

# FINAL DRAFT

## Lee County Board Dixon, Illinois

### ORDINANCE NO. \_\_\_\_\_

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#### AN ORDINANCE AMENDING THE REGULATING DEVELOPMENT OF WIND ENERGY CONVERSION SYSTEMS ORDINANCE

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- A. Applicability.** The purpose of this ordinance is to facilitate the construction, installation, and operation of Wind Energy Conversion Systems (“WECS”) in Lee County that promote economic development and ensure the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands, endangered species habitats, conservation lands, and other sensitive lands. This ordinance is not intended to replace safety, health, or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.
- B. Definitions.** For purposes of this Ordinance, the following words and terms are hereby defined:
1. **Agricultural Impact Mitigation Agreement:** An agreement negotiated between the Illinois Department of Agriculture and the utility company focused on the restoration aspect of impacts that result from utility projects being constructed across a landowner’s productive agricultural land.
  2. **Aircraft Detection Lighting Systems (ADLS):** A system that utilizes surveillance radar to track aircraft operating in proximity to the wind utility site. ADLS will activate the obstruction lighting system when aircraft enter the light activation volume and will deactivate when all aircraft depart.
  3. **Applicant:** Upon the submission of a Petition for a Special Use Permit for the purpose of a Wind Energy Conversion System (“WECS”), any person, firm or partnership, association, corporation, company or organization of any kind proposing to obtain site location approval and permits for a wind energy system in unincorporated Lee County, and includes the proposed operator and/or operator of the WECS, and any other party with an equity interest in the WECS.
  4. **“As-built” drawings:** A revised set of drawing submitted by a contractor upon completion of a project or a particular job. They reflect all changes made in the specifications and working drawings during the construction process, and show the exact dimensions, geometry, and surveyed location of all elements of the work completed under the contract.
  5. **County Appointed Third Party Engineer:** An Illinois licensed, professional engineer who is selected by the County and paid for by the Applicant to perform reviews and inspections of applicable project plans and sites.

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6. Escrowee: A bank or trust company duly authorized to do business in the State of Illinois and legally authorized to do business in the State of Illinois and legally authorized to administer trusts and escrow accounts. Prose
7. Hearing Facilitator: The Hearing Facilitator shall be an attorney, licensed to practice in the State of Illinois, to be jointly selected and compensation negotiated on behalf of the Zoning Board of Appeals by the State's Attorney (or his/her designee) and the County Zoning Administrator. Upon completion of the Hearing, the Applicant shall reimburse the County of Lee for the total fees charged by the Facilitator.

The Hearing Facilitator shall be an independent contractor who shall conduct a hearing in accordance with the Rules of Procedure for the Lee County Zoning Board of Appeals but has no adjudicatory responsibility other than ruling on requests for continuances, procedural matters, the admissibility of evidence and the propriety of any arguments.

8. Illinois Certified Shorthand Reporter: A court reporter is the silent person in the courtroom who is responsible for making a full, verbatim stenographic report of all of the testimony and the evidence and all other proceedings presented in the trial court. And, upon request, produce a written transcript of the proceeding.
9. Land Evaluation and Site Assessment: An evaluation system created by the U.S. Department of Agriculture to combine soil quality factors with other factors that affect the importance of the site for continued agricultural use.
10. Landowner: Person(s) holding legal title to property for the location of a WECS from whom the Company is seeking, or has obtained, a temporary or permanent easement, or any person(s) legally authorized by a landowner to make decisions regarding the mitigation or restoration of agricultural impacts to such landowner's property, unless the property owner has an equity interest in a WECS.
11. Operator: The entity responsible for the day-to-day-operation and maintenance of the WECS, including any party subcontractor.
12. Owner: The entity or entities with an equity interest in a WECS Project, including their respective successor and assigns. Owner does not mean (i) the property owner from whom land is leased for locating the WECS Project (unless the property owner has an equity interest in the WECS Project); or (ii) any person holding a security interest in a WECS Project solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell a WECS Project(s) at the earliest practicable date.
13. Professional Engineer: A qualified individual who is licensed as a professional engineer by the State of Illinois.
14. Primary Structure: For each property, the structure that one or more persons occupy the majority of time on property for either business or personal reasons. Primary Structure includes structures such as residences, commercial buildings, hospitals and day care facilities. Primary Structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.

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15. Shadow Flicker: The on-and-off flickering effect of a shadow caused when the sun passes behind the rotor of wind turbine.
16. Substation: The apparatus that connects the electrical collection system of the WECS(s) and increases the voltage for connection with the utility's transmission lines.
17. Wind Energy Conversion System ("WECS"): All necessary devices that together convert wind energy into electricity, including the rotor, nacelle, generator, WECS tower, electrical components, WECS foundation, transformer, and electrical cabling from the WECS tower to the substation.
18. WECS Project: The collection of WECSs and substations as specified in the Special Use Permit application.
19. WECS Tower: The support structure to which the nacelle and rotor are attached.
20. WECS Turbine: The nacelle, rotor and support structure to which the nacelle and rotor are attached.
21. WECS Turbine Height: The distance from the rotor blade at its highest point to the top surface of the WECS foundation.

### **C. Prohibition.**

1. Construction of Wind Energy Conversion Systems: No person shall construct or operate a WECS Project without having fully complied with all the provisions of this ordinance.
  - a. Permits Required: No person shall construct or operate a WECS Project without first obtaining both a special use permit and a building permit.
  - b. Special Use: A WECS Project may be permitted in the Ag-1 district as a special use, in accordance with the following regulations and design standards.

A petition for special use permit for a WECS must be on a form approved by the County Zoning Administrator and must be accompanied by:

- i. A copy of any agreements between the owner or operator of the project and any state or federal agency governing any construction mitigation activities or requirements.

