

**FILED**

**MAY 31 2023**

**ORDINANCE#**

**SITING ORDINANCE  
COMMERCIAL WIND ENERGY FACILITY**

*Cathy Jenkins*  
COUNTY CLERK  
VERMILION CO. IL.

**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 CWEF or Substation.
- B. 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. "Commercial Wind Energy Facility" or "CWEF" means a wind energy conversion facility of equal or greater than 500 kilowatts in total nameplate generating capacity. "Commercial wind energy facility" includes a wind energy conversion facility seeking an extension of a permit to construct granted by a county.
- D "Committee" means the County Wind and Solar Committee who are appointed by the County Board Chair and shall at a minimum include the County Engineer, a representative from the County Health Department, and Emergency Management Director, or their designee, for the County, and such at-large members as required and as may be appointed by the County Board Chair.
- E. "Facility Owner" means (i) a person with a direct ownership interest in a commercial wind energy facility regardless of whether the person is involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the facility, and (ii) at the time the facility is being developed, a person who is acting as a developer of the facility by acquiring the necessary rights, permits, and approvals or by planning for the construction and operation of the facility, regardless of whether the person will own or operate the facility. "Facility Owner" and "Owner" includes those successors and assigns of those entities or persons. "Facility Owner" and "Owner" does not mean (i) the property owner from whom land is leased for locating the CWEF or Supporting Facilities (unless the property owner has an equity interest in the CWEF(s) or Supporting Facilities); or (ii) any person holding a security interest in the CWEF(s) solely to secure an extension of credit. "Facility Owner" and "Owner" shall be synonymous unless otherwise stated.
- F. "Financial Assurance" or "Financial Security" or "Decommission Security" means assurance from a credit worthy party, examples of which include a surety bond (e.g., performance and payment bond), trust instrument, cash escrow, or irrevocable letter of credit.

- G. "Nonparticipating property" means real property that is not a participating property.
- H. "Nonparticipating residence" means a residence that is located on nonparticipating property and that is existing and occupied on the date that an application for a permit to develop the commercial wind energy facility or the commercial solar energy facility is filed with the county.
- I. "Occupied community building" means any one or more of the following buildings that is existing and occupied on the date that the application for a permit to develop the commercial wind energy facility or the commercial solar energy facility is filed with the county: a school, place of worship, day care facility, public library, or community center.
- J. "Operator" means the entity responsible for the day-to-day operation and maintenance of the CWEF, including any third-party subcontractors.
- K. "Professional Engineer" means a qualified individual who is licensed as a professional engineer in the state of Illinois.
- L. "Participating property" means real property that is the subject of a written agreement between a facility owner and the owner of the real property that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of constructing a commercial wind energy facility, or supporting facilities. "Participating property" also includes real property that is owned by a facility owner for the purpose of constructing a commercial wind energy facility or supporting facilities.
- M. "Participating Residences" means, for each property, the residence that is located on the participating property and is existing and occupied on the date the application for a permit to develop the commercial wind or solar facility is filed with the county.
- N. "Protected lands" means real property that is:
- (1) subject to a permanent conservation right consistent with the Real Property Conservation Rights Act; or
  - (2) registered or designated as a nature preserve, buffer, or land and water reserve under the Illinois Natural Areas Preservation Act.
- O. "Supporting facilities" means the transmission lines, substations, access roads, meteorological towers, storage containers, and equipment associated with the

generation and storage of electricity by the commercial wind energy facility or commercial solar energy facility.

- P. "Wind tower" includes the wind turbine tower, nacelle, and blades.
- Q. "Substation" means the apparatus that connects the electrical collection system of the CWEF(s) and increases the voltage for connection with the utility's transmission lines.
- R. "Wind Tower Height" means the distance from the rotor blade at its highest point to the top surface of the Wind Turbine foundation.

### **III. APPLICABILITY**

This Ordinance governs the siting, permitting, and building of CWEFs and Supporting Facilities that generate electricity to be sold to wholesale or retail markets, except that owners of CWEFs with total nameplate generating capacity of 500 kilowatts or less are not subject to this Ordinance, except for those provisions relating to setback distances. As to CWEFs with a total nameplate generating capacity of 500 kilowatts or less a building permit is required to verify compliance with the setback provisions herein, but there shall be no charge for the same, and no public hearing is required.

### **IV. PROHIBITION**

No CWEF, or Supporting Facilities governed by this Ordinance shall be constructed, erected, installed, or located within Vermilion County, unless prior approval has been obtained for each individual Wind Tower and Supporting Facility pursuant to this Ordinance from the County, and as finally approved by legislative action.

