

MONTGOMERY COUNTY ORDINANCE
#09-10
ORDINANCE REGULATING THE SITING OF
WIND ENERGY CONVERSION SYSTEMS

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I. INTRODUCTION

A. Title

This Ordinance shall be known, cited and referred to as the Montgomery County Wind Energy Siting Ordinance.

B. Purpose

This Ordinance is adopted for the following purposes:

1. To assure that any development and production of wind-generated electricity in Montgomery County is 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.

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 siting 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. **"Operator"** means the entity responsible for the day-to-day operation and maintenance of the WECS, including any third party subcontractors.
- D. **"Owner"** means the entity or entities with an equity interest in the WECSs, 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 WECSs 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 WECSs at the earliest practicable date.
- E. **"Professional Engineer"** means a qualified individual who is licensed as a professional engineer in the State of Illinois.
- F. **"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.

- G. **“Structural Engineer”** means a qualified individual who is licensed as a structural engineer in the State of Illinois.
- H. **“Substation”** means the apparatus that connects the electrical collection system of the WECSs and increases the voltage for connection with the utility’s transmission lines.
- I. **“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 Substations.
- J. **“WECS Project”** means the collection of WECS and Substations as specified in the Siting Application pursuant to Section V of this Ordinance.
- K. **“WECS Tower”** means the support structure to which the nacelle and rotor are attached.
- L. **“WECS Tower Height”** means the distance from the rotor blade at its highest point to the ground surface at the base of the WECS foundation.

III. APPLICABILITY

This Ordinance governs the siting of WECSs and Substations that generate electricity to be sold to wholesale or retail market, except that owners of WECSs with an aggregate generating capacity of 3MW or less who locate the WECSs on their own property are not subject to this Ordinance.

IV. PROHIBITION

No WECS or Substation governed by Section III of this Ordinance shall be transported, constructed, erected, installed, located or operated within Montgomery County, unless:

- A. Siting Approval has been granted by the County Board; and
- B. Road Upgrade and Maintenance Agreements have been entered into for each applicable governmental agency; and
- C. A Conditional Use Permit has been obtained for each individual WECS and Substation pursuant to this Ordinance.

V. SITING APPROVAL

- A. The Applicant must submit a Siting Application to the County Economic Development Committee for review and recommendation to County Board. Approval or Denial of application will be made by the full County Board.
- B. The Siting Application shall contain or be accompanied by the following information:
1. A 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 manufacturers, types of WECSs, number of WECSs, and name plate generating capacity of each WECS; the maximum height of the WECS Towers and maximum diameter of the WECSs rotors; the general location of the project; and (2) a description of the Applicant, Owner and Operator, including their respective business structures;
 2. The names, addresses, and phone numbers of the Applicant, Owner and Operator, and all property owners, if known;
 3. A site plan for the installation of WECSs showing the planned location of each WECS Tower, Primary Structures, property lines (including identification of adjoining properties), setback lines, public access roads and turnout locations, Substations, electrical cabling from the WECS Tower to the Substations, ancillary equipment, third party transmission lines, and layout of all structures within the geographical boundaries of any applicable setback;
 4. Individual inventory designations for each separate WECS and Substation for reference in Conditional Use Permits;
 5. All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance; and,
 6. Financial Assurance in the form of a bond to assure the construction, installation and completion of the project or improvements. Such bond shall be provided by the Applicant prior to approval by the full County Board and shall be in such amount as is determined to be 110% of the estimated WECS Project cost. Such bond shall have as security thereon a surety company qualified to do business in the State of Illinois which shall remain bound until the WECS Project is completely constructed by the Applicant and accepted by Montgomery County.
- C. The Applicant shall notify the County Economic Development Committee of any changes to the information provided in Section V.B above that occurs while the Siting Application is pending.

VI. CONDITIONAL USE PERMIT

The Applicant, Owner and/or Operator must submit a Conditional Use Application to the County Economic Development Committee for review for each WECS and Substation location (See Exhibit A). A Conditional Use Permit must be granted prior to materials being transported, constructed, erected, installed, located or operated within Montgomery County. Each location must be identified in an Approved Siting WECS Project. The County reserves the right to suspend or revoke a Permit as provided for in this Ordinance.

VII. DESIGN AND INSTALLATION

A. Design Safety Certification

1. 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 Energy ("GL"), or an equivalent third party.
2. Following the granting of Siting Approval under this Ordinance, a Structural Engineer shall certify that the foundation and tower design of the WECS are within accepted professional standards, given local soil and climate conditions.

B. Controls and Brakes

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

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

1. Fences with locking portals at least six feet high; or
2. Anti-climbing devices 12 feet vertically from the base of the WECS Tower.