**D. Design standards and installation.** The design standards and bulk regulations listed in §10-9-3 of the Lee County Code for setbacks, lot size, lot coverage, lot area, height; and §10-12-10 of the Lee County Code for signage, shall be suspended for an WECS and the following regulations shall apply instead. All other design standards and bulk regulations of the district shall apply.

1. Conformance with the Petition

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- a. The Applicant shall construct the WECS Project in accordance with submitted Special Use Petition.
- b. The Applicant shall be bound by any and all proposals and representations made under oath at the public hearing before the Lee County Zoning Board of Appeals, which shall be considered supplementary conditions or the Special Use Petition granted by the Lee County Board, even if not directly specified herein.
- c. The Applicant shall obtain all required permits from other governmental agencies (such as the Federal Aviation Administration) prior to commencing construction or as otherwise required by the applicable laws and regulations. Copies or evidence of such permits shall be submitted to Lee County on or before the issuance of the first building permit for any WECS Project.
- d. The Agricultural Impact Mitigation Agreement (AIMA) executed between the Illinois Department of Agriculture and operator of the WECS shall be the minimum standards applied to all construction and deconstruction activities. The owner and operator, contractors, and subcontractors must, at a minimum, comply with the specifications of the AIMA. Where there is conflict between the AIMA specifications and this Ordinance, the more restrictive shall apply.

**E. Application Requirements.** Due to the unique nature and special requirements of an WECS and the potential impacts of an WECS on adjoining properties and government services, the WECS shall be required to submit and obtain approval on the following items in addition to any requirements specified in the special use section of the County Code or special conditions required by the County Board. The required information must be submitted either with the application or during the hearing on the application before the Zoning Board of Appeals. The Applicant shall provide ten (10) physical copies and one (1) electronic copy of all required submittals to the Zoning Office. However, the Applicant shall only be required to submit two (2) physical copies and one (1) digital of all documents proving ownership or interest in the property. The Applicant shall be required to seek a special use permit for parcels of real estate on which wind turbines, wind energy related equipment, substations, and other associated infrastructure shall be constructed. A special use permit is not required for a parcel of real estate on which shall be placed or buried only one or more lines, electric transmission lines, or poles. The application for special use permit need not identify the specific location of each turbine, access road, access point, underground or overhead electric line, transformer, or other elements of the WECS. The application for a building permit, however, must provide the specific location of each turbine, access road, access point, underground or overhead electric line, transformer, or other element of the WECS.

1. The Applicant shall submit at or prior to the hearing before the Zoning Board of Appeals the following as part of its petition for Special Use:
  - a. Existing property lines from the exterior boundaries, including the names of adjacent property owners and current use of those properties.
  - b. Existing public and private roads, showing widths of the roads and any associated easements and rights-of-way.

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- c. Proposed location of the WECS Project, including distances from property lines and any existing or occupied residence within two thousand six hundred forty (2,640) feet of the WECS Turbine.
  - d. Location of all non-residential structures located on the property where the WECS is proposed.
  - e. Proposed location of all above-ground utility lines within a radius equal to two (2) times the height of the proposed WECS Turbine.
  - f. Proposed dimensional representation of the structural components of the WECS Tower construction, including base and footings.
  - g. Proposed schematic of electrical systems associated with the WECS Turbine, including all existing and proposed electrical connections.
  - h. Representative manufacturer's specification and installation and operation instructions or specific WECS Project design information.
  - i. Certification by a registered professional engineer that the WECS Tower's design is sufficient to withstand wind load requirements for structure as defined by the International Code Council (ICC).
  - j. Proposed location of all access roads required for the WECS Project.
  - k. A topographic map of the proposed site of construction.
  - l. A copy of a comprehensive drainage plan, if applicable, for farmland where surface or subsurface drainage will be impacted as a result of the construction, maintenance, or deconstruction of a WECS, staging areas, construction access lanes or driveways, substations, installation of underground wiring or cabling, or other construction, maintenance, or deconstruction activities associated with the WECS, developed in cooperation with the property owners. The Applicant shall contact impacted drainage districts where the WECS project will be constructed, via certified mail, for their input.
- 2. Lee County will provide a Hearing Facilitator to preside over the public hearing and an Illinois Certified Shorthand Reporter to transcribe the hearing at the expense of the Applicant.
  - 3. The Applicant shall notify the County of any material changes to the information provided in subsections a. through j. that occur prior to the issuance of a building permit.
  - 4. The Applicant shall not commence construction activity associated with the WECS Project before 6:00 A.M. nor continue past 9:00 P.M. on any day of the week within 0.25 miles of any non-participating landowner unless a waiver is obtained from such landowner.
  - 5. Prior to issuance of a building permit, the Applicant shall provide documentation to the Lee County Zoning Administrator verifying that any power purchase contracts (or other equivalent agreement), power transmission contracts and other legal rights are in place.