No CWEF, or Supporting Facilities governed by 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.

Siting permits shall be valid for a period of 30 years for any approved CWEF unless otherwise allowed by further action of the County Board.

## **V. VERMILION COUNTY WIND AND SOLAR COMMITTEE**

The committee shall be appointed by the County Board Chair 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 Chair

The committee chair shall organize the times and meeting places of the committee. The chair shall be named by the County Board Chair from such representatives as may be appointed, and may be removed from the Chairpersonship at the discretion of the County Board Chair. 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 Chair, the County Board Chair may call a meeting of the committee for any purpose.

The committee shall be limited to the review of permit 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.

## **VI. SITING APPROVAL**

- A. To obtain approval to build any structure within the jurisdiction of this ordinance, the Applicant must first submit a Siting Permit Application (“Application”) to the County, undergo a public hearing regarding the CWEF, and obtain approval from the County Board to construct the CWEF. 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. Upon approval, the County Board may affix conditions to approval which are not inconsistent with this Ordinance, or any other law or regulation.
- B. The County shall utilize the following factors used to analyze and consider the application, along with this ordinance and applicable state and federal laws and regulations.

1. The existing uses and, where applicable, zoning of nearby property;
2. The extent to which property values are diminished;

3. The extent to which the destruction of property value promotes the health, safety, morals, or general welfare of the public;
4. The relative gain to the public as opposed to the hardship imposed upon the individual property owner;
5. The suitability of the subject property for the planned purposes;
6. The length of time the property has been vacant as currently utilized considered in the context of land development in the area;
7. The care with which the community has undertaken to plan its land-use development;
8. The community need for the use proposed by the applicant;
9. The impact on wildlife and wildlife habitat; and
10. The impact on drainage facilities and public property.

C. Once an Application is received and all Application fees are received, the matter shall be scheduled for public hearing.

D. The Application shall contain or be accompanied by the following information:

1. CWEF 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 Wind Tower(s), number of Wind Towers, and nameplate generating capacity of each Wind Tower and total CWEF nameplate generating capacity; the maximum height of the Wind Tower(s) and maximum diameter of the Wind(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 CWEFs showing the planned location of each Wind 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 Wind 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.
5. All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance, including but not limited to, evidence of a review by the Illinois Department of Natural Resources, and compliance, at the expense of the Owner and/or Applicant, with recommendations made as a result and adopted by the County (including avoidance of protected lands as identified by the Illinois Department of Natural Resources), any United States Fish and Wildlife Service review and recommendations, an Illinois Historic Preservation Office study or review; and all determinations of No Hazard to Air Navigation from the Federal Aviation Administration (“FAA”).
6. Evidence of the financial ability of the Applicant and/ or Facility Owner to complete and operate the CWEF.
7. 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. To the extent practical,

the County may develop a written application cover sheet with a checklist of required and requested information to assist in presentation of the application. The County may request information concerning the background and experience of any owner, operator or construction group involved. The County may reject any application after review which does not substantially, and in good faith, contain the required or requested information.

8. Any waivers from the setback requirements, and/or shadow flicker requirements, of this ordinance and state statutes executed by the occupied community building owners/and/or the nonparticipating property owners and bearing a file stamp from the Recorder of Deed's Office confirming that such waivers were recorded against the title to the affected real estate.
9. Applicant shall provide a survey map of all known abandoned mines within the footprint of the CWEF and within a 1 mile radius of the footprint of the CWEF.
10. During the public hearing process, the Applicant shall provide sufficient evidence the CWEF will not overlay any abandoned mine and will not cause any mine subsidence.

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

During the public hearing process Applicant shall provide competent evidence that the CWEF will comply with all requirements of this Ordinance, all state and federal laws, rules and regulations.

## **VII. DESIGN AND INSTALLATION**

### **A. Design Safety Certification**

1. All CWEF(s) and Wind Towers and Supporting Facilities 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 County 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, Applicant, Owner and /or Operator. CWEF shall be maintained and operated within applicable industry standards during construction and operation until their decommissioning as set out in this ordinance.

