

ORDINANCE#

RE: WIND FARM ORDINANCE

I. INTRODUCTION

A. Title

This Ordinance shall amend the Vermilion County Ordinances and be known, cited and referred to as the Vermilion County Wind Energy Structure Ordinance.

B. Purpose:

This Ordinance is adopted for the following purposes:

- 1) To assure that any structures, and equipment connected to such structures, used in the development and production of wind- generated electricity in Vermilion County are safe and effective;
- 2) To facilitate economic opportunities for local residents;
- 3) To promote the supply of wind energy in support of Illinois' statutory goal of increasing energy production from renewable energy sources while adhering to required structural regulations to enhance safety.

II. DEFINITIONS

- A. "Applicant" means the entity or person who submits to the County, pursuant to Section V of this Ordinance, an application for the permitting of any WECS or Substation.
- B. "Financial Assurance" means reasonable assurance from a credit worthy party, examples of which include a surety bond, trust instrument, cash escrow, or irrevocable letter of credit.
- C. "Committee" means the County Structural Safety Committee who are appointed by the County Board Chairman and shall at a minimum include the County Engineer, a representative from the County Health Department, and the State's Attorney or an assistant state's attorney, and such at large members as required and as may be appointed by the County Board Chairman.
- D. "Operator" means the entity responsible for the day-to-day operation and maintenance of the WECS, including any third-party subcontractors.
- E. "Owner" means the entity or entities with an equity interest in the WECS(s), including their respective successors and assigns. Owner does not mean (i) the

property owner from whom land is leased for locating the WECS (unless the property owner has an equity interest in the WECS); or (ii) any person holding a security interest in the WECS(s) solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the WECS(s) at the earliest practicable date.

- F. "Professional Engineer" means a qualified individual who is licensed as a professional engineer in any state in the United States.
- G. "Primary Structure" means, for each property, the structure that one or more persons occupy the majority of time on that property for either business or personal reasons. Primary Structure includes structures such as residences, commercial buildings, hospitals, and day care facilities. Primary Structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.
- H. "Siting Approval" or "Permit Approval" means the approval of a building permit to locate and construct the WEC(s) at a particular location. The term permits approval and siting approval shall be interchangeable for the purposes of this ordinance.
- I. "Substation" means the apparatus that connects the electrical collection system of the WECS(s) and increases the voltage for connection with the utility's transmission lines.
- J. "Wind Energy Conversion System" ("WECS") means 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(s), and other related equipment.
- K. "WECS Project" means the collection of WECSs and Substations as specified in the siting approval application pursuant to Section VI of this Ordinance.
- L. "WECS Tower" means the support structure to which the nacelle and rotor are attached.
- M. "WECS Tower Height" means the distance from the rotor blade at its highest point to the top surface of the WECS foundation.

III. APPLICABILITY

This Ordinance governs the permitting and building of WECSs and Substations that generate electricity to be sold to wholesale or retail markets, except that owners of WECSs with an aggregate generating capacity of 100 KW or less are not subject to this Ordinance, except for those provisions relating to setback lines under section IV H and as to that provision all WECS shall be in compliance. *As to WECS with an aggregate generating capacity of 100 KW or less a permit is required to verify compliance with the setback provisions herein, but there shall be no charge for the same. [editorial*

IV. PROHIBITION

No WECS or Substation governed by Section III of this Ordinance shall be constructed, erected, installed, or located within Vermilion County, unless prior approval has been

obtained for each individual WECS and Substation pursuant to this Ordinance from the County Structural Safety Committee.

No WECS or Substation governed by Section III of this Ordinance shall be operated or maintained in violation of this Ordinance or in violation of the terms of the permit as may be approved by the County, or in an unsafe condition

V. VERMILION COUNTY STRUCTURAL SAFETY COMMITTEE

There is hereby created an advisory committee, the County Structural Safety Committee. The committee shall be appointed by the County Board Chairman and shall consist of the representative of the

- A. Vermilion County Highway Engineer
- B. Vermilion County Health Department
- C. Vermilion County Emergency Management Director
- D. Such at-large community representatives or County employees as may be required and as may be appointed by the County Board Chairman

The committee chairman shall organize the times and meeting places of the committee. The chairman shall be named by the County Board Chairman from such representatives as may be appointed, and may be removed from the chairmanship at the discretion of the chairman. All meetings shall be open to the public and shall be held at a public place with notice as required under the Open Meetings Act. In the absence or unavailability of the committee chairman, the County Board Chairman may call a meeting of the committee for any purpose.