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6. **Community Meeting.** Prior to the submission of an application for a Special Use Permit for an WECS, a community information meeting shall be organized and hosted by the Applicant. The purpose of the meeting is outreach, with the intent of providing conceptual information related to the project area to the community in an informal setting. The meeting shall not be construed to be a local government meeting or formal public hearing. The meeting shall be conducted in accordance with the following protocol:
  - a. **Notification.** The Applicant shall notify the Lee County Board, Zoning Administrator, the Township Board of the affected Township, and all persons who own real estate within a minimum of one thousand (1000) feet of the proposed WECS project boundary as sited in the application for Special Use Permit, a minimum of ten (10) days prior to the community meeting. Notification may be sent by regular, first-class mail. Notification via local newspaper, radio stations and social media should be considered.
  - b. **Meeting Date/Time/Location.** The meeting shall be held a minimum of forty-five (45) days prior to the hearing on the petition/application for Special Use Permit, on a weeknight (Monday through Thursday) at an accessible location within a Township where the proposed project will be located, such as a Township hall or other community center, or alternately at the Old Lee County Courthouse.
  - c. **Content of Meeting.** The informational meeting shall be arranged and hosted by the Applicant or a qualified representative and shall at a minimum include a detailed explanation of the project, the site plan for the proposed project, anticipated construction schedule, the landscaping and screening plan, and the decommissioning plan.
7. **Duration of Special Use Permit.** Notwithstanding the provisions of Section 10-2A-3 of the Lee County Code, the Zoning Administrator shall revoke a special use permit granted for any SES when a building permit has not been secured within thirty-six (36) months from the date the special use was granted. The County Board may extend this three-year period for such time as it shall determine, for good cause and without further hearing before either the Zoning Board of Appeals or the County Board. If no building permit is secured by the end of the thirty-six (36) months, then the Special Use Permit automatically becomes null and void.
8. **“As-builts.”** After the construction is complete, the Applicant shall provide certified “as-built” drawing to the Lee County Zoning Administrator and the Lee County Assessor showing the locations of the SES, roads, transmission lines, and other improvements related to the SES Project and a legal description of the land utilized for the improvements.
9. **Design Safety Certification**
  - a. WECS shall conform to applicable industry standards, including those of the American National Standards Institute (ANSI) The Applicant shall provide at or prior to the issuance of a building permit a certificate of design demonstrating that the equipment manufacturers have obtained approval from Underwriters Laboratories (UL), Det

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Norske Veritas (DNV), Germanischer Lloyd Wind Energie (GL), or all equivalent third party. This certificate shall cover the most recent phase of the project and Collection lines connecting the towers, substations, etc. shall be placed underground where practical.

- b. Following the granting of a Special Use Petition, a professional Engineer shall certify, as part of the building permit application, the foundation and tower design of the WECS Project is within accepted professional standards, given soil and climate conditions.
- c. The Applicant shall utilize new equipment which is commercially available. No used, experimental or prototype equipment still in testing shall be utilized.

## 10. Controls and Brakes

- a. The Applicant shall equip all WECS Projects with a redundant braking system. This includes both aerodynamic over-speed controls, including variable pitch 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.

## 11. Electrical Components

- a. The Applicant shall ensure that all electrical components of the WECS Project shall conform to applicable state and national codes, and relevant national and international standards (e.g., American National Standards Institute (ANSI) and the International Electrical Code (IEC)).
- b. The Applicant shall ensure that all electrical wires and lines used to collect power from individual WECS Turbines, as well as communication lines, shall be trenched-in (or using other best practices technique), installed and located underground at a depth consistent with local utility and telecommunication underground lines standards.
- c. The Applicant shall provide information regarding underground utilities constructed and/or installed as part of the WECS Project to the “One-Call System” operated by the Joint Utility Locating Information for Excavators Company, commonly known as “JULIE.”

## 12. Color

- a. The Applicant shall ensure that all WECS Turbines shall be painted white or gray or another non-reflective, unobtrusive color.

## 13. Aviation Safety

- a. The Applicant shall not locate a WECS Turbine to be located so as to create an airport hazard or obstruction to any existing airport, restricted landing area (RLA) or heliport pursuant to Illinois Administration Code Title 92: Transportation, Chapter 1: Department of Transportation, Subchapter b: Aeronautics, Part 14 Aviation Safety.



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- b. All WECS Turbines shall 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.

### 14. Warnings

- a. The Applicant shall ensure that a reasonably visible warning sign concerning voltage will be placed on the base of all pad-mounted transformers and substations.

### 15. Climb Prevention

- a. The Applicant shall ensure that all WECS Towers, by design, shall not be climbable from the exterior of the structure.

### 16. Setbacks

- a. All WECS Turbines shall be set back at least 1,400 feet or 3.1 times the WECS Turbine height, whichever is greater, from any Primary Structure, school, church or public building located on a non-participating parcel. The distance for the above setback shall be measured from the point of the residence foundation closest to the WECS Turbine to the base of the WECS Tower at ground level. The Applicant may negotiate a setback waiver with the parcel owner to reduce this setback requirement.
- b. All WECS Turbines shall be set back at least 1,400 feet or 3.1 times the WECS Turbine height, whichever is greater, from the boundary of any Lot, which, as of the date of the approval of the Special Use Petition, is in a residential platted subdivision.
- c. All WECS Turbines shall be set back a distance of at least 1.1 times the WECS Turbine height from public roads, third-party transmission lines and communication towers.
- d. All WECS Turbines shall be set back a distance of at least 1.1 times the WECS Turbine height from the property lines of a non-participating parcel. The Applicant may negotiate a setback waiver with an adjacent project parcel owner and/or non-participating parcel owner to reduce this setback requirement.
- e. No setback shall be required for a WECS Turbine to a residence located on a project parcel.
- f. The Applicant does not need to obtain a variance from the Lee County Zoning Board of Appeals upon the granting of a setback waiver by a parcel owner of any of the above setback requirements. Any negotiated setback waiver(s) shall run with the land and be recorded with the Lee County Recorder as part of the chain of title of the subject parcel.

### 17. Other Setbacks

- a. Natural Resource Areas and Bird and Bat Migration Paths



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- i. The Applicant affirms that consultation has been initiated with the Illinois Department of Natural Resources (IDNR) and United State Fish and Wildlife Services (USFWS). The Lee County Zoning Board of Appeals shall consider any setback recommended by these agencies, to the extent they wish to be consulted, with respect to natural resource areas such as Illinois Natural Areas Inventory Site (INAI), Natural Land Institute (NLI) site, The Nature Conservancy (TNC) site, or public forest, public forest preserve, or public park or Bird and Bat Migration Paths.
- ii. The Lee County Zoning Board of Appeals may also consider any feedback and suggestions from any managing department of a public forest, public forest preserve or public park.

