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Sec. 56-612. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant—the entity or person who submits to the county, pursuant to Section 56-616 of the Livingston County Code, an application for the siting of any wind energy conversion system (WECS) or substation.

Capability – The applicant for the WECS project must demonstrate to the satisfaction of the county that the Applicant ~~(and parent company/companies)~~, and the parent company or companies are viable and that the proposed owner and operator have the ~~capability~~ ability, knowledge, experience and resources to complete the project.

Financial assurance - reasonable assurance from a credit worthy party satisfactory to the county ~~to be assure~~ that the wind energy project will be decommissioned/deconstructed. Examples of such include a surety bond, trust instrument, cash, escrow, or irrevocable letter of credit.

Hearing Facilitator – ~~the individual appointed by the Chairman of the County Board, with the consent of the County Board, shall preside over all WECS hearings. The hearing facilitator shall rule on all questions of order and shall ensure that the hearings are run in an efficient and orderly fashion. The hearing facilitator shall be an individual who does not belong to a pro/anti wind group. LEGAL REVIEW – Is this language sufficient or do you recommend different language. Lee County language?~~ the county may unilaterally engage the services of a hearing facilitator not affiliated with any pro-wind or anti-wind group to preside over any required hearings resulting from the siting approval application. The hearing facilitator shall be an independent contractor who shall conduct a hearing in accordance with all applicable rules of the board and county but has no adjudicatory responsibility other than ruling on requests for continuances, procedural matters, admissibility of evidence and the propriety of any arguments. Upon conclusion of the evidence and final arguments, the board will prepare and submit “findings of fact” and a final recommendation to the county board including special use conditions if applicable.

The hearing facilitator shall be an attorney, licensed to practice in the State of Illinois, jointly selected by the State’s Attorney (or his designee) and the county zoning administrator and appointed by the chairman of the county board with the consent of the county board. The Applicant shall reimburse the county for the fees and costs charged by the facilitator.

Like-Kind Replacement—a WECS tower which meets or exceeds the standards and specifications of the tower being replaced and complies with the applicable terms and conditions of this Article.

Operator—the entity responsible for the day-to-day operation and maintenance of the WECS, including any third-party subcontractors.

Owner—the entity with an equity interest in the WECS, including its respective successors and assignees, or an entity that becomes an owner through foreclosure. The term "owner does not mean:

(1)

The property owner from whom land is leased for locating the WECS (unless the property owner has an equity interest in the WECS); or

(2)

Any person holding a security interest in the WECS solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the WECS at the earliest practicable date.

Professional engineer—a qualified individual who is licensed as a professional civil and/or electrical engineer in any state in the United States.

Primary structure—for each property, the structure that one or more persons occupy the majority of time on that property for either business or personal reasons. The term "primary structure" includes structures such as residences, commercial buildings, hospitals, and day care facilities. The term "primary structure" excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.

Substation—the apparatus that connects the electrical collection system of the WECS and increases the voltage for connection with the utility's transmission lines.

WECS project—the collection of WECS and substations as specified in the siting approval application pursuant to section 56-616.

WECS tower—the support structure to which the nacelle and rotor are attached, including the nacelle, rotor and blades.

WECS tower height—the distance from the rotor blade at its highest point to the top surface of the WECS foundation.

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 substations.

(Res. of 1-12-2006, § II)

Sec. 56-613. - Purpose.

The ordinance from which this article is derived is adopted for the following purposes:

- (1)
To ensure that any development and production of wind-generated electricity in the county is safe;
- (2)
To facilitate economic opportunities for local residents;
- (3)
To promote the supply of wind energy in support of a goal of increasing energy production from renewable energy sources.

(Res. of 1-12-2006, § IB)

Sec. 56-614. - Applicability.

This article governs the siting of WECSs and substations that generate electricity to be sold to wholesale or retail markets, except that owners of WECSs with an aggregate generating capacity of 3MW or less who locate the WECSs on their own property are not subject to this article, but are subject to other special use requirements outlined in this chapter.

(Res. of 1-12-2006, § III)

Sec. 56-615. - Prohibition.

No WECS or substation governed by Section 56-614 of the Livingston County Code, shall be constructed, erected, installed, or located within the county, unless prior siting approval has been obtained for each individual WECS and substation pursuant to this article.

(Res. of 1-12-2006, § IV)

Sec. 56-616. - Siting approval application.