The committee shall be limited to the review of permits applications and matters under the governance of this ordinance.

The decision to grant or deny a permit application is within the sole discretion of the County Board and that decision may be appealed as provided for in the Illinois Administrative Review Act, supra, only after the County Board has voted on the matter.

VI. SITING APPROVAL APPLICATION

- A. To obtain approval to build any structure within the jurisdiction of this ordinance or as set out in Section III, the Applicant must first submit a permit approval application to the County. The application shall be filed with the Vermilion County Board Office, and any forms or information relative to the permit process shall be made available at such location.

- B. To assist in the incidental costs of the application process, each applicant shall be required to pay a non-refundable application fee of \$4,500.00 per wind turbine structure to be built as part of the WECS project. All fees shall be due at the time the application is submitted to the County Board Office and shall be deposited into the Vermilion County General Fund.
- C. The Structural Safety Committee shall have the authority to create and require the use of any application or information form necessary or useful in the execution of this ordinance. However, no application that substantially complies with the requirements of this ordinance shall be refused appropriate review.
- D. The permit approval application shall contain or be accompanied by the following information:
1. WECS Project summary, including, to the extent available:
 - (1) a general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer(s), type(s) of WECS(s), number of WECSs, and name plate generating capacity of each WECS; the maximum height of the WECS Tower(s) and maximum diameter of the WECS(s) rotor(s); the general location of the project; and
 - (2) a description of the Applicant, Owner and Operator, including their respective business structures;
 2. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s), if known, as well as any available references and history of similar projects constructed, maintained or operated by any Applicant, Owner and Operator;
 3. A site plan for the installation of WECSs 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, Substation(s), electrical cabling from the WECS Tower to the Substation(s), ancillary equipment, third party transmission lines, and layout of all structures within the geographical boundaries of any applicable setback;
 4. A copy of an Agricultural Impact Mitigation Agreement ("AIMA") executed between the Applicant and the Illinois Department of Agriculture. [editorial note: The AIMA became a statutory requirement after this ordinance was originally drafted (2009). It

became law in 2015 with on-going amendments. See:
<https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3642&ChapterID=40> and
<https://www2.illinois.gov/sites/agr/Resources/AIMA/Pages/default.aspx>.]

5. All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance; and
6. Any other information required by the County as part of its permit process as may be hereinafter described in this ordinance or requested by the County Structural Safety Committee. To the extent practical, the Committee shall develop a written application cover sheet with a checklist of required and requested information to assist in presentation of the application. The Committee may request information concerning the background and experience of any owner, operator or construction group involved. The Committee may reject any application, which does not substantially, and in good faith contain the required or requested information.
7. The County Structural Safety Committee shall review the application. Once the permit application is received and reviewed by the Committee, the Committee may direct changes in the application. Prior to submission to the County Board, the Committee shall determine if any changes have been made to the project described in the application. Prior to its submission to the County Board the application shall have as much specific location and other information as available. If such changes are made and accepted or if the application is accepted as presented, the Committee shall forward the same to the County Board. If the Committee does not recommend that application, it shall be sent to the Board with a negative recommendation. The Board may accept a permit application by a majority vote if the application is recommended by the Committee, however if an application is not recommended by the Committee, then the permit shall be approved only if 2/3 of the Board vote to approve such application over the negative recommendation of the Committee. The Committee shall note any concerns for the Board's consideration, and the Board shall make an independent judgment as to the appropriateness of the issuance of any permit. A permit application shall not be denied if the application meets the requirements of this ordinance or has obtained acceptable waivers or variances. However, an application may be denied where the applicant has a history of poor workmanship such that the safety of the public will be at risk. The granting or denial of a permit application is a final

decision of the County Board and may be appealed as provided for in the Illinois Administrative Review Act, 735 ILCS 5/3-101.

The Applicant shall notify the County of any changes to the information provided in Section VI.B above that occurs while the permit approval application is pending.