### 18. Shadow Flicker.

- a. Prior to the issuance of a special use permit, the Applicant must present to the Lee County Zoning Board of Appeals, a Model Study presenting a conservative number of hours shadow flicker may appear on a Primary Structure of any property owner. Shadow flicker shall not exceed thirty (30) hours per year on any Primary Structure using the Model Study information. The Applicant may negotiate a shadow flicker waiver with any affected property owner to reduce this requirement.

### 19. Noise Level.

- a. The Applicant shall include a noise modeling analysis of the proposed site in the application predicting the sound pressure in accordance with the best available practices. The Applicant shall have an additional appropriate nighttime ambient sound pressure study conducted before construction commences.

### 20. Road Use Agreements.

- a. Road Use Agreement Approval Requirements.
  - i. A Road Use Agreement (RUA) shall be approved by the Developer and the County Board not less than thirty (30) days prior to the issuance of the building permits for the WECS project.
- b. Agreement Contents.

The contents of the Road Use Agreement shall include, but not be limited to the following:

  - i. Transportation Impact Analysis (TIA) that details the expected construction routes and the ESAL count per roadway segment. Core samples, or non-destructive testing methods, as approved by the County Engineer, shall be used to determine the base and surface thicknesses of each public roadway used. In addition, all bridges and culvers on the construction routes shall be identified and evaluated for structural adequacy. Adequate exhibits shall be included so that the full impact to the public roadways within the project footprint can be determined.

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- ii. Requirements that regulate the construction traffic impacts.
  - iii. Requirements for repairing damages to the roadway base, surface and appurtenances, in addition to providing for roadway surface upgrades.
  - iv. Governing practices regarding utility installations on or near the rights of way.
  - v. County requirements that include providing permits when proper information is provided by the Developer.
  - vi. Requirement for a Certificate of Liability Insurance for ten million dollars (\$10,000,000) per occurrence.
  - vii. Requirement for a Security instrument in the amount of one hundred twenty-five percent (125%) of the estimated roadway base damage repair and roadway surface repairs and upgrades.
- c. Not less than thirty (30) days after zoning has been granted, an initial engineering and legal fee of no less than one hundred thousand dollars (\$100,000) shall be deposited into the County Treasury (the Consulting Fund) to cover all engineering consulting and legal fees incurred by the County for the duration of the project from conception to completion. The amount of the initial engineering and legal fee may be adjusted at the discretion of the County Engineer based on the size of the proposed project. Additional funds shall be required, as deemed necessary by the County Engineer. Monies remaining in the Consulting Fund at the completion of the project will be refunded back to the WECS project.

### **21. Public Road Borings**

- a. The Applicant shall acquire a permit for any borings done underneath public roads within Lee County. Agricultural uses are exempt from acquiring this permit.

### **22. Repair of Drainage Facilities**

- a. The Applicant shall repair any and all field tiles damaged by the WECS Project construction and maintenance activities within ten (10) working days of the date of receipt of notification, and shall repair damage to other drainage facilities, including but not necessarily limited to waterways and drainage ditches, as soon as reasonable possible, but in any event within six (6) months of the date of receipt or notification.

### **23. Engineering Best Management Practices to Control Stormwater, Siltation and Erosion**

- a. The Applicant shall utilize established and accepted engineering Best Management Practices to manage stormwater, siltation and erosion during construction.

### **24. Blasting**

- a. The Applicant shall not conduct any blasting in connection with the construction of the WECS Project unless the Applicant has provided prior notification to the property

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owner, any abutting property owners, property owners within one thousand, five hundred (1,500) feet of the blasting site, officials of the Township in which the blasting is to occur, and the Lee County Zoning Administrator. All blasting shall be done in accordance with all applicable State and Federal laws and regulations.

### **25. Wildlife/Avian Survey and Mitigation Plan**

- a. The Applicant shall commission and submit to the Lee County's Zoning Office at the time of the building permit application, a wildlife assessment (impact study), conducted by a qualified wildlife expert having not less than ten (10) years of experience conducting wildlife assessments, indicating possible risks to local wildlife, habitat and migratory birds. Additionally, the Petitioner shall consult with the IDNR regarding the WECS Project's potential impact on local wildlife. The Applicant's wildlife expert shall also develop a mitigation plan, if applicable, that addresses and/or mitigates risks to wildlife, migratory birds and affiliated habitat raised by the IDNR.
- b. More specifically, the Applicant shall submit the wildlife assessment/impact study and mitigation plan, if applicable, to the IDNR for review and consultation. Should the IDNR choose to comment on said herein, all comments shall be forwarded to the Lee County Zoning Office in writing.
- c. If the IDNR determines that the submitted mitigation plan is insufficient to effectively address substantial adverse impacts to endangered or threatened local wildlife and habitat as identified by IDNR and the Applicant intends to proceed with the WECS Project, the applicant must correct the mitigation plan and it be deemed acceptable by the IDNR before Lee County will approve the issuance of the Special Use Permit.

