

**Lee County Board**

**Dixon, Illinois**

**ORDINANCE NO. 08-21-006**

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

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**I. APPLICABILITY**

The purpose of this ordinance is to facilitate the construction, installation, and operation of Wind Energy Conversion Systems ("WECS") in Lee County that promote economic development and ensure the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands, endangered species habitats, conservation lands, and other sensitive lands. This ordinance is not intended to replace safety, health, or environmental requirements contained in other applicable codes, standards, or ordinances. The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.

**II. DEFINITIONS**

1. Escrowee: A bank or trust company duly authorized to do business in the State of Illinois and legally authorized to do business in the State of Illinois and legally authorized to administer trusts and escrow accounts.
2. Operator: The entity responsible for the day-to-day-operation and maintenance of the WECS, including any party subcontractor.
3. Owner: The entity or entities with an equity interest in WECS Project, including their respective successor and assigns. Owner does not mean (i) the property owner from whom land is leased for locating the WECS Project (unless the property owner has an equity interest in the WECS Project); or (ii) any person holding a security interest in a WECS Project solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell a WECS Project(s) at the earliest practicable date.
4. Professional Engineer: A qualified individual who is licensed as a professional engineer by the State of Illinois.
5. Primary Structure: For each property, the structure that one or more persons occupy the majority of time on property for either business or personal reasons. Primary Structure includes structures such as residences, commercial buildings, hospitals and day care facilities. Primary Structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.

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

### III. PROHIBITION

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

### IV. DESIGN AND INSTALLATION

1. Conformance with the Petition
  - a. The Applicant shall construct the WECS Project in substantial accordance with submitted Special Use Petition.
  - b. The Applicant shall be bound by any and all proposals and representations made under oath at the public hearing before the Lee County Zoning Board of Appeals, which shall be considered supplementary conditions of the Special Use Petition granted by the Lee County Board, even if not directly specified herein.

- c. The Applicant shall obtain all required permits from other governmental agencies (such as the Federal Aviation Administration) prior to commencing construction or as otherwise required by the applicable laws and regulations. Copies or evidence of such permits shall be submitted to Lee County on or before the issuance of the first building permit for any WECS Project.
- d. The Applicant shall submit at or prior to the hearing before the Zoning Board of Appeals the following as part of its petition for Special Use:
  - i. The property lines of the proposed site of construction.
  - ii. Proposed location of the WECS Project, including distances from property lines and any existing or occupied residence within two thousand six hundred forty (2,640) feet of the WECS Turbine.
  - iii. Recognition of all non-residential structures located on the property where the WECS is proposed.
  - iv. Location of all above-ground and under-ground utility lines within a radius equal to two (2) times the height of the proposed WECS Turbine.
  - v. Dimensional representation of the structural components of the WECS Tower construction, including the base and footings.
  - vi. Schematic of electrical systems associated with the WECS Turbine, including all existing and proposed electrical connections.
  - vii. Representative manufacturer's specifications and installation and operation instructions or specific WECS Project design information.
  - viii. Certification by a registered Professional Engineer that the WECS Tower's design is sufficient to withstand wind load requirements for structure as defined by the International Code Council (ICC).
  - ix. Location of all access roads required for the WECS Project.
  - x. A topographic map of the proposed site of construction.

The Applicant shall notify the County of any material changes to the information provided in subsections i through x that occur prior to the issuance of a building permit.

- e. The Applicant shall not commence construction activity associated with the WECS Project before 6:00 A.M. nor continue past 9:00 P.M. on any day of the week within one-quarter ( $\frac{1}{4}$ ) of a mile of any non-participating landowner unless a waiver is obtained from such landowner.

- f. Prior to issuance of a building permit, the Applicant shall provide documentation to the Lee County Zoning Administrator verifying that any power purchase contracts (or other equivalent agreement), power transmission contracts and other legal rights are in place.
- g. The Applicant shall commence construction of the WECS Project within thirty-six (36) months of the date of the Special Use Petition approval by the Lee County Board. After construction is complete, the Applicant shall provide certified "as-built" drawings to the Lee County Administrator and the Lee County Assessor showing the locations of the WECS Turbines, roads, transmission lines, and other improvements related to the WECS Project and a legal description of the land utilized for the improvements. The Special Use Permit shall thereafter automatically be modified to limit the legal description of the area of the Special Use Petition to the land utilized for the improvements.