(a)

To obtain siting approval, the applicant must first submit a siting approval application to the county.

(b)

The siting approval application shall contain or be accompanied by the following information:

(1)

A WECS project summary, including, to the extent available:

a.

A general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturers, types of WECS, number of WECSs, and name plate generating capacity of each WECS; the maximum height of the WECS towers and maximum diameter of the WECS rotor;

b.

The location of the project; and

c.

A description of the applicant, owner and operator, including their respective business structures;

(2)

The names, addresses, and phone numbers of the applicants, owner and operator, and all property owners; and as to whether the petitioner or applicant is acting for himself or herself or as an agent, alter ego, or representative of a principal and the name and address of the principal; whether the petitioner or applicant is a corporation and of all stockholders or shareholders owning any interest in excess of 20% of all of the outstanding stock or shares of the corporation; whether the petitioner or applicant, or his or her principal, is a business or entity doing business under an assumed name, and if so, the name and residence of all actual owners of the business or entity; whether petitioner or applicant, or his or her principal, is a partnership, joint venture, syndicate, or an unincorporated voluntary association, and if so, the names and addresses of all partners or members of the partnership, joint venture, syndicate, or unincorporated voluntary association;

~~Where the property is the subject of a land trust agreement the applicant shall provide a trust disclosure in compliance with the "Land Trust Disclosure Act," 765 ILCS 405/1 et seq., signed by the trustee of the trust.~~

(3)

A site plan for the installation of WECSs showing the planned location of each WECS tower, guy lines and anchor bases, primary structures, property lines (including identification of adjoining

properties), setback lines, public and private access roads and turnout locations, substations, electrical cabling from the WECS tower to the substations, ancillary equipment, any **above or below ground** transmission lines related to the project, operations and maintenance building(s), layout of all structures within the geographical boundaries of any applicable setback, and the location of any construction staging areas including concrete batch plants.

(4)

All required studies, reports, certification, and approvals demonstrating compliance with the provisions of this article;

(5)

Any other information normally required by the county as part of this chapter; and

(6)

Sufficient documentation that the applicant, owner, company and parent company/ companies, have the capability to complete the WECS project as proposed; and

~~Financial assurance shall be provided that the project can be developed as proposed.~~

(7)

If the Applicant **intends to** offer a Good Neighbor Plan or Property Value Guarantee Plan, a copy of such plan shall be included **with the siting approval application at the time the application is submitted.**

(c)

The applicant shall **promptly** notify the county of any changes to the information provided in subsection (b) of this section that occur while the siting approval application is pending.

The applicant shall not be allowed to materially change the siting approval application after the hearing process **has** started.

(Res. of 1-12-2006, § V)

Sec. 56-617. - Fees.

(a)

The application, upon submittal of an application for a wind energy conversion special use, shall submit a certified check to the county in the amount provided in the county fee schedule. This amount shall be placed in FDIC-insured money-market accounts and will be used to cover the county's cost incurred during the special use application review process and public hearings, including, but not limited to, costs of experts and attorneys retained by the county and the cost of any appeals.

(b)

Should the actual costs to the county exceed the cost deposit, the applicant shall remit additional funds as outlined in the county fee schedule within 15 days of the receipt of written notice from the county. The county may stay the processing of an application or continue any hearings until such time as the requested, additional funds have been paid.

(c)

Any amount remaining in the account or accounts after the county renders its decision, exhaustion of all appeals, and payment of all bills and invoices, shall be refunded to the applicant.

(d)

The applicant shall file ten complete copies of the WECS special use application upon submittal of the WECS special use application fee. A minimum of one copy shall be submitted in electronic format and a minimum of one copy shall be submitted in paper format.

(Ord. No. 09-21, § 1, 6-11-2009)

Sec. 56-618. - 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 Energic (GL), or an equivalent third party.

(2)

Following the granting of siting approval under this chapter, a professional engineer shall certify, as part of the building permit application, that the foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.

(b)

Controls and brakes.

(1)

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

(c)

Electrical components. All electrical components of the WECS shall conform to applicable local, state, and national codes, and relevant national and international standards (e.g., ANSI and international electrical commission). Utility lines connecting the towers, substations, etc., shall be placed underground where practical.

(d)

Color. Towers and blades shall be painted a nonreflective, unobtrusive color that mitigates the visual impact of the structure. No advertisement shall be visible on the blades or tower.