**F. The Land Evaluation Site Assessment (LESA) System.** A system used by Lee County as the primary method for determining the location of rural residential development. While the Site Assessment portion of the LESA System will not be considered in the granting of a special use permit, consideration will be given to the Land Evaluation score. The Land Evaluation score will not prevent the siting of an WECS in an agricultural zone, where it can be demonstrated that the harvesting of wind energy at that location is minimally impacts agriculture. The Lee County Board must not follow the Land Evaluation score blindly, but rather, must base its zoning and rezoning decisions on the totality of circumstances that arise in each case. Furthermore, in assessing the impact of the Land Evaluation score on requests for a special use, Lee County should determine whether the requested use is:

- a. Exempted by 55 ILCS 5/5-12001;
- b. Exempted by other statutory provisions;
- c. Desirable public policy; or
- d. Each parcel will be considered on an individual basis. Considerations of the Land Evaluation include, but are not limited to:
  - i. WECS's proximity to grid.
  - ii. Findings of the Resource Report by the Lee County Soil and Water Conservation District.
  - iii. Parcels where soils with a Productivity Index of 117 or higher were found.

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- iv. Impacts to wildlife and protected lands such as wetlands or natural prairie.
- v. Protection of historical resources and sites.
- vi. Compatibility with the Comprehensive Plan.
- vii. Any other required reports by Lee County or any Federal or State Jurisdiction.

### **G. Operational Standard Conditions.**

#### **1. General Operational and Maintenance Requirements**

- a. The Applicant shall operate the WECS Project without risk of fire, offensive noise, vibration, dust, smoke, odor, glare, lighting, explosion or the like and the WECS Project shall not be detrimental to the public health, safety and/or general welfare or the immediate neighborhood or community at large.
- b. The Applicant of the WECS Project shall repair, maintain and replace the WECS and/or WECS components consistent with sound utility practices needed to keep the WECS Project in good repair and operation condition.

#### **2. Maintenance**

- a. The Applicant shall apply for recertification of the Special Use Permit for any physical modification to the WECS Project that alters the mechanical load, mechanical load path, or major electrical components. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the Applicant shall confer with a relevant third-party certifying entity to determine whether the physical modification requires re-certification.

#### **3. Interference**

- a. The Applicant shall provide the applicable microwavable transmission providers and local emergency service provider(s) (911 operators) copies of the project summary and site plan. To the extent that the above provider(s) demonstrate a likelihood of interference with their respective communications resulting from the WECS Project, or the Applicant receives a written complaint related to the above-mentioned interference; the Applicant shall take reasonable steps to respond to the complaint and shall use commercially reasonable efforts to mitigate any problems on a case-by-case basis.
- b. If after construction of the WECS Project, the Applicant receives a written complaint from a property owner within a one (1) mile radius around the project boundary, related to interference with local broadcast residential television, line of sight internet, or similar telecommunication methods, the Applicant shall respond within ten (10) working days after being notified, and shall use commercially reasonable efforts to mitigate any problems on a case-by-case basis.

#### **4. Coordination with Local Fire Protection District(s)**

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- a. The Applicant shall submit to the local fire protection district(s) a copy of the site plan.
- b. Upon request by the local fire department, the Applicant shall cooperate with the local fire department to develop the fire protection district's emergency response plan. The Applicant shall work and cooperate with any and all local rescue authorities to provide training, at Petitioner's expense, to personnel who can assist with a rescue from a WECS Project.

### **5. Materials Handling, Storage and Disposal**

- a. The Applicant shall promptly remove from the site all solid wastes related to the construction, operation and maintenance of the WECS Project and shall dispose of such materials in accordance with all federal, state and local laws.
- b. The Applicant shall handle, store, transport and dispose of all hazardous materials related to the construction, operation and maintenance of the WECS Project in accordance with all applicable local, state and federal laws.

### **6. Shadow Flicker**

- a. The Applicant shall use commercially reasonable efforts to remedy shadow flicker affecting any property owner that is not a participant in the WECS Project, for all Primary Structures estimated to receive between ten (10) and thirty (30) hours of shadow flicker, and on a case-by-case basis for Primary Structures estimated to receive less than ten (10) hours of shadow flicker by undertaking measures such as trees and/or vegetation plantings, or awning installation. The Applicant may negotiate a shadow flicker waiver with any affected property owner to reduce this requirement.
- b. If the Applicant receives a verified complaint about shadow flicker exceeding thirty (30) hours per year, on a Primary Structure, then the Applicant shall remedy the violation within ninety (90) days of the verified complaint. If the Applicant fails to remedy the violation within ninety (90) days of the verified complaint, the Applicant shall program any and all WECS Turbines causing the shadow flicker violation to shut down during the period of time that shadow flicker is anticipated to occur.

### **7. Lighting**

- a. The Applicant shall use minimal lighting in its WECS Project. No tower lighting other than normal security lighting shall be permitted except as the best available technology allowed by the FAA.

### **8. Stray Voltage**

- a. The Applicant shall minimize to the maximum practical extent possible the impact of any stray voltage caused by the operation of the WECS Project.

### **9. Advertising Material and Signage**

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- a. The Applicant shall not allow any advertising material and/or signage other than warning, equipment identification or ownership information on the WECS Project. This prohibition shall include, but is not limited to, the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners, or waving, fluttering or revolving devices on the WECS Project, but not including any meteorological devices.

### **10. Protection of Surface Water and Groundwater Resources**

- a. The Applicant shall operate the WECS Project so as not to cause surface water or groundwater contamination.

### **11. Impacts to Wildlife**

- a. The Applicant shall catalogue and annually report to the IDNR, until allowed to discontinue future studies, all birds and bats that are discovered to have been injured or killed by the WECS Turbines. The annual report of bat and bird injuries and deaths shall include species, number, and dates when the injured or killed bird or bat was discovered. Lee County reserves the right to hire a qualified third-party to conduct a study, at the expense of the Applicant.