## 2. Design Safety Certification

- a. The Applicant shall provide at or prior to the issuance of a building permit a certificate of design demonstrating that the equipment manufacturers have obtained approval from Underwriters Laboratories (UL), Det Norske Veritas (DNV), Germanischer Lloyd Wind Energie (GL), or all equivalent third party.
- b. Following the granting of a Special Use Petition, a professional Engineer shall certify, as part of the building permit application, the foundation and tower design of the WECS Project is within accepted professional standards, given soil and climate conditions.
- c. The Applicant shall utilize new equipment which is commercially available. No used, experimental or prototype equipment still in testing shall be utilized.

## 3. Controls and Brakes

The Applicant shall equip all WECS Projects with a redundant braking system. This includes both aerodynamic over-speed controls, including variable pitch systems and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulations shall not be considered a sufficient braking system for over-speed protection.

## 4. Electrical Components

- a. The Applicant shall ensure that all electrical components of the WECS Project shall conform to applicable state and national codes, and relevant national and international standards (e.g., American National Standards Institute (ANSI) and the International Electrical Code (IEC)).
- b. The Applicant shall ensure that all electrical wires and lines used to collect power from individual WECS Turbines, as well as communication lines, shall

be trenched-in (or using other best practices technique), installed and located underground at a depth consistent with local utility and telecommunication underground lines standards.

- c. The Applicant shall provide information regarding underground utilities constructed and/or installed as part of the WECS Project to the “One-Call System” operated by the Joint Utility Locating Information for Excavators Company, commonly known as “JULIE.”

5. Color

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

6. Aviation Safety

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

7. Warnings

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

8. Climb Prevention

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

9. Setbacks

- a. All WECS Turbines shall be set back at least 1,400 feet or 3.1 times the WECS Turbine height, whichever is greater, from any Primary Structure, school, church or public building located on a non-participating parcel. The distance for the above setback shall be measured from the point of the residence foundation closest to the WECS Turbine to the base of the WECS Tower at ground level. The Applicant may negotiate a setback easement with the parcel owner to reduce this setback requirement.
- b. All WECS Turbines shall be set back at least 1,400 feet or 3.5 times the WECS Turbine height, whichever is greater, from the boundary of any Lot, which, as of the date of the approval of the Special Use Petition, is in a residential platted subdivision.

- c. All WECS Turbines shall be set back a distance of at least 1.1 times the WECS Turbine height from public roads, third-party transmission lines and communication towers.
- d. All WECS Turbines shall be set back a distance of at least 1.1 times the WECS Turbine height from the property lines of a non-participating parcel. The Applicant may negotiate a setback easement with an adjacent project parcel owner and/or non-participating parcel owner to reduce this setback requirement.
- e. No setback shall be required for a WECS Turbine to a residence located on a project parcel.
- f. The Applicant does not need to obtain a variance from the Lee County Zoning Board of Appeals upon the granting of a setback easement by a parcel owner of any of the above setback requirements. Any negotiated setback easement(s) shall run with the land and be recorded with the Lee County Recorder as part of the chain of title of the subject parcel.

## 10. Other Setbacks

### Natural Resource Areas and Bird and Bat Migration Paths

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

## 11. Use of Public Roads

Prior to the issuance of a building permit, the Applicant shall enter into a Road Use and Repair Agreement approved by the Lee County Board and the Township Highway Commissioner as applicable.

## 12. Repair of Drainage Facilities

The Applicant shall repair any and all field tiles damaged by the WECS Project construction and maintenance activities within ten (10) working days of the date of receipt of notification, and shall repair damage to other drainage facilities, including

but not necessarily limited to waterways and drainage ditches, as soon as reasonable possible, but in any event within six (6) months of the date of receipt or notification.

13. Engineering Best Management Practices to Control Stormwater, Siltation and Erosion

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

14. Agricultural Impact Mitigation Agreement (AIMA). The Applicant shall enter into and adhere to the AIMA with the Illinois Department of Agriculture, prior to construction, pursuant to 505 ILCS 147/15.

15. Blasting

The Applicant shall not conduct any blasting in connection with the construction of the WECS Project unless the Applicant has provided prior notification to the property owner, any abutting property owners, property owners within one thousand, five hundred (1,500) feet of the blasting site, officials of the Township in which the blasting is to occur, and the Lee County Zoning Administrator. All blasting shall be done in accordance with all applicable State and Federal laws and regulations.