(e)

Compliance with the Federal Aviation Administration. The applicant for the WECS shall comply with all applicable Federal Aviation Administration (FAA) requirements.

(f)

Warnings.

(1)

A reasonable 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.

(3) Upon completion of the construction of an approved WECS project, a reasonable visible sign, to warn people to not approach a turbine while operating must be placed at the entrance of each access road. This sign shall be made with letters and numbers at least 3 inches in height, and shall include the 911 address of the tower.

(4) Upon completion of the construction of an approved WECS project, a sign that provides emergency contact information shall be posted on or near the operations and maintenance building. These phone numbers shall remain active and maintained, with comments and complaints being logged. This sign must include phone numbers including a business phone and a phone number answered 24 hours a day.

(g)

Climb prevention. All WECS towers must be externally 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)

Unless this Article is amended as a result of a referendum or Illinois Attorney General Opinion, all WECS towers shall be set back 3.75 times the height of the tower or 1,600 feet, whichever is greater, from any primary structure. The distance for the above setback shall be measured from the primary structure foundation closest to the WECS tower, to the center of the WECS tower foundation.

~~(With the exception of Indian Grove Township. For Indian Grove Township, all WECS towers shall be setback ten times the height of the tower or 4,000 feet, whichever is greater, from a 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 requirements but in no case shall a WECS tower be located closer to a primary structure than 1.10 times the WECS tower height. WECS tower height means the distance from the rotor blade at its highest point to the top surface of the WECS foundation. (Pending receipt of Attorney General Opinion and advisory referendum approval)~~

(2)

All WECS towers shall be set back a distance of at least 1.10 times the WECS tower height from public roads, third party transmission lines, and communication towers. The county may waive this setback requirement. WECS tower height means the distance from the rotor blade at its highest point to the top surface of the WECS foundation.

(3)

Unless this Article is amended as a result of a referendum or Illinois Attorney General Opinion, all WECS towers shall be set back a distance of at least 1.375 times the WECS tower height from adjacent property lines, as measured from the closest edge of the tower structure. The affected adjacent property owner may waive this setback requirement. WECS tower height means the distance from the rotor blade at its highest point to the top surface of the WECS foundation.

~~(With the exception of Indian Grove Township. For Indian Grove Township, all WECS towers shall be set back a distance of at least 4.0 times the WECS tower height from adjacent property lines, as measured from the closest edge of the tower structure. The affected adjacent property owner may waive this setback requirement. WECS tower height means the distance from the rotor blade at its highest point to the top surface of the WECS foundation. (Pending receipt of Attorney General Opinion and advisory referendum approval.)~~

(4)

An incorporated village or municipality must approve of the location of any tower to be located within 1.5 miles of the corporate limits of such incorporated village or municipality.

(5)

No part of a WECS tower or foundation shall encroach on a public or private sewage disposal (septic) system.

(6)

All WECS substations shall be set back 1600 feet from the property line of any property containing a primary structure.

(7)

All WECS towers shall be set back on the sides a safe distance from private air strip as measured from the center line of the air strip and 5,000 feet as measured from the end of a private air strip, in the landing and takeoff area. Owners of the airstrip may waive this requirement in writing as part of the application or as an exhibit made part of the zoning board of appeals hearing pertaining to the specific WECS project.

(i)

Compliance with additional regulations. Nothing in this article is intended to preempt other applicable state and federal laws and regulations.

(j)

Use of public roads.

(1)

An applicant, owner, or operator proposing to use any county, township or village road, for the purpose of transporting and installation of WECS or substation parts and/or equipment for construction, operation, or maintenance of the WECS or substations, shall:

a.

Identify all such public roads; and

b.

Obtain applicable weight and size permits from relevant government agencies prior to construction.

(2)

To the extent an applicant, owner, or operator must obtain a weight or size permit from the county, or village, township, state, the applicant, owner, or operator shall:

a.

Conduct a preconstruction baseline survey to determine existing road conditions for assessing potential future damage;

b.

Provide financial assurance, in a reasonable amount agreed to by the relevant parties, for the purpose of repairing any damage to public roads caused by constructing, operating or maintaining the WECS prior to the issuance of building permits; and

c.

Provide the county zoning administrator with signed copy of any agreements pertaining to the use of public roads prior to the issuance of building permits.