### **12. Noise Level**

- a. The Applicant shall have a third-party qualified professional approved by the Lee County Engineer or Lee County Zoning Administrator (after submission of résumé and relevant work experience) conduct an appropriate analysis of the noise impact to nearby properties which will be reviewed and approved by the County Appointed Third Party Engineer. The sound pressure level generated by a WECS Project shall comply with all Illinois Pollution Control Board (IPCB) noise regulations as outlined in Title 35: Environmental Protection, Subtitle 11: Noise, Chapter I: Pollution Control Board, Parts 900, 901 and 910, which outline limitations and measurement procedures, and specifically address the prohibition of noise pollution in the State of Illinois.
- b. Complaint Resolution: The Applicant of the WECS Project shall respond to complainant property owner(s) and Lee County Zoning Administrator within five (5) business days after being notified in writing of a sound/noise complaint by any property owner(s) within the project boundary and one (1) mile radius beyond any WECS Project location.

## **H. Reports.**

1. Progress Report. Prior to the issuance of building permits, the Applicant of the WECS Project shall submit, on a biannual basis, due by June 30 and December 31 of each year a Progress Report. The report shall include information on the status of the Building Permit submission, including delays, schedule changes, and alterations or changes to the approved Special Use Permit Application. This requirement will cease once the building permits have been issued.
2. Maintenance Report. The Applicant of the WECS Project shall submit, on an annual basis, due by June 30, a summary of the maintenance report to Lee County Zoning Office including all maintenance performed on the systems. In addition to the above annual summary, the

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Applicant shall furnish such maintenance report as Lee County reasonably requests. Requirements include, but are not limited to:

- a. Emergency contact information for the WECS
  - b. Letter of credit for the WECS project
  - c. Administration fee for letter of credit
3. Operation Report. The Applicant shall provide a quarterly certification report (WECS Quarterly Operating Report), due to Zoning Administrator March 31, June 30, September 30, and December 31 of each year. The report is to include the number of days each WECS Project unit was available for operation and actually in operation. When any WECS Project unit has been inoperable for more than ninety (90) consecutive days, the Applicant shall report to Lee County Zoning Administrator the following information:
  - a. The date the unit became inoperable.
  - b. The expected date for the WECS Turbine(s) to return to service.

**I. Liability Insurance.** The Applicant of the WECS shall maintain a current general liability policy covering bodily injury and property damage and naming Lee County as an additional insured with limits of at least five million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) in the aggregate with a deductible of no more than five thousand dollars (\$5,000).

1. Standard Condition for Liability Insurance

a. General Liability Insurance

- i. The County of Lee, Illinois, its officers and employees shall be included as an additional insured on the General Liability policy on a primary and non-contributory basis for both ongoing and completed operations. A minimum of a three (3) year extended reporting period is required for all claims-made policies.
- ii. The County of Lee, Illinois, its officers and employees shall be named as additional insured with a waiver of subrogation on the Commercial Liability policy.
- iii. Any Commercial Umbrella utilized shall be a "Following Form" policy.
- iv. All policies must contain no more than a thirty (30) day notice of cancellation.
- v. Current copies of the insurance policies and certificates of insurance shall be kept on file with the Zoning Administrator.

b. Maintenance of General Liability Insurance

- i. The Applicant of the WECS shall maintain a current general liability policy covering bodily injury and property damage with minimum limits of at least five



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million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) in the aggregate.

- ii. The Applicant of the WECS shall maintain a current Commercial Auto policy of at least one million dollars (\$1,000,000).
- iii. The Applicant of the WECS shall maintain Workman's Compensation insurance in the following amounts:
  - a. One million dollars (\$1,000,000) per accident;
  - b. Occupational Disease: One million dollars (\$1,000,000) per employee with a policy limit of one million dollars (\$1,000,000).
  - c. Pollution liability insurance shall be maintained in the amount of five million dollars (\$5,000,000) per policy.
  - d. The general liability policy shall identify landowners included in the Special Use Permit as additional insured.

### **J. Decommissioning Plan.**

- 1. No Special Use Permit will be issued without first receiving an approved WECS decommissioning plan.
- 2. Deconstruction of a Facility shall include the removal/disposition of the following equipment/facilities utilized for operation of the Facility and located on Landowner property:
  - a. Wind Turbine towers and blades;
  - b. Wind Turbine generators;
  - c. Wind Turbine foundations (to depth of 5 feet);
  - d. Transformers;
  - e. Collection/interconnection substation (components, cable, and steel foundations), provided, however, that electrical collection cables at a depth of 5 feet or greater may be left in place, unless written and signed consent is provided by the Landowner;
  - f. Overhead collection system;
  - g. Operations/maintenance buildings, spare parts buildings and substation/switching gear buildings unless written and signed consent is provided by the Landowner;
  - h. Access Road(s) (unless Landowner requests in writing that the access road is to remain);
  - i. Operation/maintenance yard/staging area unless written and signed consent is provided by the Landowner; and
  - j. Debris and litter generated by Deconstruction and Deconstruction crews.
- 3. The Facility Owner shall, at its expense, complete Deconstruction of a Commercial Wind Energy Facility within eighteen (18) months after the end of the useful life of the facility.

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Restoration of the area occupied by the project improvements shall be returned to as near as practicable to the same condition that existed immediately before construction of such improvements.

