

**MORGAN COUNTY, ILLINOIS**

**ORDINANCE NO. 2023 -6\_\_**

**WIND AND SOLAR ENERGY CONVERSION SYSTEMS SITING REGULATIONS  
ORDINANCE**

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## I. INTRODUCTION

### A. Title

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

### B. Authority and Adoption

1. On May 4, 2009, at an open public meeting and after due consideration and deliberation by the members of the Morgan County Board of Commissioners (the "Board" or "County Board") and after public input was considered, the County Board adopted the Morgan County Wind Energy Siting Regulations Ordinance, known as the "2009 Wind Energy Siting Conversion Systems Regulations Ordinance" or "2009 WECS Ordinance".
2. On December 16, 2019, after the required public hearing was completed, the County Board adopted Ordinance No. 2019-10A (Wind Energy Siting Conversion Systems Regulations Ordinance) ("2019 WECS Ordinance"), which replaced the 2009 WECS Ordinance.
3. At the May 8, 2023 open, public County Board Meeting, the Chair of the County Board announced that a copy of the draft 2023 Wind and Solar Energy Siting Regulations Ordinance ("2023 WECS and Solar Energy Regulations Ordinance"), which contains proposed amendments to the 2019 WECS Ordinance, would be made available for public inspection on the County website as of May 8, 2023, and that the County Board of Appeals will conduct a public hearing on May 22, 2023 to consider the 2023 WECS and Solar Energy Regulations Ordinance. The amendments to the 2019 WECS Ordinance are required by Illinois Public Act 102-1123, which amended the Counties Code (55 ILCS 5/5) and mandates that the County update its Regulations regarding Wind and Solar Energy Conversion Systems.
4. On May 22, 2023, the County Board of Appeals conducted the required public hearing relative to the 2023 WECS and Solar Energy Regulations Ordinance, at which County staff input was received and the public was provided an opportunity to make public comments and submit written comments, and then the Board of Appeals issued its recommendation to the County Board relative to the adoption of the 2023 WECS and Solar Regulations Ordinance.
5. On May 22, 2023, the County Board held an open, public meeting to consider and then take action regarding the adoption of the 2023 WECS and Solar Regulations Ordinance.

At the May 22, 2023 public meeting, , after discussion and consideration of the 2023 WECS and Solar Regulations Ordinance and consideration for the comments provided by County staff and the public, the Morgan County Board of

Commissioners voted to approve / not approve and adopt/ not adopt the 2023 WECS and Solar Regulations Ordinance; and

6. The Morgan County Board of Commissioners are authorized to enact the regulations set forth below in the Ordinance in accordance with the statutory authority set forth under applicable laws (e.g., Article VII, Section 7 of the Illinois Constitution of 1970, the Illinois Counties Code, 55 ILCS 5/ et seq. and the Illinois Open Meetings Act, 5 ILCS 120/ et seq.), including but not limited to Section 5-12020 of the Illinois County Code (55 ILCS 5/5-12020), and have taken all necessary actions at open public meetings, have posted and published all required public notices prior to voting on this Ordinance.

C. Findings and Purpose

Findings and Purpose. This Ordinance has been adopted for the following purposes after the Board made the following determinations and findings:

1. To assure that any development and production of wind-generated electricity in Morgan 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;
4. To adopt regulations to govern the construction, installation, operation and removal of wind energy systems to enhance the protection of the health, safety and welfare of the County's residents, property owners, business owners and the public within the County's planning and zoning jurisdiction; and
5. To adopt the general zoning regulations and add certain new regulations, such as plan review fee reimbursement regulations, to ensure that the financial costs incurred by the County in the review of new development wind energy proposals are paid by developers and property owners of such projects.
6. To comply with Illinois Public Act 102-1123, as amended, which enacted amendments to the Counties Code (55 ILCS 5/5) and mandated that the County update its 2019 Regulations regarding Wind and Solar Energy Conversion Systems, including that the County comply with the State regulations that:
  - a. The County "may also regulate the siting of commercial wind energy systems with standards that are not more restrictive than the requirements specified in this Section [55 ILCS 5/5-12020] in unincorporated areas of the [C]ounty that are outside the zoning jurisdiction of a municipality and that are outside the 1.5-mile radius surrounding the zoning jurisdiction of a municipality."

- b. The County “may not adopt zoning regulations, that disallow, permanently or temporarily, commercial wind energy facilities or commercial solar energy facilities from being developed or operated in any district zoned to allow agricultural or industrial uses.”
- c. The County “may not require permit application fees for a commercial wind energy facility or commercial solar energy facility that are unreasonable. All application fees imposed by the [C]ounty shall be consistent with fees for projects in the [C]ounty with similar capital value and cost.”
- d. The County “may not condition approval of a commercial wind energy facility or commercial solar energy facility on a property value guarantee and may not require a facility owner to pay into a neighboring property devaluation escrow account.”
- e. The County “may set blade tip height limitations for commercial wind towers in commercial wind energy facilities but may not set a blade tip height limitation that is more restrictive than the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR Part 77.”