16. Wildlife/Avian Survey and Mitigation Plan

- a. The Applicant shall commission and submit to the Lee County's Zoning Office at the time of the building permit application, a wildlife assessment (impact study), conducted by a qualified wildlife expert having not less than ten (10) years of experience conducting wildlife assessments, indicating possible risks to local wildlife, habitat and migratory birds. Additionally, the Petitioner shall consult with the IDNR regarding the WECS Project's potential impact on local wildlife. The Applicant's wildlife expert shall also develop a mitigation plan, if applicable, that addresses and/or mitigates risks to wildlife, migratory birds and affiliated habitat raised by the IDNR.
- b. More specifically, the Applicant shall submit the wildlife assessment/impact study and mitigation plan, if applicable, to the IDNR for review and consultation. Should the IDNR choose to comment on said herein, all comments shall be forwarded to the Lee County Zoning Office in writing.
- c. If the IDNR determines that the submitted mitigation plan is insufficient to effectively address the risk to local wildlife and habitat or the Lee County Zoning Administrator requires clarification on any study, plan, or comment referred to herein, or no IDNR comments are provided to the Lee County Zoning Office, then Lee County may select and hire a qualified wildlife expert having not less than ten (10) years of experience conducting wildlife assessments, impact studies, and mitigation plans to re view the wildlife assessment, impact study, and mitigation plan submitted by the Owner/Operator. All costs associated with the wildlife expert selected and

hired by Lee County shall be paid for by the Applicant. Should it be found by Lee County's wildlife expert that the mitigation plan is deficient, such deficiency shall be addressed by the Applicant's wildlife expert to the satisfaction of Lee County's wildlife expert. Moreover, should Lee County's wildlife expert find that the mitigation plan (or the lack of a mitigation plan) by the Applicant's wildlife expert is deficient or not acceptable, then the Applicant shall mitigate the wildlife concern(s) in accordance with the recommendations of Lee County's wildlife expert. The mitigation plan, including any recommendation(s) listed therein, shall be subject to the same enforcement powers of any other performance standard contained herein.

## V. OPERATION

### 1. General Operational and Maintenance Requirements

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

### 2. Maintenance

- a. The Applicant of the WECS Project shall submit, on an annual basis, a summary of the operation and maintenance reports to Lee County Zoning Office. In addition to the above annual summary, the Applicant shall furnish such operation and maintenance reports as Lee County reasonably requests.
- b. The Applicant shall apply for recertification of the Special Use Permit for any physical modification to the WECS Project that alters the mechanical load, mechanical load path, or major electrical components. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the Applicant shall confer with a relevant third-party certifying entity to determine whether the physical modification requires re-certification.

### 3. Interference

- a. The Applicant shall provide the applicable microwavable transmission providers and local emergency service provider(s) (911 operators) copies of the project summary and site plan. To the extent that the above provider(s) demonstrate a likelihood of interference with their respective communications resulting from the WECS Project, or the Applicant receives a written complaint related to the above-mentioned interference; the Applicant shall take reasonable

steps to respond to the complaint and shall use commercially reasonable efforts to mitigate any problems on a case-by-case basis.

- b. If after construction of the WECS Project, the Applicant receives a written complaint from a property owner within a one (1) mile radius around the project boundary, related to interference with local broadcast residential television, the Applicant shall respond within ten (10) working days after being notified, and shall use commercially reasonable efforts to mitigate any problems on a case-by-case basis.

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

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

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

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

#### 6. Shadow Flicker

- a. Prior to the issuance of a building permit, the Applicant must present to the Lee County Zoning Board of Appeals, a Model Study presenting a conservative number of hours shadow flicker may appear on a Primary Structure of a non-participating property owner. Shadow flicker shall not exceed thirty (30) hours per year on any Primary Structure using the Model Study information.
- b. The Applicant shall use commercially reasonable efforts to remedy shadow flicker affecting any property owner that is not a participant in the WECS Project, for all properties estimated to receive between ten (10) and thirty (30) hours of shadow flicker, and on a case-by-case basis for those properties estimated to receive less than ten (10) hours of shadow flicker by undertaking measures such as trees and/or vegetation plantings, or awning installation.

- c. If the Applicant receives a verified complaint about shadow flicker exceeding thirty (30) hours per year, on a Primary Structure, then the Applicant shall program any and all WECS Turbines causing the shadow flicker to shut down during the period of time that shadow flicker is anticipated to occur.