4. Method of deconstruction. The Applicant will be able to utilize any method for deconstruction of the WECS Facility as long as the blade removal is done in a manner that does not cause the blades to break apart, shatter, splinter, or disintegrate. Any hazards fluids must be removed prior to the felling of any WECS Turbine.
5. Failure to file a WECS Annual Operating Report within four hundred twenty-five (425) total days of the date of initial commercial operation or the last filed WECS Annual Operating Report shall be cause for the Lee County Zoning Administrator to request the Lee County Zoning Board of Appeals to convene a public hearing to determine whether abandonment of the WECS Project facilities has occurred. The Applicant shall be provided the opportunity to present evidence demonstrating that the WECS Project facilities are operable and not abandoned.
6. Any WECS Project unit which has been inoperable for three hundred sixty-five (365) consecutive days or four hundred twenty-five (425) total days in two (2) consecutive calendar years shall be presumed inoperable and abandoned. A determination or finding of presumed inoperability/abandonment by the Lee County Zoning Administrator is grounds for the Lee County Zoning Board of Appeals to conduct a public hearing to consider revocation of the Special Use Petition covering the WECS Project unit in question. The Lee County Zoning Administrator shall notify the Applicant and the WECS Project site landowner of his intention to seek revocation of the Special Use at least thirty (30) days prior to issuance of a notice of public hearing by the Lee County Zoning Board of Appeals of such recommendation. The Applicant shall be provided an opportunity to present evidence demonstrating that the WECS Project facilities are operable and not abandoned.
7. Revocation
  - a. Any Lee County Zoning Board of Appeals recommendation to revoke the Special Use for the inoperable/abandoned WECS Project facilities shall be forwarded to the full Lee County Board for consideration of the recommended revocation of the Special Use Petition. Revocation of Special Use for one or more WECS Project units does not revoke the Special Use approval for other WECS Project facilities approved by a common, original Special Use Petition.
  - b. In the case of revocation of the Special Use Petition for the WECS Project facilities by the Lee County Board, the Lee County Zoning Administrator shall notify the Applicant and the landowner that an updated Decommissioning Plan must be submitted to the Lee County Zoning Office within sixty (60) days of the certified revocation date.
  - c. All decommissioning and restoration work conducted pursuant to revocation of the Special Use Petition by the Lee County Board shall be completed in a timely manner not to exceed two hundred forty (240) days after the date of the revocation order by the Lee County Board. Up to one hundred eighty (180) days of additional time to accomplish decommissioning and restoration may be granted by the Lee County Zoning Administrator if the Lee County Zoning Administrator determines that

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additional time is in the best interests of Lee County, landowners and area highway authorities.

### **8. Permits**

- a. Prior to the issuance of building permits for any WECS Project facilities, the Applicant shall submit a WECS Project Decommissioning Plan to the Lee County Zoning Administrator. Said plan, prepared by an independent Illinois Certified Professional Engineer, shall be acceptable to the County Appointed Third Party Engineer and the Lee County Zoning Administrator, such acceptance not to be unreasonably withheld, and shall include the following information:
  - i. Description of the circumstances that will trigger decommissioning.
  - ii. Description of the methodology and cost to remove all above-ground WECS Project facilities covered by the approved Special Use Petition.
  - iii. Description of the methodology and cost to remove all below-ground WECS Project facilities covered by the approved Special Use Petition to a depth of five (5) feet below grade.
  - iv. Methodology and cost to restore all areas used for construction, operation and access to a condition supporting land use similar to the land use prior to the WECS Project construction.
  - v. A schedule of work and a list of permits necessary to accomplish the work.
  - vi. Methodology to identify and manage any hazardous or special materials.
  - vii. The net salvage value of all WECS Project equipment and materials removed.
  - viii. An Estimated Decommissioning Cost, outlining the total costs necessary to decommission the WECS Facility in its entirety and complete site restoration, less any salvage value of WECS Project equipment and materials.
  - ix. Certification that all decommissioning and restoration work will be performed in accordance with any standards and conditions in the applicable WECS Project Road Agreement.
  - x. Confirmation by affidavit that the obligation to decommission the WECS Project is included in the lease agreement for every parcel included in the Petition.
  - xi. The amount of financial security as outlined in section G.8.c.
- b. The Decommissioning Plan shall be binding upon the Applicant at the time of submission and any subsequent Owner/Operator of the WECS Project facilities.

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- c. If the Applicant provides a Decommissioning Plan and/or Estimated Decommissioning Cost that is not approved by the County Appointed Third Party Engineer, Lee County reserves the right to hire a qualified, third-party Professional Engineer, at the expense of the Applicant, to prepare an appropriate Decommissioning Plan and/or Estimated Decommissioning Cost.
- d. The Estimated Decommissioning Cost is intended to cover the projected cost to secure completion of decommissioning the WECS in its entirety and complete site restoration. The estimated cost of decommissioning and restoration shall not be inclusive of any salvage value related to the decommissioning.
  - i. The facility owner shall provide decommissioning security financing of one hundred twenty-five percent (125%) of the Estimated Decommissioning Cost, in accordance with the approved Special Use Petition, and as approved by the County Appointed Third Party Engineer.
  - ii. Security financing must be in the form of an irrevocable letter of credit or a cash escrow, unless the County Board, in its sole discretion, agrees to accept a performance bond.
  - iii. For an irrevocable letter of credit, financial assurance for decommissioning shall be provided according to the following schedule and instruments:
    - 1. On or before the first (1<sup>st</sup>) anniversary of the Commercial Operation Date, the Owner/Operator shall provide Lee County with financial assurance by way of letter of credit equal to fifty percent (50%) of the Estimated Decommissioning Cost.
    - 2. On or before the eighth (8<sup>th</sup>) anniversary of the Commercial Operation Date, the Facility Owner shall provide Lee County with financial assurance by way of letter of credit equal to one hundred percent (100%) of the Estimated Decommissioning Cost.
    - 3. The Owner/Operator shall pay to Lee County, as an administrative fee, the amount of \$55 per megawatt (MW) on an annual basis for the life of the wind energy system for the administration of the decommissioning plan and letter of credit. Any financial institution chosen for the financial assurance by way of a letter of credit shall be a United States domestic bank as defined by 31CFR § 515.320 and a financial institution approved by the Lee County Zoning Administrator.
    - 4. Owner/Operator shall provide a ninety (90) day notice of termination to the Lee County Zoning Administrator of the existing letter of credit and/or any change in principal ownership of the facility.
  - iv. For Escrow accounts, financial security shall be collected over the first fifteen (15) years of operation. An Annual Financial Security Amount shall be defined as the Estimated Decommissioning Cost divided by fifteen (15).