2. A Professional Engineer shall certify, as part of the building permit application that the foundation and tower design of the CWEF 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 CWEF, the Applicant at its own expense, shall provide soil and geotechnical soil boring reports for each Wind Tower location to the County for review and approval prior to the issuance of any building permit. Recommendations from the County Soil and Water Conservation District shall be obtained and followed as part of any issuance of a permit or continued operations under a permit.
3. All Supporting Facilities which may be built in conjunction with the operation of the CWEF 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 60 inches below the ground.
4. Any staging or layout area where equipment will be gathered for installation will be identified to and approved by the County.

#### B. Controls and Brakes

All Wind Towers 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 CWEF shall conform to applicable local, state, and national codes, and relevant national and international standards (e.g. ANSI and International Electrical Commission).

#### D. Color, Aesthetics, Lighting

Towers and blades shall be painted white or gray or another non-reflective, unobtrusive color, including tower height. Further, all turbines shall rotate in the same direction.

CWEF Projects shall utilize minimal lighting that is compliant with the applicable FAA regulations, as amended from time to time by the FAA. The Applicant and/ or Facility Owner shall apply for the installation of an Aircraft Detection Lighting System and, if approved by the FAA, shall install and maintain such lighting system throughout the life of the CWEF.

All interproject power and communication lines used to collect power from individual turbines and all communication lines shall be buried underground at a depth in accordance with the AIMA until the same reach the property line or a substation adjacent to the property line.

#### E. Compliance with the Federal Aviation Administration

The Applicant for the CWEF 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 Wind 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 Wind Tower.

H. Setbacks (measured from the center point on the base of the Wind Tower)

<u>Setback Description</u>	<u>Setback Distance</u>
Occupied Community Buildings	2.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure
Participating Residences	1.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure
Nonparticipating Residences	2.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure
Boundary Lines of Participating Property	None
Boundary Lines of Nonparticipating Property	1.1 times the maximum blade tip height of the wind tower to the nearest point on the property

line of the nonparticipating  
property

Public Road Rights-of-Way	1.1 times the maximum blade tip height of the wind tower to the center point of the public road right-of-way
Overhead Communication and Electric Transmission and Distribution Facilities (Not Including Overhead Utility Service Lines to Individual Houses or Outbuildings)	1.1 times the maximum blade tip height of the wind tower to the nearest edge of the property line, easement, or right of way containing the overhead line
Overhead Utility Service Lines to Individual Houses or Outbuildings	None
Fish and Wildlife Areas and Illinois Nature Preserve Commission Protected Lands	2.1 times the maximum blade tip height of the wind tower to the nearest point on the property line of the fish and wildlife area or protected land
Known abandoned mines	5,280 feet as measured from the center point of the wind turbine to the nearest point of any known

underground mine tunnel, shaft, chute, or other below ground excavation.

This Section does not exempt or excuse compliance with electric facility clearances approved or required by the National Electrical Code, The National Electrical Safety Code, Illinois Commerce Commission, Federal Energy Regulatory Commission, and their designees or successors.

A wind tower of a commercial wind energy facility must be sited so that industry standard computer modeling indicates that any occupied community building or nonparticipating residence will not experience more than 30 hours per year of shadow flicker under planned operating conditions.

#### 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

- i. An applicant, Owner, or Operator proposing to use any county, municipal, township or village road(s), for the purpose of transporting CWEF or substation parts and/or equipment for construction, operation, upgrades and decommissioning, or maintenance of CWEF(s) or Supporting Facilities shall prior to issuance of CWEF Construction/ Building Permits:
  1. Identify all such public roads within the county to be used for transportation of CWEF components or substations components and/or equipment for the construction, operation, or maintenance of the CWEF(s) or substation(s);
  2. Provide the Vermilion County Highway Department with the following prior to issuance of Construction/ Building Permits:
    - a. The list of roads to be used;
    - b. An executed copy of applicable weight and size permits from appropriate governmental units having jurisdiction over identified public roads; and
    - c. An executed copy of each written road use agreement and supporting documentation required by the

appropriate governmental units having jurisdiction over identified public roads addressing:

1. The use and proposed repair plan for the public roads, bridges, and rights of way located within that governmental unit's jurisdiction;
  2. The pre-construction baseline survey prepared and sealed by a State of Illinois Licensed Professional Engineer to determine existing road and bridge conditions for assessing potential damage to identified public roads;
  3. The method to conduct a post construction baseline survey prepared and sealed by a State of Illinois Licensed Professional Engineer to determine any actual damage to identified public roads and bridges;
  4. Proposed remediation or compensation to the appropriate governmental unit having jurisdiction over identified public roads for any actual measured damage to public roads and bridges; and
  5. Performance/surety bonds or other financial assurance documents required to guarantee the performance of the road use agreements.
  6. If no such written agreement is required by the governmental unit having jurisdiction per identified public roads, an executed written statement from said unit of government stating no agreement is required shall be submitted.
- ii. Reasonable dust control measures will be required during construction of the CWEF(s).