The Chairman and Board of Commissioners of Morgan County, Illinois find that it is in the best interests of the County residents, the property owners and the businesses of the County, as well as the general public, to enact the Code Amendments as set forth below; and

## II. DEFINITIONS

- A. A. “Applicant” means the entity who submits to the County, pursuant to Article V (Siting Approval Permit Application) of this Ordinance, an application for the siting and operation of any WECS or Substation. All references to Applicant in this Ordinance shall include Applicant’s successors-in-interest and assigns, which includes a WECS Permittee (as defined below).
- B. B. “Board of Appeals” means the five (5) member board appointed by the presiding officer of the County Board with the advice and consent of the County Board pursuant to 55 ILCS 5/5-12010 and authorized to act, conduct meetings and public hearings and make and issue findings and recommendations and final decisions on matters within its statutory jurisdiction in accordance with the applicable provisions of the Illinois Counties Code (55 ILCS 5/5-1200 *et seq.*).
- B. C. “Commercial solar energy facility” or “CSEF” means a “commercial solar energy system” as defined in Section 10-720 of the Property Tax Code. “Commercial solar energy facility” does not mean a utility-scale solar energy facility being constructed at a site that was eligible to participate in a procurement event conducted by the Illinois Power Agency pursuant to subsection (c-5) of Section 1-75 of the Illinois Power Agency Act.
- D. “Commercial wind energy facility” means a wind energy conversion facility of equal or greater than 500 kilowatts in total nameplate generating capacity, including a facility seeking an extension of a permit to construct such facility granted by a county or municipality before the effective date of Public Act 102-1123.
- E. “County Board” means the Morgan County Board of Commissioners.

F, "Facility Owner" means (i) a person with a direct ownership interest in a commercial wind energy facility or commercial solar energy facility, or both, regardless of whether the person is involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the facility, and (ii) at the time the facility is being developed, a person who is acting as a developer of the facility by acquiring the necessary rights, permits and approvals. "Facility Owner" does not mean (i) the property owner from whom land is leased for locating a wind energy conversion system (unless the property owner has an equity interest in a wind energy conversion system); or (ii) any person holding a security interest in a wind energy conversion system 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 wind energy conversion system at the earliest practicable date.

G "Fall Zone" means the area, defined as the farthest distance from the WECS Tower base, in which a guyed WECS Tower will collapse in the event of a structural failure. This area is less than the total height of the structure. H. "Feeder Line" means any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid.

I. "Financial Assurance" or "Financial Security" or "Decommission Security" means reasonable assurance from a credit worthy party, examples of which include a surety bond (e.g., performance and payment bond), trust instrument, cash escrow, or irrevocable letter of credit.

J. "Meteorological Tower" means those towers which are erected primarily to measure wind speed and direction plus other data relevant to siting and operation of a WECS Project. For purposes of this ordinance, Meteorological Towers do not include towers and equipment used by airports, the Illinois Department of Transportation, or other similar applications or government agencies, to monitor weather conditions.

K. "Nonparticipating Property" means a real property that is not a participating property.

L. "Non-Participating Residence" means a residence that is located on nonparticipating property and that is existing and occupied on the date that an application for a permit to develop the commercial wind energy facility or the commercial solar energy facility is filed with the county.

M. "Notice to Proceed" means a written document, named as such, stating that the Applicant expresses an intent to commence construction activities on a WECS Project and identifying the date on which the construction activities are scheduled to commence.

N. "Operator" means the person or entity responsible for the day-to-day operation and maintenance of a wind energy conversion system, including any third party subcontractors. The Operator must be a qualified wind power professional. All references to Operator in the Ordinance shall include Owner's successors-in-interest and assigns.

O. "Occupied Community Building" means any one or more of the following buildings that is existing and occupied on the date that the application for a permit to develop the

commercial wind energy facility or the commercial solar energy facility is filed with the county: a school, place of worship, day care facility, public library, or community center.

P. "Participating Property" means real property that is the subject of a written agreement between a facility owner and the owner of the real property that provides the facility owner an easement, option, lease or license to use the real property for the purpose of constructing a commercial wind energy facility, a commercial solar energy facility, or supporting facilities. "Participating property" also includes real property that is owned by a facility owner for the purpose of constructing a commercial wind energy facility, a commercial solar energy facility, or supporting facilities.

Q. "Participating Residence" means a residence that is located on participating property and that is existing and occupied on the date that an application for a permit to develop the commercial wind energy facility or the commercial solar energy facility is filed with the county.

R. "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, groups assembly uses (e.g., schools, places of worship, day care facilities,, public libraries and community centers) (i.e., Occupied Community Buildings). Primary Structure excludes ancillary structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.

S. "Professional Engineer" means a qualified individual who is licensed as a professional engineer in any state in the United States. Where a structural engineer is required to take some action under terms of this Ordinance, a Professional Engineer may serve as the structural engineer if he or she has the appropriate structural engineering certification.

T.. "Property Line" means the boundary line of the area over which the entity applying for a WECS or CSEF permit has legal control for the purposes of installation of a WECS or CSEF. This control may be attained through fee title ownership, lease, easement, or other appropriate contractual relationship between the Applicant and landowner.

U. "Protected Lands" means real property that is: (i) subject to a permanent conservation right consistent with the Real Property Conservation Rights Act, or (ii) registered or designated as a nature preserve, buffer, or land and water reserve under the Illinois Natural Areas preservation Act.

V. "Public Conservation Lands" means land owned in fee title by County, state or federal agencies and managed specifically for conservation purposes, including but not limited to County, state and federal parks, state and federal wildlife management areas, state scientific and natural areas, and federal wildlife refuges and waterfowl protection areas. Public conservation lands do not include private lands upon which conservation easements have been sold to government agencies or non-profit conservation organizations. Public conservation lands also do not include private lands for which the owners have entered into contractual relationships with government or non-profit conservation organizations for conservation purposes.