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- v. Prior to the completion of every fifth (5<sup>th</sup>) year of operation, and every fifth (5<sup>th</sup>) year thereafter for the life of the project, or as deemed necessary by the Lee County Zoning Administrator, the Owner/Operator shall provide an updated Decommissioning Plan to the Lee County Zoning Administrator with an updated Estimated Decommissioning Cost to be reviewed and approved by the County Appointed Third Party Engineer.
- vi. If this revised sum is greater than the prior Estimated Decommissioning Cost projected sum of all decommissioning and restoration work, not inclusive of the salvage value of any equipment or materials, then the Owner/Operator shall provide any difference in the prior Annual Financial Security Amounts within sixty (60) days, and the following Annual Financial Security Amounts due shall be in accordance with this new sum and the remaining projected operational duration.
- vii. If at any point, during the life of the project, the Annual Financial Security Amounts paid to date exceed the new Estimated Decommissioning Cost, then the Owner/Operator shall reimburse or reduce the total Annual Financial Security Amounts within sixty (60) days, and the following Annual Financial Security Amounts due shall be in accordance with this new sum.

### EXAMPLE:

Project Date	Est. Total Decommissioning Cost	Annual Financial Security Amount	Total Financial Security being held by Escrowee
Prior to building permits	\$1,500,000	\$100,000 (15 years left on the project operation)	\$100,000
End of Year 1-4	\$1,500,000	\$100,000 each year	\$500,000 (end of year 4)
End of Year 5	\$1,000,000	\$50,000 (\$1,000,000 total less \$500,000 already in Escrow possession = \$500,000 left to provide over 10 years left on the project operation)	\$550,000
End of Year 6-9	\$1,000,000	\$50,000 each year	\$750,000
End of Year 10	\$1,500,000	\$150,000 (\$1,500,000 total less \$750,000 already in Escrow possession = \$750,000 left to provide over 5 years left on the project operation)	\$900,000
End of Year 11-14	\$1,500,000	\$150,000 each year	\$1,500,000
End of Year 15	\$1,250,000	(\$250,000) refund from Escrowee to owner due to prior overestimate of total cost.	\$1,250,000

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- viii. Any interest accruing to the financial security will be included in the calculation of Total Financial Security being held by the Owner/Operator for the purposes of decommissioning and may therefore be used to offset contributions made by the WECS owner toward the Estimated Decommissioning Cost. Once the project has been fully decommissioned in accordance with the requirements of this section, any remaining security shall be reduced or returned to the WECS Owner/Operator.
- ix. If the WECS Project Owner/Operator desires to decommission any WECS Project facilities said Owner/Operator shall notify the Lee County Zoning Administrator prior to commencing any decommissioning work. The WECS Project Owner/Operator shall submit an updated Decommissioning Plan to the Lee County Zoning Administrator to be reviewed and approved by the County Appointed Third Party Engineer within fifteen (15) business days.
- x. All deposits with the Escrowee under the Decommissioning Plan section shall be to an escrow or trust account to be held by the Escrowee pursuant to a written trust or escrow agreement between the WECS Project Owner/Operator and the Escrowee. The written agreement shall include the provisions of this Decommissioning Plan section and such other terms and conditions as are not inconsistent herewith. The WECS Owner/Operator shall provide copy of the executed written agreement to the Lee County Zoning Administrator. All disbursements from the escrow or trust account for costs, fees or expenses of decommissioning a WECS Project facility shall require approval of the Lee County Zoning Administrator and Lee County Treasurer, who shall not unreasonably withhold or delay said approval. Upon the completion of the decommissioning of a WECS Project facility, any excess funds held in escrow or trust account will be returned to the WECS Owner/Operator. The WECS Owner/Operator will be solely responsible for all costs, fees and expenses of decommissioning a WECS Project facility in excess of the amount held in the escrow or trust account. The written agreement between the WECS Owner/Operator and the Escrowee shall be binding upon and insure to the benefit of the assignees and successors in interested or the WECS Owner/Operator and the Escrowee. The WECS Owner/Operator shall be solely liable and responsible for all costs, fees and expenses of establishing and maintaining the escrow or trust account.

**K. Indemnity.** The Applicant shall defend, indemnify and hold harmless Lee County and their officials from and against any and all claims, demands, losses, lawsuits, causes of action, damages, injuries, costs, expenses and liabilities, whatsoever, including but not limited to, reasonable attorney's fees arising out of the acts or omissions of the Applicant concerning the operation of the WECS Project, without limitation, whether said liability is premised upon either contract or tort actions or other related claimed legal theory.

- a. The Applicant will provide notice of this Petition to all the owners of all non-participating parcels that are located within 2,640 feet of any boundary of the WECS Project and participating parcels.

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- L. Administration and enforcement.** Prior to obtaining a building permit, the Applicant of the WECS Project, at its expense, shall coordinate with the Zoning Administrator to develop a system for logging and investigating complaints related to the WECS project as not previously defined herein.

This ordinance shall be in full force and effect from and after its passage, approval, and publication as required by law.

PASSED BY THE LEE COUNTY BOARD

This \_\_\_\_\_ day of \_\_\_\_\_, 2022.

BY: \_\_\_\_\_

Lee County Board Chair

ATTEST:

\_\_\_\_\_  
Lee County Clerk