#### 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.

The Facility Owner must repair damage to drainage systems within 30 days of receiving notice of such damage. All repairs must be performed by a contractor with facilities

located in Vermilion County, Illinois, unless no contractors within the County are capable of making such repairs within the proscribed time period.

## **VIII. OPERATION**

### **A. Maintenance**

1. The Facility Owner or Operator of the CWEF 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. Upon request of the County, a representative of the owner/operator of the CWEF Project will meet to confer about operations of the CWEF and discuss any complaints relative to the operation of the CWEF and associated activities related to the operation of the CWEF project. All costs and fees incurred by the County in attempting to or resolving complaints shall be reimbursed by the Applicant or Owner of the CWEF. A permanent hotline number and email will be available for residents to call or communicate with to make complaints, which shall operate on a 24/7 basis. The County shall be provided with any information concerning complaints and their resolution upon request.
2. Any physical modification to the CWEF that alters the mechanical load, mechanical load path, Wind Turbine heights, Wind Turbine impacts on the environment (such as sound, shadow flicker or other environmental impacts), or major electrical components shall require re-certification under Section VI of this Ordinance. Like-kind replacements shall not require re-certification but records demonstrating the nature of the 'like-kind' replacement or repair must be maintained and notification made to the County. Prior to making any physical modification (other than a like-kind replacement or repair), the owner or operator shall confer with a relevant third-party certifying entity identified in Section VI of this Ordinance as well as the County to determine whether the physical modification requires re- certification. The County may in its sole discretion require re-certification unless adequate showing is made by that such is not required. Re-certification of the CWEF will be required for any "repower" of a CWEF. Re-certification includes filing a Siting Permit Application, and public hearing to determine whether to approve the proposed CWEF changes. All requirements of this Ordinance shall apply to any re-certification request.

## B. Interference

1. There shall be no interference with emergency communications, weather radar, or television reception as a result of the construction or operation of a CWF project.
2. 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 this Ordinance. The Applicant, at its expense shall have a third party acceptable to the County who has a qualified professional background, conduct an appropriate analysis of the E9-1-1 communications, emergency communications, weather radar, or other official County and local municipal communications to determine that such communications shall not be negatively impacted or influenced by the proposed CWF. To the extent that the above provider(s) demonstrate a likelihood of interference with its communications resulting from the CWF, the Applicant shall take immediate action to minimize interference with such emergency communications. If, after construction of the CWF, the Owner or Operator receives a written complaint related to the above-mentioned interference, the Owner or Operator shall take immediate steps to respond to the complaint.
3. The Applicant, at its expense shall have a third party acceptable to the County who has a qualified professional background, conduct an appropriate analysis of the television reception, documenting the television stations that are received within one and one-half miles of the footprint of the CWF project. If, after construction of the CWF, the Owner or Operator receives a written complaint related to interference with local broadcast residential television, the Owner or Operator shall take immediate steps to respond and remedy 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 or emergency response department, the Owner or Operator shall cooperate with the local fire department to develop the fire department's emergency response plan and shall provide in person training to emergency response personnel. The Facility Owner shall be responsible for the costs associated with any additional training or required equipment.



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 CWEF 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 CWEF shall be handled, stored, transported, and disposed of in accordance with all applicable local, state and federal laws.

#### E. Aerial Application Cost Reimbursement

1. Facility Owner shall consult with all landowners and farmers within the footprint of the Project or adjacent thereto regarding aerial application; and
2. Shall reimburse those landowners or farmers the reasonable increased costs of aerial application due to or as a consequence of the existence of the CWEF.

### **IX. NOISE LEVELS**

Noise levels from each Wind Turbine or CWEF Project shall follow applicable Illinois Pollution Control Board (IPCB) regulations. The Applicant, using 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, or the County, and after consultation with the Facility Owner and/or Operator of the project, as to noise levels the Facility Owner and/or Operator 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.