- W. "Regional Planner" means the Morgan County employee who performs planning and development related duties and other duties as assigned by the Morgan County Commissioners. Also known as the "Morgan County Planner".
- X. "Siting Approval Permit" means a permit approved by the County Board, after a public hearing, allowing a particular use at a specified location subject to compliance with certain specified special conditions as may be required by the County Board.
- Y. "Substation" means the apparatus that collects and connects the electrical collection system of the WECS(s) and increases the voltage for connection with the utility's transmission lines.
- Z. "Supporting facilities" means the transmission lines, substations, access roads, meteorological towers, storage containers, and equipment associated with the generation and storage of electricity by the commercial wind energy facility or commercial solar energy facility.
- AA. "Transmission Line" means those electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electrical energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.
- BB. "Wind Energy Conversion System" ("WECS") means all necessary devices that together convert wind energy into electricity, including the rotor, nacelle, generator, WECS Tower, electrical components, WECS foundation, transformer, and electrical cabling from the WECS Tower to the Substation(s).
- CC. "WECS or CSEF Permittee" means an Applicant who applies for and receives a Siting Approval Permit under this Ordinance for the siting and operation of any WECS or CSEF or Substation. All references to a WECS or CSEF Permittee in this Ordinance shall include a WECS or CSEF Permittee's successors-in-interest and assigns.
- DD. "WECS or CSEF Project" means the collection of WECSs or CSEFs and Substations operations and maintenance buildings, permanent Meteorological Towers, and any other Supporting Facilities, as specified in the Siting Approval Permit application pursuant to Article V (Siting Approval Permit Application) of this Ordinance.
- EE. "WECS Tower" means the wind turbine tower, the nacelle, rotor, and blades.
- FF. "WECS Tower Height" means the distance from the rotor blade at its highest point to the top surface of the WECS foundation.
- GG. "WECS or CSEF Building Permit" means a permit necessary for the commencement of work performed toward the construction, erection or installation of an approved WECS, CSEF, Substation or operations and maintenance building in connection with a WECS or CSEF Project. A WECS or CSEF Building Permit may be issued by the Regional Planner after a WECS or CSEF Project has obtained a Siting Approval Permit from the County Board and the Regional Planner determines that all conditions, if any, have been satisfied that are imposed by the Siting Approval Permit. The WECS or CSEF Building Permit shall require the Applicant (WECS or CSEF Permittee) to deliver a written "Notice to Proceed" for the WECS or CSEF Project to the Regional Planner prior to commencement of construction of the WECS or CSEF Project. The term "commencement of construction", as used in this Ordinance, includes any site development work (e.g., demolition, grubbing, grading,

excavation, road work, construction of Project-related structures and infrastructure improvements, etc.) regarding the WECS or CSEF Project.

- HH. "Wind Turbine" (or "Wind Tower") means any piece of electrical generating equipment that converts the kinetic energy of moving wind into electrical energy through the use of airfoils or similar devices to capture the wind (i.e., wind turbine tower, nacelle and blades).

### III. APPLICABILITY

- A. This Ordinance governs the siting of Commercial Wind Energy Facilities, Commercial Solar Energy Facilities, and Supporting Facilities that generate electricity to be sold to wholesale or retail markets.
- B. Owners of WECSs with an aggregate generating capacity of 0.5MW or less who locate the WECS(s) on their own property are not subject to this Ordinance.

### IV. PROHIBITION

- A. No Commercial Wind Energy Facility, Commercial Solar Energy Facility, or Supporting Facility governed by Section III(A) (Applicability) of this Ordinance shall be constructed, erected, installed, or located within the County, unless prior siting approval has been obtained for each individual facility or for a group of facilities under a joint siting application pursuant to this Ordinance.

### V. SITING APPROVAL PERMIT APPLICATION

- A. To obtain siting approval, the Applicant must first submit a Siting Approval Permit application to the County.
- B. The Siting Approval Permit application shall contain or be accompanied by the following information:
1. A WECS or CSEF Project Summary, including, to the extent available: (a) a general description of the project, including (i) its approximate overall name plate generating capacity, (ii) the potential equipment manufacturer(s), (iii) type(s) of WECS(s) or CSEF(s), (iv) the number of WECSs or CSEFs, and name plate generating capacity of each WECS or CSEF, (v) the maximum height of the WECS Tower(s) and maximum diameter of the WECS(s) rotor(s) or the maximum height from ground of the CSEF array while in full tilt, (vi) the number of Substations or other supporting facilities, (vii) a project site plan, project phasing plan and project construction timeline plan, and (viii) the general location of the project; and (b) a description of the Applicant, Owner and Operator, including their respective business structures;
  2. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s), if known, and documentation demonstrating land ownership or legal control of the property;