(k)

Height. The permitted maximum height of a WECS shall be 500 feet.

(1)

State and federal regulations may require a lesser height.

(2)

A WECS and transmissions poles shall be constructed with a tubular tower or monopole structure, not a lattice tower.

(l)

Lighting. A lighting plan for each WECS shall be approved by the zoning board of appeals. Such plan must describe all lighting that will be used, including any lighting that may be required by the FAA. Such a plan shall include but is not limited to 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. A lighting plan for the WECS substation shall also be provided. This WECS substation lighting plan shall include plans as to how glare for these lights are being controlled.

(m)

All wind farm developments are to be in compliance with an Agriculture Impact Mitigation Agreement (AIMA), as approved by the State of Illinois.

(n)

If the Company proposes to make a change in the Project, including moving a turbine siting more than 150 feet, then the company, through the use of a qualified professional, shall appropriately demonstrate compliance with the noise requirements.

(Res. of 1-12-2006, § VI)

Sec. 56-619. - Operation.

(a)

Maintenance.

(1)

The owner or operator of the WECS must submit, on an annual basis, a summary of the operation and maintenance reports to the county. In addition to the annual summary mentioned in this subsection, 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 recertification under Section 56-618(a)(1) of the Livingston County Code. Like-kind replacements of individual WECS towers shall not require recertification but shall require the written approval of the county zoning administrator. A like-kind replacement is defined as a WECS tower which meets or exceeds the standards and specifications of the tower being replaced and complies with the applicable terms and conditions of this Article. 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 56-618(a)(1) of the Livingston County Code, to determine whether the physical modification requires re-certification, and by a professional engineer as determined by the county zoning administrator. The cost of the third party certifying entity and professional engineer shall be paid by the owner or operator.

(3)

~~Like kind replacements shall not require recertification. 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 56-618 (a)(1) to determine whether the physical modification requires re-certification, and by a professional engineer as required by the county zoning office.~~

~~If the Company proposes to make a change in the Project, including the replacement of a turbine or turbines or other significant components thereof with equipment of new design or size, then the Company shall apply for an amendment to the Special Use before making such change.~~

(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 56-616(b)(1) and (3) of the Livingston County Code. This project summary shall include a study pertaining to the relationship of the proposed project and microwave transmission providers and local emergency service providers.

(2)

To the extent that the providers in subsection (b)(1) of this section demonstrate a likelihood of interference with its communications resulting from the WECSs, the applicant shall take measures to mitigate such anticipated interference. If, after construction of the WECS, the owner or operator receives a written complaint related to the above-mentioned interference, the owner or operator shall take steps to respond to and to rectify the complaint.

(3)

Prior to construction of the WECS, the owner or operator shall conduct a study related to interference with local broadcast residential television and wireless internet services, if it is demonstrated a likelihood of interference may result for the WECS, The applicant shall take measures to mitigate such anticipated interference. If, after construction of the WECS, the owner or operator receives a reasonable written complaint related to interference with local broadcast residential television and wireless internet services the owner or operator shall take steps to rectify the complaint, such as providing alternate service to each individual resident or property owner affected.

(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. In addition to the site plan, a plan pertaining to the planning, response, recovery and mitigation of any natural or man made hazard that may affect the WECS development.

(2)

Upon request by the local fire department, the owner or operator shall cooperate with the local fire department to develop the fire department's emergency response plan.

(3)

Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

(d)

Materials handling, storage and disposal.

(1)

All solid wastes related to the construction, operation and maintenance of the WECS shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.

(2)

A list of hazardous fluids that may be used on site shall be provided. All hazardous materials related to the construction, operation and maintenance of the WECS shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.

(e)

Mitigation of Shadow Flicker.

(1)

The applicant shall conduct an analysis on the potential shadow flicker onto adjacent properties as part of the siting application approval process. The analysis shall identify the locations of the shadow flicker and the expected durations of the flicker over the course of a year.

(2)

Shadow flicker shall not affect a Primary Structure in excess of 30 hours per year. An owner of a primary structure can have the option to waive this requirement.

(3)

Measures to alleviate the effects of Shadow flicker on a Primary Structure that is impacted shall be outlined by the applicant. These measures shall at a minimum include window treatments.