VII. DESIGN AND INSTALLATION

A. Design Safety Certification

1. All WECSs shall conform to applicable industry standards, including those of the American National Standards Institute ("ANSI"). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories ("UL"), Det Norske Veritas ("DNV"), Germanischer Lloyd Wind Energie ("GL"), or an equivalent third party. The Committee shall have the discretion to refuse any certification or require additional certification. Any dispute as to the sufficiency of the certification shall first be addressed by informal consultation between the County Structural Safety Committee, Applicant, Owner and /or Operator. If the informal consultation does not resolve the dispute then the dispute shall be resolved by application to the County Board committee of three members as chosen by the County Board Chairman. Said Board members shall be chosen from the entire County Board as needed. Any appeal from the decision of the three-person County Board Committee shall be as provided in the Administrative Review Act, 735 ILCS 5/3-101. WECS shall be maintained and operated within applicable industry standards during construction and operation until their decommissioning as set out in this ordinance.
2. Following the granting of permit approval under this Ordinance, a Professional 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, subsurface and climate conditions. To ensure that the subsurface conditions of the site will provide proper support for the WECS, the Applicant will provide proper support for the WECS, the Applicant at its own expense, shall provide soil and geotechnical soil boring reports for each WEC tower location to the County Structural Safety Committee for review and approval prior to the issuance of any building permit.
3. All structures other than WECS which may be built in conjunction with the operation of the WECS shall comply with applicable safety and building codes and if there are no codes which are found to be applicable then they shall comply with the International Building Code standards insofar as practical. All underground connections shall be at least 36 60 inches below the ground, ~~except~~

~~as otherwise allowed by the National Electric Code (N.E.C.)~~ [Editorial note:-There will now be no exceptions to the depth rule of 60 inches.]

4. Any staging or layout area where equipment will be gathered for installation will be identified to and approved by the Committee.

B. Controls and Brakes

All WECS shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed 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.

E. Compliance with the Federal Aviation Administration

The Applicant for the WECS shall comply with all applicable FAA requirements.

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 15 feet from the ground.

G. Climb Prevention

1. All WECS Towers must be unclimbable by design or protected by anti-climbing devices such as:
 - A. Fences with locking portals at least six feet high; or
 - B. Anti-climbing devices 12 feet vertically from the base of the WECS Tower.

H. Setbacks

1. To ensure the safety of surrounding buildings and owners, all WECS Towers shall be set back at least 1200 feet or *3.0 times the height of the WECS tower, whichever is greater*, from any Primary Structure.

2. The distance for the above setback shall be measured from the point of the Primary Structure foundation closest to the WECS Tower to the center of the WECS Tower foundation. The owner of the Primary Structure may waive this setback requirement; but in no case shall a WECS Tower be located closer to a Primary Structure than 1.10 times the WECS Tower Height.
3. All WECS Towers shall be set back a distance of at least 1.10 times the WECS Tower Height from public roads, third party transmission lines, and communication towers. The County may waive this setback requirement.
4. All WECS Towers shall be set back a distance of at least 1.10 times the WECS Tower Height from adjacent property lines. The affected adjacent property owner may waive this setback requirement.
5. The Applicant does not need to obtain a variance from the County upon waiver by either the County, or property owner, or any adjacent non-participating property land owner who does not have a wind turbine on their land but is within the setback distance as described and thereby impacted, of any of the above setback requirements. Any waiver of any of the above setback requirements shall run with the land and be recorded as part of the chain of title in the deed of the subject property.

I. Compliance with Additional Regulations

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

J. Use of Public Roads

1. An Applicant, Owner, or Operator proposing to use any county, municipality, township or village road(s), for the purpose of transporting WECS or Substation parts and/or equipment for construction, operation, or maintenance of the WECS(s) or Substation(s), shall:
 - a. Identify all such public roads; and
 - b. Obtain applicable weight and size permits from relevant government agencies prior to construction.
2. To the extent an Applicant, Owner, or Operator must obtain a weight or size permit from the county, municipality, township or village, the Applicant, Owner, or Operator shall:
 - a. Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage; and
 - b. Enter into a Roadway Use and Repair Agreement approved by the appropriate jurisdiction(s) having authority over the various roadways to be used. Where a County Road is involved the County Engineer and State's Attorney's Office must approve the agreement as it relates to County Roads. Where a township road or highway is involved, the appropriate township highway commissioner shall be notified and approve any such agreement. This ordinance does not replace or change the jurisdiction of existing governmental units as to roads and highways within their jurisdiction.
 - c. 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.

K. AGRICULTURAL LAND RESTORATION

All impacted agricultural land, whether impacted during the construction, operation, or decommissioning activities, must be remediated by the Applicant pursuant to the terms of the Agricultural Impact Mitigation Agreement.