3. A site plan for the WECS or CSEF Project showing the planned location of each WECS Tower or CSEF array, including legal descriptions for each site, guy lines and anchor bases (if any), Primary Structure(s), parcel boundary lines (including identification of adjoining properties), setback lines, public access roads and turnout locations, Substation(s), operations and maintenance buildings, and permanent Meteorological Towers, electrical cabling from the WECS Tower to the Substation(s), ancillary equipment, third party transmission lines, any and all other Supportive Facilities, the location of any wetlands, flood plain, drainage ditches, scenic and natural areas within one thousand five hundred (1,500) feet of the proposed WECS or CSEF, the location of all known communications towers within two (2) miles of the proposed WECS or CSEF, and the layout of all structures within the geographical boundaries of any applicable setback;
4. A permit application filed with the Federal Aviation Administration;
5. A proposed Decommissioning Plan for the WECS or CSEF Project;
6. All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance;
7. An executed Agricultural Impact Mitigation Agreement (AIMA) between the Applicant and the Illinois Department of Agriculture (per Illinois Public Act 102-1123, effective January 1, 2023);
8. The results and recommendations from consultation with the Illinois Department of Natural Resources that are obtained through the Ecological Compliance Assessment Tool (EcoCAT) or a comparable successor tool;
9. The results of the United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with (i) the "U.S. Fish and Wildlife Service's Land-Based Wind Energy Guidelines" and (ii) any applicable United States Fish and Wildlife Service solar wildlife guidelines that have been subject to public review;
10. Evidence of consultation with the Illinois State Historic Preservation Office to assess potential impacts on State-registered historic sites under the Illinois State Agency Historic Resources Preservation Act;
8. The topographic map include the WECS or CSEF Project site and the surrounding area;
9. Any other information normally required by the County as part of its permitting requirements for siting buildings or other structures;
10. Waivers from the setback requirements of Article VI (Design and Installation), Subsection H (Setback) below executed by the participating land owners and/or the non-participating property owners bearing a file-

stamp from the County Recorder of Deeds Office confirming that the waiver was recorded against title to the affected real property.

11. Any other information requested by the County or the County consultants that is necessary to evaluate the siting application and operation of the WECS or CSEF Project and to demonstrate that the WECS or CSEF Project meets each of the regulations in this Ordinance, including the Siting Approval Permit standards set forth below.
- C. The Applicant shall notify the County by delivering notice to the Morgan County Regional Planner of any changes to the information provided in Section V(B) above that occur while the Siting Approval Permit application is pending; and
  - D. The Applicant shall submit twelve (12) copies of the Siting Approval Permit application to the Morgan County Regional Planner.

## VI. DESIGN AND INSTALLATION

### A. Design Safety Certification

1. WECSs and CSEFs shall conform to all applicable industry standards, including those of the American National Standards Institute ("ANSI"). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories ("UL"), Det Norske Veritas ("DNV"), Germanischer Lloyd Wind Energie ("CGL"), or an equivalent third party. All turbines shall be new equipment commercially available; no used or experimental equipment shall be used in the WECS or CSEF Project without the approval of a variance by the Board of Appeals or the County Board.
2. Following the granting of siting approval under this Ordinance, a structural engineer shall certify, as part of the WECS Building Permit application process, that the foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.

### B. Controls and Brakes

All WECSs 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 or CSEFs shall conform to applicable local, state, and national codes, and relevant national and international standards (e.g. ANSI and International Electrical Commission).

### D. Aesthetics and Lighting

The following items are recommended standards to mitigate visual impact:

1. Coatings and Coloring: Towers and blades shall be painted white or gray or another non-reflective, unobtrusive color. Black blades are acceptable for mitigation of icing.
2. Signage, including anything in the tower or nacelle, shall comply with other county ordinances pertaining to signage.
3. Turbine Consistency: To the extent feasible, the WECS Project shall consist of turbines of similar design and size, including tower height. Further, all turbines shall rotate in the same direction. Turbines shall also be consistent in color and direction with nearby facilities.
4. Lighting: WECS Projects shall utilize minimal lighting that is compliant with the applicable FAA regulations, as amended by the FAA. To the extent that such tower lighting is available, and is approved by the FAA for a WECS Project, the Applicant shall install Aircraft Detection Lighting Systems ("ADLS") or other similar technology to reduce light pollution and visual impacts caused by the WECS Towers.
5. Intra-project Power and Communication Lines: All power lines used to collect power from individual turbines and all communication lines shall be buried underground until same reach the property line or a substation adjacent to the property line.

E. Compliance with the Federal Aviation Administration (FAA)

The Applicant for the WECS and CSEFs shall comply with all applicable FAA requirements and shall provide documentation evidencing compliance to the Regional Planner.

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, plastic sleeves, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of fifteen (15) feet from the ground.

G. Climb Prevention

1. All WECS Towers must be unclimbable by design or protected by anti-climbing devices such as:
  - a. Fences with locking portals at least six (6) feet high; or
  - b. Anti-climbing devices twelve (12) feet vertically from the base of the WECS Tower.

2. All CSEF facilities must be enclosed by a perimeter fence of a height of at least six (6) feet up to the maximum height allowed by the County fence regulations or twenty-five feet, whichever is less. This requirement may be waived subject to the written consent of the owner of each of the affected non-participating property.