#### 7. Lighting

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

#### 8. Stray Voltage

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

#### 9. Advertising Material and Signage

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

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

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

#### 11. Impacts to Wildlife

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

#### 12. Noise Level

- a. The Applicant shall have a third-party qualified professional approved by the Lee County Engineer or Lee County Zoning Administrator (after submission of résumé and relevant work experience) conduct an appropriate analysis of the noise impact to nearby properties. The sound pressure level generated by a WECS Project shall comply with all Illinois Pollution Control Board (IPCB) noise regulations as outlined in Title 35: Environmental Protection, Subtitle 11: Noise, Chapter I: Pollution Control Board, Parts 900, 901 and 910, which

outline limitations and measurement procedures, and specifically address the prohibition of noise pollution in the State of Illinois. The Applicant shall include a modeling analysis of the proposed site in the application predicting the sound pressure in accordance with the best available practices. The Applicant shall have an additional appropriate nighttime ambient sound pressure study conducted before construction commences.

- b. Complaint Resolution: The Applicant of the WECS Project shall respond to complainant property owner(s) and Lee County Zoning Administrator within five (5) business days after being notified in writing of a sound/noise complaint by any property owner(s) within the project boundary and one (1) mile radius beyond any WECS Project location.

## VI. LIABILITY INSURANCE

1. The Applicant shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring the Applicant, project parcel owners and participating parcel owners against loss or liability caused by the Applicant's occupation and use of property under the lease, in an amount not less than five million U.S. dollars (\$5,000,000.00) of combined single limit liability coverage per occurrence, accident or incident, with a ten million U.S. dollars (\$10,000,000.00) per aggregate, with a deductible of no more than twenty-five thousand U.S. dollars (\$25,000.00). The Applicant shall name Lee County as an additional insured on said policy.
2. The Applicant and its subcontractors shall obtain and maintain statutorily mandated Worker's Compensation Coverage and employers' liability insurance.
3. The Applicant and its subcontractors shall provide certificates of insurance to the Zoning Board of Appeals. In the event there is a lapse in coverage exceeding thirty (30) days, the Zoning Board of Appeals shall require immediate restoration thereof.

## VII. DECOMMISSIONING PLAN

1. The Applicant shall ensure that the WECS Project facilities are properly decommissioned within twelve (12) months of the end of the project life or facility abandonment. The Owner/Operator's decommissioning obligations shall include removal of all physical material comprising the project improvements to a depth of five (5) feet beneath the soil surface, and restoration of the area occupied by the project improvements to as near as practicable to the same condition that existed immediately before construction of such improvements.
2. The Applicant shall provide an annual certification report (WECS Annual Operating Report) to include the number of days each WECS Project unit was available for operation and actually in operation. When any WECS Project unit has been inoperable for more than ninety (90) consecutive days, the Applicant shall report to Lee County Zoning Administrator the following information:

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

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

6. Permits

- a. Prior to the issuance of building permits for any WECS Project facilities, the Applicant shall submit a WECS Project Decommissioning Plan to the Lee County Zoning Administrator. Said plan, prepared by an independent Illinois Certified Professional Engineer, shall be acceptable to the Lee County Engineer and the Lee County Zoning Administrator, such acceptance not to be unreasonably withheld, and shall include the following information:
  - i. Description of the circumstances that will trigger decommissioning.
  - ii. Description of the methodology and cost to remove all above-ground WECS Project facilities covered by the approved Special Use Petition.
  - iii. Description of the methodology and cost to remove all below-ground WECS Project facilities covered by the approved Special Use Petition to a depth of five (5) feet below grade.
  - iv. Methodology and cost to restore all areas used for construction, operation and access to a condition supporting land use similar to the land use prior to the WECS Project construction.
  - v. A schedule of work and a list of permits necessary to accomplish the work.
  - vi. Methodology to identify and manage any hazardous or special materials.
  - vii. The net salvage value of all WECS Project equipment and materials removed.
  - viii. Certification that all decommissioning and restoration work will be performed in accordance with any standards and conditions in the applicable WECS Project Road Agreement.
  - ix. Confirmation by affidavit that the obligation to decommission the WECS Project is included in the lease agreement for every parcel included in the Petition.
  - x. The amount of financial security as outlined below in sections b, c and d.
- b. The Applicant shall provide proof that the necessary amount or form of financial security has been received by the Escrowee and names the Project site

landowner as beneficiary. The amount of security shall be equal to the positive difference, if any, between the total cost of all decommissioning and restoration work and the net salvage value of all removed WECS Project equipment or materials and increased over the operation of the WECS Project per Section (g) below, plus 10% contingency ("Estimated Decommissioning Cost"). To determine that amount, the WECS Project Owner/Operator will provide a list of at least two (2) construction/demolition companies capable of completing a decommissioning of the proposed WECS Project to the Lee County Zoning Administrator and the Lee County Engineer. The Applicant may choose a company from the provided list or another company of its choice. All costs to secure the bids will be borne by the Applicant. The Lee County Engineer and the Lee County Zoning Administrator will review the two bids and decide if one is acceptable, if not a third company can be asked to bid. The Lee County Engineer and the Lee County Zoning Administrator will then decide to accept one of the bids to determine the amount of financial security to be received.