VIII. OPERATION

A. Maintenance

1. The Owner or Operator of the WECS must submit, on an annual basis, a summary of the operation and maintenance reports to the County. In addition to the above annual summary, the Owner or Operator must furnish such operation and maintenance reports as the County reasonably requests.
2. Any physical modification to the WECS that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification under Section VI (I) of this Ordinance. Like-kind replacements shall not require re-certification but records demonstrating the nature of the 'like-kind' repair must be maintained and notification made to the County. Prior to making any physical modification (other than a like-kind replacement), the owner or operator shall confer with a relevant third-party certifying entity identified in Section VI (A) (1) of this Ordinance as well as the Structural Safety Committee to determine whether the physical modification requires re-certification. The Committee may in its sole discretion require re-certification unless adequate showing is made by that such is not required.

B. Interference

1. The Applicant shall provide the applicable microwave transmission providers and local emergency service provider(s) (911 operators) copies of the project summary and site plan, as set forth in Section V.B.1, and V.B.3. of this Ordinance. To the extent that the above provider(s) demonstrate a likelihood of interference with its communications resulting from the WECS(s), the Applicant shall take reasonable measures to mitigate such anticipated interference. If, after construction of the WECS, the Owner or Operator receives a written complaint related to the above-mentioned interference, the Owner or Operator shall take reasonable steps to respond to the complaint.
2. If, after construction of the WECS, the Owner or Operator receives a written complaint related to interference with local broadcast residential television, the Owner or Operator shall take reasonable steps to respond to the complaint.

C. Coordination with Local Fire Department

1. The Applicant, Owner or Operator shall submit to the local fire department a copy of the site plan.

2. Upon request by the local fire department, the Owner or Operator shall cooperate with the local fire department to develop the fire department's emergency response plan.
3. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

D. Materials Handling, Storage and Disposal

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

IX. NOISE LEVELS

Noise levels from each WECS or WECS Project shall be in compliance with applicable Illinois Pollution Control Board (IPCB) regulations. The Applicant, through the use of a qualified professional, as part of the permit approval application process, shall appropriately demonstrate compliance with the above noise requirements. Upon complaint of any resident and as reviewed and forwarded by the County and after consultation with the owner / operator of the project, as to noise levels the Applicant at its own expense shall conduct a sound study using qualified professionals acceptable to the County to examine and resolve such complaints. The County shall have full access to all data and reports or findings of any such studies. **[Editorial note: The County does not have the capacity to monitor noise and the Illinois Pollution Control Board has not been active in this area so I suggest putting the burden on the Applicant but only after a review by the County and consultation with the wind project owner to ensure only reasonable complaints are processed. In the past, they have done this regardless.]**

X. BIRDS AND BATS AND OTHER NATURAL RESOURCE AND WILDLIFE ISSUES

Consultation with the Illinois Department of Natural Resources (hereinafter "IDNR") as required pursuant to 17 Ill. Adm. Code Part 1075 shall be included by any applicant. The burden to conduct such consultations shall be upon the applicant and shall be reviewed by the Committee. The Committee shall weigh the recommendations of the Illinois Department of Natural Resources, if any, but shall not be bound by them and the County Board and Committee shall exercise independent judgment on the acceptance or rejection of such recommendations or may require implementation of such recommendations or alternatives determined by the County Board to be appropriate. It shall be the applicant's obligation to certify that based upon consultation with the IDNR, the siting, building and operation of the WECS will not violate existing law. The Committee may require any independent study suggested by IDNR and the applicant shall pay for such studies.

Where applicable, the Committee shall consider the need for requesting an Incidental Take Authorization from IDNR or requiring the same as part of the application process.

XI. PUBLIC PARTICIPATION

Nothing in the Ordinance is meant to augment or diminish existing opportunities for public participation at the County Board meeting wherein the permit is to be voted upon.

XII. LIABILITY INSURANCE

The Owner or Operator of the WECS(s) shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$5 million per occurrence and \$5 million in the aggregate. The same shall apply to all contractors and subcontractors during the construction process. Proof of such insurance shall be kept current and on file at the County Board Office.