#### H. Setback Requirements

The setback requirements for WECS shall be as follows:

Setback Description	Setback Distance
Occupied Community Buildings	2.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure
Participating Residences	1.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure
Nonparticipating Residences	2.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure.
Boundary Lines of Participating Property	None
Boundary Lines of Nonparticipating Property	1.1 times the maximum blade tip height of the wind tower to the nearest point on the property line of the nonparticipating property
Public Road Rights-of-Way	1.1 times the maximum blade tip height of the wind tower to the enter point of the public road right-of-way
Overhead Communication and Electric Transmission Facilities (Not Including Overhead Utility Service Lines to Individual Houses or Outbuildings)	1.1 times the maximum blade tip height of the wind tower to the nearest edge of the property line, easement, or right of way containing the overhead line
Overhead Utility Service Lines to Individual Houses or Outbuildings	None
Fish and Wildlife Areas and Illinois Nature Preserve Commission Protected Lands	2.1 times the maximum blade tip height of the wind tower to the nearest point on the property line of the fish and wildlife area or protected land

The setback requirements for CSEFs shall be as follows:

Setback Description	Setback Distance
Occupied Community Buildings and Dwellings on Nonparticipating Properties	150 feet from the nearest point on the outside wall of the structure
Boundary Lines of Participating Property	None
Public Road Rights of Way	50 feet from the nearest edge
Boundary Lines of Nonparticipating Property	50 feet to the nearest point on the property line of the nonparticipating property

1. All CSEF facilities shall be constructed and maintained so that no component of a solar panel has a height of more than twenty (20 feet above the ground when the CSEF arrays are at full tilt.
2. The requirements of this Subsection H may be waived subject to the written consent of the owner of each of the affected non-participating property.
3. As part of the approval of the sitting permit, where it is deemed necessary and appropriate by the County Board, the County may require certain vegetative screening surrounding a commercial wind energy facility or a commercial solar energy facility but may not require earthen berms or similar structures in accordance with Public Act 102-1123.
4. Blade Tip Height. The maximum blade tip height applicable to any commercial wind energy facility shall not exceed the height limitations allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR Part 77.

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The Applicant does not need to obtain a variance from the County upon waiver by either the County or property owner or of all affected nonparticipating property owners of any of the above setback requirements. Any waiver of any of the above setback requirements shall run with the land and be recorded as part of the chain of title in the deed of the subject property.

#### I. Compliance with Additional Regulations

Nothing in this Ordinance is intended to preempt other applicable state and federal laws and regulations, including compliance with the electric facility clearances

approved or required by the National Electric Code, the National Electric Safety Code, Illinois Commerce Commission, Federal Energy Regulatory Commission, and their designees or successors.

J.        Use of Public Roads ANNE UPDATE TO CONFORM TO subsection (s) of PA 102-1123.1. An Applicant proposing to use any County, municipality, township or age road(s), for the purpose of transporting WECS or Substation parts and/or equipment for construction, operation, or maintenance of the WECS(s) or Substation(s), shall: Enter into a road use agreement with the Illinois Department of Transportation, a road district, or other appropriate unit of local government which shall require the facility owner to be responsible for (i) the reasonable cost of improving roads used by the facility owner to construct the commercial wind energy facility or the commercial solar energy facility and (ii) the reasonable cost of repairing roads used by the facility owner during construction of the commercial wind energy facility or the commercial solar energy facility so that those roads are in a condition that is safe for the driving public after the completion of the facility's construction. Roadways improved in preparation for and during the construction of the commercial wind energy facility or commercial solar energy facility shall be repaired and restored to the improved condition at the reasonable cost of the developer if the roadways have degraded or were damaged as a result of construction-related activities. The road use agreement shall not require the facility owner to pay costs, fees, or charges for road work that is not specifically and uniquely attributable to the construction of the commercial wind energy facility or the commercial solar energy facility. Road-related fees, permit fees, or other charges imposed by the Illinois Department of Transportation, a road district, or other unit of local government under a road use agreement with the facility owner shall be reasonably related to the cost of administration of the road use agreement.

K.        Site Assessment

The Applicant, at its expense, shall provide soil boring reports to the County Engineer with respect to each WECS Tower location CSEF location, or location of Supporting Facilities, as part of its WECS or CSEF Building Permit. The Applicant shall follow the guidelines for Conservation Practices Impact Mitigation submitted by the Morgan County Soil and Water Conservation District (or equivalent regulatory agency). Also the Applicant shall submit grading plans for the proposed Supporting Facilities for review and comment by the Morgan County Soil and Water Conservation District prior to the issuance of any WECS or CSEF Building Permit for the construction of said substations.

L.        Communications Analysis; Interference

1.        The Applicant, at its expense, shall have a third party, qualified professional (after submission of resume and relevant work experience) conduct an appropriate analysis of the television reception documenting the television stations that are received within one and one-half (1 ½) miles of the footprint of the WECS Project. The results of said study shall be public record and will serve as a baseline reading for television reception conditions prior to the construction of the WECS Project and shall be submitted as part of the Siting Approval Permit application.