H. Setbacks

1. All WECS Towers shall be set back at least 1000 feet from any Primary Structure. 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.
2. All WECS Towers shall be set back a distance of at least 1.10 times the WECS Tower Height from public roads, utilities, sewer mains, water mains, sewer treatment facilities, water treatment facilities, third party transmission lines, and communication towers. The County may waive this setback requirement.
3. All WECS Towers shall be set back a distance of at least 1.10 times the WECS Tower Height from adjacent property lines, private sewage disposal or septic systems and private water wells. The affected property owner may waive this setback requirement.
4. The Applicant does not need to obtain a variance from the County upon waiver by either the County or property owner 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.

5. New structures, specifically those built after a wind turbine is sited and operational, and adjacent to wind power facilities shall maintain the same setbacks from those facilities as those facilities themselves are required to observe hereunder.

I. *Compliance with Additional Regulations*

1. The Applicant must receive approval from the Village or Municipality when the location of a WECS Tower is proposed within 1.5 miles of said Village or Municipal corporate limits.
2. Nothing in this Ordinance is intended to preempt other applicable state and federal laws and regulations.

J. *Agriculture Damage Repair*

All damages to waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction or maintenance of the WECS, must be completely repaired or replaced.

K. *Use of Public Roads*

1. An Applicant, Owner, or Operator proposing to use any county, township, municipal or village road, for the purpose of transporting WECS or Substation parts and/or equipment for construction, operation, or maintenance of the WECSs or Substations, shall:
 - a. Identify all such public roads including a site layout plan showing the applicable tower sites, public road network used, access road entrances, underground collection system and power transformer sites;
 - b. Enter into a Road Upgrade and Maintenance Agreement with the relevant government agencies prior to construction; and,
 - c. Obtain applicable weight and size permits from all relevant government agencies.
2. To the extent an Applicant, Owner, or Operator must obtain a Road Upgrade and Maintenance Agreement -- the Agreement shall address as a minimum:
 - a. Identify necessary heavy and oversized equipment and materials over roads identified in Section VII.J.1.a, which may in certain cases be in excess of the design limits of the roads;

- b. Widen, modify and/or improve roads including culverts, bridges, road shoulders and other related fixtures to permit such equipment and materials to pass;
- c. Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage;
- d. 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 transporting, constructing, operating or maintaining WECSs and Substations; and,
- e. Identify any special issues which may affect the public health, safety and welfare.

L. Height

The permitted maximum height of a WECS shall be 500 feet. State and Federal Regulations may require a lesser height. To the extent feasible, the WECS Project shall consist of turbines of similar design and size, including tower height. All WECSs shall be constructed with self-supporting, tubular towers. Lattice towers will not be accepted.

M. Lighting

The WECS Project shall utilize minimal lighting. No tower lighting other than normal security lighting shall be permitted except as may be required by the FAA. A lighting plan for each WECS shall be developed. Such plan must describe all lighting that will be used, including the planned number and location of lights, light color and where any lights will be flashing. Strobe lights are discouraged and if they are required by the FAA they must be shielded from the ground. The lighting should be planned and developed in such a way to minimize the visual impact of the structures. A consideration of synchronized lighting shall also be part of any lighting plan.

VIII. OPERATION

A. Maintenance

1. The Owner or Operator shall ensure each WECS and Substation is inspected annually by qualified wind power professionals, approved by the County Economic Development Committee, and shall submit a certificate from said professionals reciting the annual maintenance done on the facility and stating that the facility is in good working condition and not a hazard to the public. Failure to submit such annual certificate shall be grounds for revocation of the Conditional Use Permit. In addition to the above annual certification, 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 VII.A of this Ordinance. Like-kind replacements shall not require re-certification. 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 VII(A) of this Ordinance to determine whether the physical modification requires re-certification.

B. *Interference*

1. The Applicant shall provide the applicable microwave transmission providers and local emergency service providers (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 providers demonstrate a likelihood of interference with its communications resulting from the WECSs, 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 rectify the complaint to the satisfaction of the agency affected.
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 resolve the complaint.

C. *Coordination with Montgomery County Emergency Management Agency*

1. The Applicant, Owner or Operator shall submit to the local EMA a copy of the site plan.
2. The Owner, Applicant or Operator shall cooperate with the local EMA to develop an 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 local, state and federal laws.
2. All hazardous material 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. EMA and

HazMat Directors shall be notified of the handling, storage, transportation and disposal of any and all hazardous materials.

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 Siting Application process, shall appropriately demonstrate compliance with the above noise requirements.

