint related to shadow flicker, the County shall investigate, and if the WECS are found in non-compliance, the owner/operator shall shut down said turbine(s) during periods when shadow flicker encroaches onto a non-participating property. If owner/operator is unable to remedy the complaint within 30 days, the WECS shall be decommissioned.

At the time of the application, they know exactly where shadow flicker is. Modeling can determine better placement, or when certain towers may need to be shut down. The developer may enter into an agreement with homeowners to compensate for disruptions, but under no circumstance should a land or homeowner be forced into any amount of flicker without agreement. It is also important to note that the large majority of shadow flicker will come during the hours when people are at home enjoying the sunrise or the sunset.

(E) **Coordination with Local Fire Departments:**

A local fire department will undoubtedly have liabilities in the event of a fire. A fire in the nacelle, battery explosion, or oil leak could lead to a large field fire, and emergency situations. Local responders will need to have proper training and potentially special or additional equipment in the event of a fire or in an evacuation. Evacuation zones will be large in the event of a fire.

- (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 and owner/operator shall pay for fire department(s) required training.
- (3) Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

(F) **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 at the expense of the owner/operator.
- (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 at the expense of the owner/operator.

**§153.09 Sound Limits**

It is important to note we are talking about dBA; not decibels. These are NOT THE SAME. The ambient nighttime level at many rural Tazewell County resident's homes is around 25dba. With the proposed levels of 38dba, the sound level is perceived to have more than doubled. If it increases to 45 dba, the level is perceived to have doubled yet again. It would be perceived to be 4 times louder than the ambient sound level of 25 dba. Land and homeowners can waive sound limits at their discretion and enter into agreements with the developers.

- (A) **Audible Sound Limits:** No WECS shall be located so as to cause any Class A non-participating property to receive sound that exceeds 38 dBA at the property line of the receiving property or, if the receiving property



comprises more than one class of land, at the Class A boundary.

**(B) Requirements:**

- (1) All instruments must meet ANSI or IEC Type 1 Precision sound level meter performance specifications.
- (2) The application shall comply with ANSI S12.9, 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. Data utilized shall be measured during Pasquill Stability Class E or F conditions. 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.
- (5) If, after construction of the WECS, the County receives a written complaint related to sound limits, the County shall investigate, and if the WEC(S) are found in no-compliance on any non-participating property, the owner/operator shall shut down said turbine(s) until the turbine(s) is in compliance with said ordinance. If owner/operator is unable to remedy the complaint within 90 days, the WECS shall be decommissioned.

**§153.10 Birds**

*It is a known fact that wind turbines kill birds and we can take steps to mitigate this impact. We have local and migratory birds in Tazewell County. There is no downfall to the county and its residents to requiring Identiflight.*

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 WECS 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 eagle's nest. Special consideration shall be given to National Resources Inventory (NRI) and Land Evaluation and Site Assessment (LESA) reports when establishing turbine locations.
- (B) All WECS projects must be equipped with an Identiflight Aerial Detection System, or an equivalent system thereto.

**§153.11 Public Participation**

Nothing in the ordinance is meant to augment or diminish existing opportunities for public participation such as public hearings and open meetings. At least ninety (90) days prior to the submission of any WECS application, the applicant shall make a reasonable effort to inform members of the public of the proposed project. Mailings and notices of public community meetings or open houses shall be sent out to landowners and residences within the footprint and to landowners and residences within one and one-half ( 1.5) miles of the proposed outside boundary of the project. These mailings should make reference to where additional information, including the actual application being filed with the County, can be obtained regarding the proposed project. Advertisements in local newspapers and at least one community meeting are also required.