2. The Applicant, at its expense, shall have a third party, qualified professional (after submission of resume and relevant work experience), conduct a communications analysis that indicates that the E9-1-1 communications, emergency communications or official County and local municipal communications reception shall not be negatively impacted or influenced by the proposed wind power facility. Said communication analysis shall be a public record and shall be submitted as part of the Siting Approval Permit application.
3. The Applicant and the Operator, at the Applicant's expense, shall take immediate actions to minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves or television signals and to eliminate any such interference that impacts local government public safety (police, fire, emergency medical services, emergency management services, 911 dispatch) communications, caused by the operation of the WECS. The Applicant shall provide the applicable microwave transmission providers and local emergency service provider(s) (911 operators) copies of the WECS Project Summary and Site Plan, as set forth in Section V(B)(1) and V(B)(3) of this Ordinance. To the extent that the above provider(s) demonstrate a likelihood of interference with its communications resulting from the WECS(s), the Applicant and the Operator, at Applicant's expense, shall take reasonable measures to minimize and mitigate such anticipated interference and with regard to interference with local, government public safety (police, fire, emergency medical services, emergency management services, 911 dispatch) communications, the Applicant and the Operator, at Applicant's expense, shall take all necessary and available commercial measures to eliminate any such interference. If, after construction of the WECS, the Applicant (WECS Permittee) or Operator receives a written complaint related to the above-mentioned interference, the Applicant (WECS Permittee) shall take commercially reasonable steps to respond to the complaint, except in the case of a complaint of interference with local, government public safety (police, fire, emergency medical services, emergency management services, 911 dispatch) communications. In the case of local, government public safety communications, the Applicant (WECS Permittee) and the Operator, at the Applicant's expense, shall immediately take all necessary and available commercial measures to eliminate any such interference.
4. If, after construction of the WECS, the Applicant (WECS Permittee) or Operator receives a written complaint related to interference with local broadcast residential television, the Applicant (WECS Permittee) shall take commercially reasonable steps to respond to the complaint. A summary of complaint and subsequent response from Applicant shall be forwarded to the Morgan County Board of Commissioners for review. Once the construction is complete and a television reception complaint is received by the Regional Planner, who will have thirty (30) calendar days to verify the complaint, the Applicant (WECS Permittee) will be given fifteen (15) calendar days to respond, in writing (validation date). Said response shall be addressed and forwarded to both the Regional Planner and the complainant. Such response shall include but not be limited to the following: an acknowledgment that a complaint was made and evaluated

by the Applicant (WECS Permittee). If considered valid by the Applicant (WECS Permittee): an explanation, including a time line, as to what the Applicant (WECS Permittee) intends to do about the complaint. The Applicant (WECS Permittee) of the wind power facility will be given an additional fifteen (15) calendar days from the validation date to resolve said TV reception issue. If considered invalid by the Applicant (WECS Permittee), an explanation, including supporting documentation and expert opinions, as to why the Applicant (WECS Permittee) believes the complaint is not valid. Television reception complaints must be filed within six (6) months from the date each wind turbine generator goes online.

**M. Noise Levels**

Noise levels from each WECS, CSEF, or WECS or CSEF Project shall be in compliance with applicable Illinois Pollution Control Board (IPCB) regulations (See, 35 Ill. Adm. Code Parts 900, 901 and 910). The Applicant, through the use of a qualified professional, as part of the Siting Approval Permit application process, shall appropriately demonstrate compliance with the applicable noise requirements. The Applicant, at its expense, shall have a third party, qualified professional (after submission of resume and relevant work experience), conduct an appropriate analysis of the noise impact to nearby properties. The sound pressure level generated by a WECS or CSEF shall comply with all Illinois Pollution Control Board (IPCB) noise regulations. A modeling analysis of the proposed site shall be included in the application predicting the sound pressure in accordance with the best available practices. The program generating the modeling must take into account not only topography, but also prevailing winds, temperature, air density, ground cover, and other effects which contribute to the distance that sound can travel. The modeling must be submitted to the County as part of the Siting Approval Permit application. A "0" background ambient noise level shall be used for all modeling. After a WECS or CSEF is completed and operational for one (1) year, the Applicant (WECS or CSEF Permittee) of the WECS or CSEF Project, at its expense, shall have a third-party, qualified professional (after submission of resume and relevant work experience) complete a second noise study to evaluate compliance with the IPCB noise regulations. The study shall be completed and returned to Regional Planner within sixty (60) calendar days. The Applicant (WECS or CSEF Permittee) shall immediately take measures to ensure compliance with the IPCB noise regulations should the study show a violation of IPCB noise regulations, unless said violation is excused and waived in writing by affected non-participating landowners and occupants. All analyses and studies are subject to approval of the Regional Planner and are a matter of public record. After the initial one (1) year operational period, the Applicant (WECS or CSEF Permittee) shall immediately take measures to ensure compliance with the IPCB noise regulations in the event that the Regional Planner is provided with credible evidence the WECS or CSEF Project, as constructed and operated, does not meet the IPCB noise regulations, unless said violation is excused and waived in writing by the affected landowners and occupants.

**N. Agricultural Impact Mitigation**

Pursuant to 505 ILCS 147/15(a), the Applicant, at its expense, shall enter into an Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture



prior to any public hearing required before a siting decision on the WECS or CSEF Project application. All impacted agricultural land, whether impacted during construction, operation, or decommissioning activities, must be remediated by the Applicant pursuant to the terms of the Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture.