X. BIRDS

A qualified professional, such as an ornithologist or wildlife biologist, shall conduct an avian habitat study, as part of the Siting Application process, to determine if the installation of WECSs will have a substantial adverse impact on birds.

XI. PUBLIC PARTICIPATION

Nothing in the Ordinance is meant to augment or diminish existing opportunities for public participation.

XII. LIABILITY INSURANCE

The Owner or Operator of the WECSs shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$1 million per occurrence and \$1 million in the aggregate.

XIII. DECOMMISSIONING PLAN

Prior to receiving Siting 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 upon the end of project life or facility abandonment. The Decommissioning Plan shall include:

- A. Provisions describing the triggering events for decommissioning the WECS Project;
- B. Provisions for the removal of structures, debris and cabling, including those below the soil surface to a depth of four (4) feet;
 - 1. All solid wastes shall be disposed of in accordance with all local, state and federal laws.
 - 2. All hazardous materials shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws. EMA and

HazMat Directors shall be notified of the handling, storage, transportation and disposal of any and all hazardous materials.

- C. Provisions for the restoration of the soil and vegetation consistent and compatible with surrounding vegetation;
- D. An estimate of the decommissioning costs certified by a Professional or Structural Engineer;
- E. Financial Assurance, secured by the Owner or Operator, for the purpose of adequately performing decommissioning, in an amount equal to the Engineer's certified estimate of the decommissioning costs;
- F. Identification of and procedure for County access to Financial Assurances;
- G. A provision that the terms of the Decommissioning Plan shall be binding upon the Owner or Operator and any of their successors, assigns, or heirs;
- H. A provision that the County shall have access to the site, pursuant to reasonable notice, to affect or complete decommissioning; and,
- I. A provision that the County is granted the right to seek injunctive relief to affect or complete decommissioning, as well as the County's right to seek reimbursement from applicant or applicant's successor for decommissioning costs in excess of the Engineer's estimate and to file a lien against any real estate owned by applicant or applicant's successor, for the amount of the excess, and to take all steps allowed by law to enforce said lien.

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 fines for the resolution of such defaults, the County shall first provide written notice to the Owner and Operator, setting forth the alleged defaults. 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 defaults.
- C. If the County determines in its discretion, that the parties cannot resolve the alleged defaults within the good faith negotiation period, the County shall make application to the circuit court for an injunction requiring conformance with this ordinance or make such other order as the court deems necessary to secure compliance with the ordinance. The Applicant, Owner or Operator who violates this ordinance shall upon conviction thereof be fined not less than five-hundred dollars (\$500.00) nor more than one-thousand dollars (\$1000.00); and a separate

offense shall be deemed committed upon each day during or on which a violation occurs or continues.

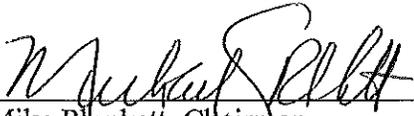
- D. Nothing herein shall prevent the County from taking such other lawful action to prevent or remedy violations. All cost connected therewith shall accrue to the Applicant, Owner or Operator responsible.

XV. FEE SCHEDULE

- A. Upon submittal of a Siting Application for a WECS, the Applicant shall submit a certified check to Montgomery County in the amount of \$50,000. This amount shall be placed in a guaranteed money market account that will be used to cover the County's cost incurred during the application review. Should the actual costs to the County exceed \$50,000, the applicant shall be responsible for those costs and shall remit additional funds within 15 days of the notice from the County. An amount remaining in the account after the County renders its decision and all bills and invoices have been paid, shall be refunded to the applicant. The County requests that the applicant shall file ten copies of the Siting Application upon submittal of the Application Fee.
- B. The Conditional Use Permit Fee for each new WECS shall be \$5,000. The fee for any major improvements to an existing WECS shall be \$2,500.

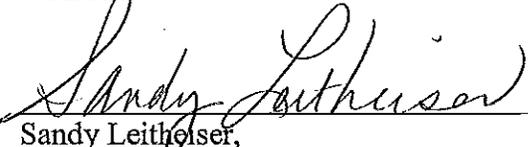
BE IT FINALLY ORDAINED, That the Montgomery County Board reserves the express right to change, modify or terminate these regulations and procedures at any time, in whole or in part, for any reason, with or without prior notice upon its own unilateral act.

APPROVED AND ADOPTED BY THE COUNTY BOARD OF MONTGOMERY COUNTY, ILLINOIS THIS 9th Day of June 2009



Mike Plunkett, Chairman
Montgomery County Board

ATEST,



Sandy Leithaiser,
Montgomery County Clerk and Recorder