**§153.12 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 ten million dollars (\$10,000,000) per occurrence and fifty million dollars (\$50,000,000) in the aggregate, with an annual certificate of insurance being provided to the County, with the County being added as an additional insured with the designation of primary and non-contributory. Upon written notice, applicant shall promptly increase such liability insurance if such amount is increased in this Ordinance. The applicant shall provide evidence of such increased insurance to the County. Insurance coverage shall be maintained without interruption from the date of permitting through the decommissioning of all wind turbines. Certificates of insurance acceptable to the County and in compliance with this section shall be filed with the County prior to the commencement of any work on the WECS and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required under this section shall contain a provision that coverages afforded under the policies shall not be cancelled or allowed to expire until at least sixty (60) days written notice has been given to the County. Applicant shall also, to the fullest extent permitted by law, defend with counsel acceptable to the County, indemnify, and hold the County, its employees, Board Members and agents harmless for any action due to or arising out of the construction, maintenance, decommissioning, deconstruction and/or operation of the WECS, including the payment of any attorney's fees and costs arising out of any action due to or arising out of the construction, maintenance and/or operation of the WECS.

### **§153.13 Decommissioning and Site Reclamation Plan Requirement**

**We feel this decommissioning plan is very strong; and would benefit and protect the county and all taxpayers in the long run. A strong decommissioning plan is very important due to the large costs and uncertainty of the future.**

At the time of the Special Use application, the County and the applicant, owner, and/or operator must submit 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 County with any application for a WECS Special Use Permit.

The applicant or subsequent project operator shall ensure that the WECS facilities are properly decommissioned within twelve (12) months of the end of the project life or the abandonment of the facility. The applicant or subsequent project operator's obligations shall include removal of all equipment and physical materials (concrete, rebar, etc., but excluding fill), negotiated 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, who is hired by the County and paid for by the Applicant 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.

The amount of financial 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 County Board shall jointly:

- (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 and an independent engineer of the County's choosing; the County will review all estimates and make a recommendation to the County Board for an acceptable estimate. The 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 the County to access the financial assurances; and
  - (12) A provision that the 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 (1) 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 County and/or its designee shall have access to records in order to determine the electric generation of every turbine.
  - (3) The company dissolves or terminates the project.
  - (4) The principal company dissolves or any of the turbines fall into disrepair, is in threat of collapsing or creating any other health and safety problem.
- (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) A qualified independent drainage contractor shall be present to ensure drainage tiles, waterways, culverts, etc. are repaired as work progresses.
- (7) 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 fifty percent (50%) 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 at Applicant's cost 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 hired by the County-and paid for by the Owner/Operator. 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 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 the 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 the 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.
  - (6) 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 affect 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.
  - (7) The 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) Effective upon decommissioning, reclamation, vacation and extinguishment, title to any rights in the participating properties shall automatically revert to and be reconveyed to the participating landowner, and owner/operator shall have no further rights, title, interests, benefits and/or liability with respect to such property.
- (H) To the extent that the WECS facility is not removed by the Owner/Operator and the Financial Assurance is found to be insufficient to cover the costs of the decommissioning, the participating property owner is responsible for decommissioning any portion of the WECS facility on the participating property. If the participating property owner fails to complete the decommissioning within six (6) months after notice from the County, the participating property owner agrees to allow the County access to the property to perform the decommissioning, and the participating property owner shall be liable to the County for all decommissioning costs incurred by the County.

**§153.14 Remedies**

- (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) Prior to implementation of the existing County procedures for the resolution of such default(s), the appropriate County body or representative 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).
- (C) If the County determines in its sole 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 and the County shall be entitled to take any other action permitted at law or in equity.

**§153.15 Future Operators**

Future operators, Participating Property owners, 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 of the WECS project 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.

**§153.16 Severability**

In the event any term or provision of this Ordinance shall be held, illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Ordinance shall not be affected thereby and shall remain valid and in full force and effect.

**§153.17 Fees Charged For Building Permit**

- (A) The fees for processing of the building permit applications for a WECS shall be \$20 per foot of total height (including blades) for each turbine and paid to the County upon the filing of the building permit application.
- (B) WECS are permitted only in the A-1 and A-2 zoning districts by special use upon approval by the County Board.