### **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 County. The County shall weigh the recommendations of the Illinois Department of

Natural Resources, if any, but shall not be bound by them and the County Board 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. Such recommended practices and studies may be, but are not limited to:

1. Curtailment wind turbine operations during certain hours, days, or other specified periods.
2. Require a minimum of three years, or as recommended by IDNR, mortality monitoring for specified wildlife.
3. Require setbacks from Illinois Nature Preserves as specified by IDNR.
4. Require setbacks from Illinois Natures Inventory Sites as specified by IDNR.
5. Require setbacks from streams which may be identified by IDNR, including but not limited to any perennial stream with a non-forested riparian zone.
6. Require setbacks from forested areas and forested riparian zones as described by or specifically identified by IDNR.
7. Coordination with recommendations of the U.S. Fish and Wildlife Service ("USFWS") as to Bald and Golden Eagles, or other matters within their jurisdiction or concern.
8. That all "Tiered surveys" identified in the IDNR report as tier 1, 2, & 3 studies, as required by USFWS, Land-Based Energy Guidelines be forwarded to IDNR for study and comment and possible action if recommendations are made.
9. The results of the United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with (i) the "U.S. Fish and Wildlife Service's Land-Based Wind Energy Guidelines" and (ii) any applicable United States Fish and Wildlife Service wildlife guidelines that have been subject to public review.
10. It shall be the applicant's obligation to certify that based upon consultation with the IDNR, the siting, building and operation of the CWEF will not violate existing law. The County may require any independent study as noted above or otherwise deemed necessary by the County, IDNR, USFWS, or other nature or historic preservation agency or otherwise suggested by IDNR and the applicant shall pay for such studies.
11. The county may require that a facility owner provide evidence of consultation with the Illinois State Historic Preservation Office to assess potential impacts on State-registered historic sites under the Illinois State Agency Historic Resources Preservation Act.

12. Where applicable, the County 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**

Commencing with the issuance of a CWEF Building Permit, the Applicant shall maintain a current general comprehensive liability policy and automobile liability coverage covering bodily injury, death and illness, and property damage with limits of at least Five Million Dollars (\$5,000,000.00) per occurrence and Twenty Million Dollars (\$20,000,000.00) in the aggregate; and, shall further maintain the above-stated lines of insurance from delivery of the "Notice to Proceed by the Applicant under the turbine supply and/or balance of plant construction contract(s) for the CWEF Project, in coverage amounts of at least Five Million Dollars (\$5,000,000.00) per occurrence and Twenty Million Dollars (\$20,000,000.00) in the aggregate during the life of the CWEF Project. The Applicant shall file the original certificate of insurance upon commencement of project construction prior to the issuance of a CWEF Building Permit, corresponding policies and endorsements to be provided within sixty (60) days of issuance, and at each subsequent renewal, at least annually thereafter.

The Applicant and Facility Owner shall defend, indemnify and hold harmless the County and its officers, appointed and elected officials, employees, attorneys, engineers and agents (collectively and individually, the "Indemnified Parties") from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees relating to or arising out of the issuance of the Siting Permit or the construction, operation, maintenance and removal of the CWEF and affiliated equipment including, without limitation, liability for property damage or personal injury (including death or illness), whether said liability is premised on contract or on tort (including without limitation strict liability or

negligence) or any acts or omissions of the Applicant or Facility Owner, or the Operator under this Ordinance or the Siting Permit, except to the extent any such claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities arise from the negligence or intentional acts of such Indemnified Parties. This general indemnification shall not be construed as limiting or qualifying the County's other indemnification rights available under the law.

### **XIII. DECOMMISSIONING PLAN**

- A. Prior to receiving a Building Permit under this Ordinance, the County and the Applicant, Owner, and/or Operator must formulate a Decommissioning Plan and a Decommissioning Agreement to ensure that the CWEF Project is properly decommissioned, and have such plan approved by the County Board. The Applicant must present information regarding the Decommissioning Plan in its Siting Application and during the public hearing process. The Decommissioning Plan and Agreement shall be as required by the AIMA and include:
- B. Provisions describing the triggering events for decommissioning the CWEF 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 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 an Illinois licensed Professional Engineer, considering the expected life of the CWEF;
- 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 without regard to any previous financial assurance or bond posted if those resources are not available to the County for any reason, or have already been expended.
- J. The Decommissioning Cost shall be evaluated every 5 years from the date of Commercial Operation by an independent engineer at the Facility Owner's expense. Any increased Decommissioning Cost estimates shall require the Facility Owner to adjust the financial assurances provided to the County accordingly.