O. Avian and Wildlife Impact Study

The Applicant, at its expense, shall have a third party, qualified professional (after submission of resume and relevant work experience) conduct an avian and wildlife impact study and submit said study to the Regional Planner as part of the Siting Approval Permit application. Prior to the substantial completion of the physical aerial erection of the wind turbines, the Applicant shall develop to the reasonable satisfaction of the Illinois Department of Natural Resources ("IDNR") and the United States Fish and Wildlife Service ("USFWS") (to the extent the IDNR and the USFWS choose to participate in the process), a professional monitoring program of reasonable duration and scope, consistent with common practice in the wind power industry, to assess migratory bird mortalities resulting from the operation of the wind power facility. The monitoring program shall be undertaken at owner's expense and shall be performed at the direction of a qualified independent professional to be mutually agreed upon by the aforesaid parties in good faith. Such monitoring program shall commence upon the substantial completion of the physical aerial erection of the wind turbine generators, unless otherwise mutually agreed to by the Applicant, IDNR and USFWS (to the extent the IDNR and the USFWS choose to participate in the process). If the results of the monitoring program demonstrate the need, the Applicant of the WECS Project shall work with IDNR and USFWS (to the extent IDNR and USFWS each, respectively, choose to participate) to develop an appropriate response, including the potential further study and implementation of practicable mitigation measures that may either directly or indirectly minimize migratory bird mortality or increase bird populations. The Applicant shall review and consider and must adhere to the recommendations provided by the Illinois Department of Natural Resources ("IDNR") in an EcoCAT Natural Resource Review Report and may decide to follow the recommendations suggested by the United States Fish and Wildlife Services ("USFWS") Endangered Species Consultation program.

P. Height

The total height of a WECS tower shall be the height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR Part 77.

Q. As-Built Map and Plans

Within sixty (60) calendar days of completion of construction of the WECS or CSEF Project, the Applicant (WECS or CSEF Permittee) or Operator shall deliver "as-built" maps, site plan and engineering plans for the WECS or CSEF Project that have been signed and stamped by a Professional Engineer and a licensed surveyor.

R. Engineer's Certificate

The WECS Project engineer's certificate shall be completed by a structural engineer registered in the State of Illinois or by a Professional Engineer with a certification from a structural engineer registered in the State of Illinois and shall certify that the WECS tower and foundation design is compatible with and appropriate for each turbine design proposed to be installed and that the specific soils at the site can support the apparatus, given local soil and climate conditions. All commercially installed wind turbines must utilize self-supporting, tubular towers. Smaller co-generators of 40 kilowatts or less, however, may use lattice construction towers, but must meet all other standards contained in this subsection. The WECS Project engineer's certificate shall be a public record and shall be submitted as part of the Siting Approval Permit application as a condition of approval.

S. Conformance With Approved Application and Plans

The Applicant (WECS or CSEF Permittee) shall construct and operate the WECS or CSEF Project in substantial conformance with the construction plans contained in a County-approved submitted Siting Approval Permit application(s) and all accompanying plan(s) and design documents. Nothing contained herein shall be deemed to preclude the agricultural, commercial or industrial use of the balance of the subject property not occupied by the WECS Project. Said agricultural use will be considered as being the principal use of the subject property notwithstanding adoption of a special use ordinance and the construction and operation of one or more WECS or CSEF on a given lot or parcel of land, at locations approved by the County pursuant to Siting Approval Permit approval on a Site Plan Map.

T. Additional Terms and Conditions

1. All technical submissions as defined in the Professional Engineering Practice Act of 1989 (225 ILCS 325/4(w)) and contained in the Siting Approval Permit Application shall be prepared and signed by an Illinois Professional Engineer (or structural engineer) for the relevant discipline.
2. The County may retain a qualified, independent code inspector or professional engineer both to make appropriate inspections of the WECS or CSEF Project during and after construction and to consult with the County to confirm that the construction, substantial repair, replacement, repowering and/or decommissioning of the WECS or CSEF Project is performed in compliance with applicable electrical and building codes. The cost and fees so incurred by the County in retaining said inspector or engineer shall be promptly reimbursed by the Applicant (WECS or CSEF Permittee) of the WECS or CSEF Project.
3. The Applicant shall provide locked metal gates or a locked chain are installed at the access road entrances of all the wind turbine generator locations if requested by the landowner. An exception may be made when the landowner has filed a written statement with the Regional Planner which states that the owner does not want a locked metal gate installed and has provided a signed liability waiver to the County.

4. The Siting Approval Permit granted to the Applicant shall bind and inure to the benefit of the Applicant, its successors-in-interest and assigns. If any provision in this Ordinance is held invalid, such invalidity shall not affect any other provision of this Ordinance that can be given effect without the invalid provision and, to this end, the provisions in this Ordinance are severable.
5. The Applicant shall supply written proof of an approved entrance, from the appropriate governing road and highway jurisdictions or the Illinois Department of Transportation, to the Regional Planner prior to the issuance of any WECS or CSEF Building Permit or prior to construction of the WECS or CSEF Project.
6. No wind turbine generator shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. The wind turbine generator shall not be installed in a location along the major axis of existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
7. The Applicant of the WECS Project shall use two (2) methods to detect icing conditions on turbine blades: (1) sensors that detect when blades become imbalanced or create vibration due to ice accumulation; and (2) meteorological data from on-site meteorological towers, on-site anemometers, and other relevant weather sources that will be used to determine if ice accumulation is occurring. These control systems will either automatically shut down the turbine(s) in icing conditions or the Applicant will manually shut down the turbine(s) if icing conditions are identified.

U. Nonconforming Use and Structures

1. This Ordinance has established specific requirements for WECS and CSEF Projects which must be satisfied before the County Board may approve a WECS or CSEF Project Siting Approval Permit Application. However, it is understood and anticipated that circumstances beyond the control of the Applicant (WECS or CSEF Permittee) or Operator may cause the WECS or CSEF to become noncompliant with the provisions of this Ordinance. Recognizing both the legitimate interest of those who lawfully established such a nonconformity and the need to protect the public health, safety, comfort, and general welfare, the provisions of this subchapter are intended to provide for the regulation of nonconforming uses, lots and structures within the following:
  - a. It is the intent of this subchapter to permit nonconforming uses to continue until they are removed or until they become a risk to public safety and/or health.