XIII. DECOMMISSIONING PLAN

- A. Prior to receiving permit approval under this Ordinance, the County and the Applicant, Owner, and/or Operator must formulate a Decommissioning Plan to ensure that the WECS Project is properly decommissioned, and have such plan approved by the Committee. The Decommissioning Plan shall include:
- B. Provisions describing the triggering events for decommissioning the WECS Project;
- C. Provisions for the removal of structures, debris and cabling, including those below the soil surface, and shall provide for the removal of all buried objects above a depth of 36 60 inches under the soil surface;
- D. Provisions for the restoration of the soil and vegetation in accordance with the AIMA;
- E. An estimate of the decommissioning costs certified by a Professional Engineer, taking into account the expected life of the WECS;
- F. Financial Assurance, secured by the Owner or Operator, for the purpose of adequately performing decommissioning, in an amount equal to the Professional Engineer's certified estimate of the decommissioning costs, provided however, that the owner and or applicant may not delegate or assign the responsibilities of

decommissioning under this ordinance or the AIMA without express written consent of the County;

- G. Identification of and procedures for County access to Financial Assurances;
- H. A provision that the terms of the Decommissioning Plan shall be binding upon the Owner or Operator and any of their successors, assigns, or heirs; and
- I. A provision that the County shall have access to the site, pursuant to reasonable notice, to effect or complete decommissioning at the expense of the owner/operator or other responsible party.

XIV. 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 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 60 days, for good faith negotiations to resolve the alleged default(s), except those defaults that implicate public safety in which case the County Engineer in consultation with the Committee may issue a stop order.
- C. Any violation of this ordinance shall be an offense punishable by a fine not to exceed \$1,000.00. Each violation shall be a separate offense. Each day a violation occurs or continues shall be a separate offense. A court may set any appropriate per day fine for each day the infraction exists or until such infraction is remedied. It is the goal of this ordinance to promote structural safety to protect the public and the court in setting any appropriate fine shall consider the nature of the offense, the degree of public safety involved, the efforts of the County and responsible owner or applicant to quickly and safely resolve any infraction. It is the intent that any dispute between the parties be resolved promptly and where possible by informal discussions as outlined elsewhere in this ordinance.

XV. COUNTY AUTHORITY TO ENTER AND INSPECT

To accomplish the purposes of this ordinance, the County Structural Safety Committee shall have the right to enter upon any land upon which a WECS or structure related to the operation or maintenance of such WECS, is situated. If entry is denied, the County may seek an administrative search warrant to enter and inspect the land and structures. Neither this provision, nor any other in this ordinance as a whole, is intended to place a duty upon the County to inspect or enforce any provision of this ordinance, or waive any statutory immunity provided by law.

XVI WAIVER AND VARIANCES

The County Structural Safety Committee may allow waivers and variances of various buildings or equipment connected to the buildings, not in compliance with the ordinance when it is shown that the cost of compliance exceeds the benefit sought and does not implicate a danger to the public, or that technology has changed requiring such waiver or variance, or the application of a particular section of the ordinance is unworkable or impractical and sufficient proof exists to show that alternative means or equipment will serve the purposes of this ordinance, or that the true intent of the code or rules legally adopted under this code have been incorrectly interpreted. Such variances whether at the permit application stage or over the life of the WECS shall be considered at the request of the applicant or owner or managing entity responsible for the WECs and shall be in writing and demonstrate the need for a waiver or variance to the satisfaction of the committee. Such variance or waiver shall be filed with the County Board Office.

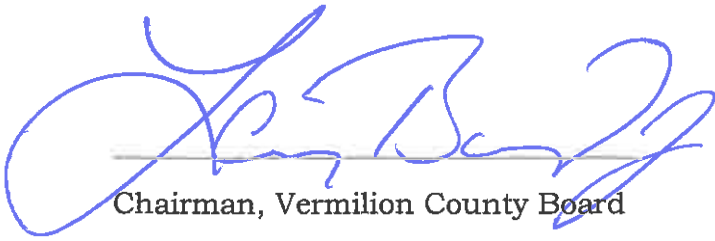
XVI. Conflict with Other Laws and Severability

Should any provision of this ordinance conflict with any other law or ordinance, state statute, regulation or rule, then the provisions of this ordinance shall apply and shall prevail over other ordinances to the extent allowed under law due to the special nature of the structures covered by this ordinance.

Should any provision, section or part thereof, or the application of this ordinance to any person or circumstance, be found or held to be unconstitutional or invalid by any court of competent jurisdiction, such section or part thereof shall be deemed a separate, distinct and independent provision and such holding or finding shall not affect the validity of the remaining portions of this ordinance which can be given effect without the invalid section, provision or part thereof.

XVII. EFFECTIVE DATE

This ordinance shall become effective immediately upon the date of its passage by the county board.


Chairman, Vermilion County Board

Attest:


Clerk of the County Board

Ordinance# 21-0802