(Res. of 1-12-2006, § VII)

Sec. 56-620. - 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 approval application process, shall appropriately demonstrate compliance with the noise requirements of this siting section. For the purpose of the special use review of the proposed WECS project, compliance shall be measured a minimum of 150 feet from the center point of the primary structure. Thereafter, the WECS project shall be in compliance with applicable IPCB regulations throughout the entire operation period of the WECS project.

(Res. of 1-12-2006, § VIII)

Sec. 56-621. – Birds .

A qualified professional, such as an ornithologist or wildlife biologist, shall conduct an avian and bat habitat study, as part of the siting approval application process, to determine if the installation of WECS will have an adverse impact on birds and bats. The study must contain a plan for minimizing impact during the migration of birds and bats.

(Res. of 1-12-2006, § IX)

Sec. 56-622. - Public participation and pre-application.

Nothing in this article is meant to augment or diminish existing opportunities for public participation. At least 90 days prior to the submission of any WECS application, the applicant shall make a reasonable effort to inform members of the public of the proposed project. Mailings should be sent out to landowners and residences within the footprint and to landowners and residences within 1.5 miles of the proposed outside boundary of the project. These mailings should make reference to where additional information can be obtained regarding the proposed project. Advertisements in local newspapers and community meetings are also recommended.

(Res. of 1-12-2006, § X)

Sec. 56-623. - Liability insurance.

The owner or operator of the WECS shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$5,000,000.00 per occurrence and \$10,000,000.00 in the aggregate, with an annual certificate of insurance being provided to the county regional planning commission office, with the county being added as an additional insured.

The applicant shall promptly increase such liability insurance if such amount is increased in the WECS Ordinance and the applicant is notified in writing of same by the County. The applicant shall provide evidence of such increased insurance to the Zoning Administrator.

Insurance coverage shall be maintained without interruption from the date of permitting through the decommissioning of all wind turbines. Certificates of insurance acceptable to the County and in compliance with this section shall be filed with the County prior to the commencement of any work on the WECS and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required under this section shall contain a provision that coverages afforded under the policies shall not be cancelled or allowed to expire until at least sixty (60) days written notice has been given to the county.

Applicant shall also, to the fullest extent permitted by law, indemnify, and hold the County, its employees, Board Members and agents harmless for any action due to or arising out of the construction, maintenance, decommissioning, deconstruction and/or operation of the WECS, including the payment of any attorney's fees and costs arising out of any action due to or arising out of the construction, maintenance and/or operation of the WECS.

(Res. of 1-12-2006, § XI)

Sec. 56-624. – Decommissioning/Deconstruction Plan. Prior to receiving siting approval under this article, the applicant, owner, and/or operator must formulate a decommissioning plan to ensure that the WECS Project is properly decommissioned. The decommissioning plan shall include:

(1)

Provisions describing the triggering events for decommissioning the WECS project.

(2)

Provisions for the removal of structures, debris and cabling, including those below the soil surface;

(3)

Provisions for the restoration of the soil and vegetation;

(4)

An estimate of the decommissioning costs certified by a professional engineer, to be updated every three years or as determined by the county zoning administrator, which update shall include an analysis of the salvage value of the improvements. The owner or operator shall provide the county zoning administrator with each updated estimate, which will be subject to review and approval or adjustment by the county board. If the county board determines that the amount of security must be increased due to changes in the estimated decommissioning costs, the owner or operator shall post such additional security within thirty (30) days of the owner or operator receiving written notification from the county.

(5)

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 cost and the cost to continue insurance coverage at the level specified in Section 56-623 of the Livingston County Code.

(6)

A provision that the terms of the decommissioning plan shall be binding upon the owner or operator and any of his successors, assign, or heirs.

(Res. of 1-12-2006, § XII)

Sec. 56-625. - Remedies.

(a)

The applicant's, owner's, or operator's failure to materially comply with any of the provisions of this article shall constitute a default under this article.

(b)

Prior to implementation of the existing county procedures for the resolution of such defaults, the appropriate county body 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 sole discretion, that the parties cannot resolve the alleged defaults within the good faith negotiation period, the existing county ordinance provisions including Section 56-940 of the Livingston County Code, addressing the resolution of such defaults shall govern.

~~Chuck to add language regarding default from condition language.~~

~~LEGAL REVIEW— Same question as previously presented. This language is part of the special use conditions. Is it better to include within the ordinance or within the conditions?~~

(Res. of 1-12-2006, § XIII)