- c. The Decommissioning Plan shall be binding upon the Applicant at the time of submission and any subsequent Owner/Operator of the WECS Project facilities.
- d. The Estimated Decommissioning Cost is intended to cover the projected cost to secure completion of decommissioning and site restoration net of salvage value of any equipment or materials.
  - i. The amount of the financial security shall be equal to the Estimated Decommissioning Cost in accordance with the approved Special Use Petition.
  - ii. Financial security shall be collected over the first fifteen (15) years of operation. An Annual Financial Security Amount shall be defined as the Estimated Decommissioning Cost divided by fifteen (15).
  - iii. The initial Annual Financial Security Amount shall be in place prior to issuance of the building permits. At the end of each year of operation, an additional Annual Financial Security Amount shall be added to that being held by the Escrowee.
  - iv. Prior to the completion of every fifth (5<sup>th</sup>) year of operation, and every fifth (5<sup>th</sup>) year thereafter for the life of the project, the Owner/Operator shall provide an updated Decommissioning Plan to the Lee County Zoning Administrator with an updated Estimated Decommissioning Cost.
  - v. If this revised sum is greater than the prior Estimated Decommissioning Cost projected sum of all decommissioning and restoration work less salvage value of any equipment or materials, then the Owner/Operator shall provide any difference in the prior Annual Financial Security Amounts within sixty (60) days, and the following Annual Financial

Security Amounts due shall be in accordance with this new sum and the remaining projected operational duration.

- vi. If at any point, during the life of the project, the Annual Financial Security Amounts paid to date exceed the new Estimated Decommissioning Cost, then the Escrowee shall reimburse or reduce the total Annual Financial Security Amounts within sixty (60) days, and the following Annual Financial Security Amounts due shall be in accordance with this new sum.

EXAMPLE:

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

- e. Any interested accruing to the financial security will be included in the calculation of Total Financial Security being held by the Escrowee for the purposes of decommissioning and may therefore be used to offset contributions made by the WECS owner toward the Estimated Decommissioning Cost. Once the project has been fully decommissioned in accordance with the requirements of this section, any remaining security shall be reduced or returned to the WECS Owner/Operator.
- f. If the WECS Project Owner/Operator desires to decommission any WECS Project facilities said Owner/Operator shall notify the Lee County Zoning

Administrator prior to commencing any decommissioning work. The WECS Project Owner/Operator shall submit an updated Decommissioning Plan to the Lee County Zoning Administrator. The Lee County Zoning Administrator shall determine within fifteen (15) business days whether the submitted plan complies with all applicable requirements.

- g. All deposits with the Escrowee under the Decommissioning Plan section shall be to an escrow or trust account to be held by the Escrowee pursuant to a written trust or escrow agreement between the WECS Project Owner/Operator and the Escrowee. The written agreement shall include the provisions of this Decommissioning Plan section and such other terms and conditions as are not inconsistent herewith. The WECS Owner/Operator shall provide copy of the executed written agreement to the Lee County Zoning Administrator. All disbursements from the escrow or trust account for costs, fees or expenses of decommissioning a WECS Project facility shall require approval of the Lee County Zoning Administrator, who shall not unreasonably withhold or delay said approval. Upon the completion of the decommissioning of a WECS Project facility, any excess funds held in escrow or trust account will be returned to the WECS Owner/Operator. The WECS Owner/Operator will be solely responsible for all costs, fees and expenses of decommissioning a WECS Project facility in excess of the amount held in the escrow or trust account. The written agreement between the WECS Owner/Operator and the Escrowee shall be binding upon and insure to the benefit of the assignees and successors interested or the WECS Owner/Operator and the Escrowee. The WECS Owner/Operator shall be solely liable and responsible for all costs, fees and expenses of establishing and maintaining the escrow or trust account.

#### VIII. INDEMNITY

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

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