#### **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 County 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 and any costs (including attorney's fees) of the county in enforcing such. 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 shall have the right to enter upon any land upon which a Wind Turbine, CWEF or Supporting Facility 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, is intended to place a duty upon the County to inspect or enforce any provision of this ordinance, or waive any statutory, or common law, immunity provided by law, including any privilege, immunity or affirmative defense under the Local Immunity Act (745 ILCS 10/1-101 et seq).

## **XVI FEES AND COSTS**

### **1. Siting Permit Application Fees**

- a. Prior to processing any Application for a Commercial Wind Energy Facility, the Applicant must submit a certified check to the County for the Application Fee equal to \$5,000.00 per megawatt (mW) of proposed nameplate capacity, up to a maximum fee of \$250,000.00. These funds shall be placed in an FDIC insured account and will be used to cover the county's cost incurred in processing the Application.
- b. Should the actual costs to the County exceed the submitted Application Fee, the Applicant shall be responsible for those additional costs and shall remit additional funds to the County within 15 days of receipt of a request from the County. No hearings on an Application shall be conducted nor final decisions rendered on an Application if there are Application fees due to the County.
- c. Any unused amounts of the Application Fee shall be refunded to the Applicant within six months of the County Board rendering a final decision on the matter, unless any pending litigation, disputes or negotiations involving the

County exist regarding the Commercial Wind Energy Facility, in which case any amounts owed to the Applicant shall be refunded within six months of the conclusion of the litigation, disputes or negotiations. An Applicant may request any unused Application Fee be applied toward the Building Permit Fees for the Facility.

2. Building Permit Fees

- a. Prior to the issuance of building permits, the Building Permit Applicant must deposit a Building Permit Fee equating to \$7,500.00 per megawatt (mW) of nameplate capacity. If the total nameplate capacity is less than 1 mW, the building permit fee shall be reduced pro rata.

3. All Costs to be Paid by Applicant or Owner

- a. In addition to all fees noted above, the Applicant or Owner shall pay all costs incurred by the County, including but not limited to, those costs associated with all offices, boards and commissions of the County, and third-party costs incurred by the County. This includes, but is not limited to, the direct or indirect costs associated with the hearing, permitting, operations, inspections, decommissioning, litigation, disputes, and/ or negotiations.

## **XVII WAIVER AND VARIANCES**

The County 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. The requirements set forth in this ordinance as to setbacks and shadow flicker may also be waived subject to the written consent of the owner of each affected nonparticipating property. Such variances whether at the permit application stage or over the life of the CWEF(s) shall be considered at the request of the applicant or owner or managing entity responsible for the CWEF(s) and shall be in writing and demonstrate the need for a waiver or variance to the satisfaction of the County. Such variance or waiver shall be filed with the County Board Office.

## **XVIII. PUBLIC HEARING PROCESS**

The County may engage the services of a hearing facilitator. The hearing facilitator shall be an independent contractor who shall conduct a hearing in accordance with all applicable rules of the board and the county but has no adjudicatory responsibility other than ruling on requests for continuances, procedural matters, admissibility of evidence and the propriety of any arguments.

The hearing facilitator shall be an attorney, licensed to practice in the State of Illinois. The Applicant shall reimburse the county for the fees and costs charged by the facilitator.

## **XIX. 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.

## **XX. EFFECTIVE DATE**

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



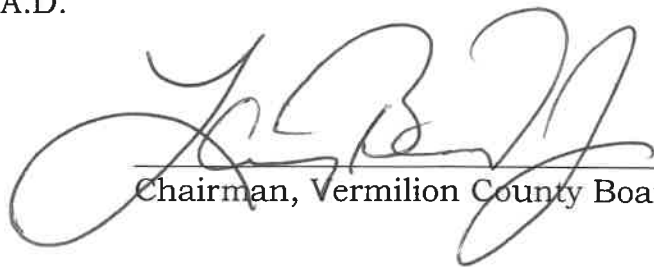
**PRESENTED, APPROVED AND ORDAINED** by the County Board of Vermilion County, Illinois at the May 24, 2023 A.D. Session.

DATED this 24<sup>th</sup> day of May 2023 A.D.

AYE 18 NAY 0 ABSENT 9

ATTEST:

Cathy Jenkins (IP)  
Clerk of the County Board

  
Chairman, Vermilion County Board

Ordinance/Resolution

No. 23-0508

Approved by Wind & Solar Subcommittee on 05/19/23: Steve Fourez (Y) N A  
Chairman

Adrian Greenwell (Y) N A

Curt Elmore (Y) N A

Russ Rudd (Y) N A

Harold Puzey (Y) N A

Chris Crawford (Y) N A