- b. It is the intent of this subchapter that nonconforming structures shall not be enlarged upon, expanded or extended, unless they are brought into compliance with then-current regulations, subject to reasonable exceptions listed below.
- 2. Any nonconforming structure which received a Siting Approval Permit from the County Board prior to becoming nonconforming, may be continued only in accordance with the following:
  - a. Nonconforming Structures: No nonconforming structures shall be:
    - i. Added to or enlarged in any manner that increases the nonconformity, except as allowed under the exceptions below;
    - ii. Moved or relocated, in whole or in part, that increases the nonconformity, except as allowed under the exceptions below; or
    - iii. Renewed if abandoned for a period of twelve (12) continuous months. The term “abandoned” does not apply to any structure that is not in use or operation due to on-going construction, maintenance, repair or replacement work.
  - b. Nonconforming Use of a Structure: Nonconforming use of a structure may be:
    - i. Used for its intended uses and operations, subject to the provisions of this subsection.
  - c. Damage: Restoration or Reconstruction. A nonconforming structure may be:
    - i. Restored or reconstructed to its original size, height and dimensions, if damaged or destroyed, subject to compliance with applicable then-current state or federal laws governing the construction and operation of WECS or CSEFs. Said restoration or reconstruction shall be upon (a) the original foundation, if feasible, or (b) the location of the original foundation, or (c) a new location that does not increase the nonconformity.
    - ii. A WECS Tower or CSEF or Supporting Facilities may be restored or reconstructed at its original location where it existed prior to a non-participating property owner constructing his/her/its Primary Structure within the one thousand six hundred fifty feet (1,650) setback requirement or a participating property owner constructing his/her/its Primary Structure within the one thousand three hundred twenty feet (1,320) setback requirement of Article VI (Design and Installation), Subsection H (Setback) above, subject to compliance with applicable then-current state or federal laws governing the construction and operation of WECS or CSEF.
  - d. Exceptions:

- i. Structural alterations or repairs of a nonconforming structure required by law shall be permitted.
- ii. No nonconforming structure shall be structurally altered or enlarged in such a manner that would further increase the nonconformity, except that structural alterations or operational components related with normal maintenance, repairs and replacements may be permitted where there is no increase in the existing encroachments or the increase results in a *de minimis* (two (2) percent (2%)) expansion of the encroachments.
- iii. Provided that the result is to change the status of a structure or use from nonconforming to conforming, such structure or use may be:
  - a. Structurally altered;
  - b. Added to or enlarged;
  - c. Moved or relocated, in whole or in part;
  - d. Expanded or extended;
  - e. Changed; or
  - f. Restored or reconstructed.

## VII. OPERATION

### A. Maintenance

- 2. Annual Report. The Applicant (WECS or CSEF Permittee) must submit, on an annual basis on the anniversary date of the siting approval application, an operation and maintenance report to the County. The report shall contain the following information: (i) a general description of any physical repairs, replacements or modification(s) to the WECS or CSEF and/or its infrastructure; (ii) complaints pertaining to setbacks, noise, appearance, safety, lighting and use of any public roads received by the Applicant concerning the WECS or CSEF and the resolution of such complaints; (iii) calls for emergency services; (iv) status of liability insurance; and (v) a general summary of service calls to the WECS or CSEF. Failure to provide the annual report shall be considered a material violation of this Ordinance and subject to Article XI (Remedies).
- 2. Re-Certification. Any physical modification to the WECS or CSEF that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification under Section VI(A)(1) of this Ordinance. Like-kind replacements and modifications that are made in the ordinary course of operations, including expected repairs and warranty items, shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement or other modifications made in the ordinary course of operations), the Applicant shall confer with a relevant third-party certifying entity identified in Section VI(A)(1) of this Ordinance to determine whether the physical modification requires re-certification.

### B. Coordination with Emergency Responders:

1. The Applicant shall submit to the local emergency responders a copy of the Site Plan, Standard Operating Procedures (SOPs) and Standard Operating Guidelines (SOGs), and any amendments to such documents, for the wind power facility so that the local law enforcement, fire protection district and rescue units, emergency medical service providers and emergency management service providers that have jurisdiction over each tower site may evaluate and coordinate their emergency response plans with the Applicant of the WECS or CSEF Project.
2. The Applicant, at its expense, shall provide annual training for, and the necessary equipment to, the Operator and local emergency response authorities and their personnel so that they can properly respond to a potential emergency at the WECS or CSEF Project. Special equipment to be provided includes, but is not limited to, permanently installed rescue equipment such as winches, pulleys, harnesses, etc.
3. The Applicant and the Operator shall cooperate with all local emergency responders to develop an emergency response plan. The plan shall include, at a minimum, 24 hour contact information (names, titles, email addresses, cell phone numbers) for the Applicant and the Operator and at least three (3) designated WECS or CSEF Project representatives (a primary representative with two (2) alternate representatives, each of whom are on-call "24 hours per day / 7 days per week / 365 days per year"). Any change in the designated WECS Project representative or his/her contact information shall be promptly communicated to the Regional Planner. The content of the emergency response plan, including the 24 hour contact information, shall be reviewed and updated on an annually basis.
4. Nothing in this section shall alleviate the need to comply with all other applicable life safety, fire / emergency laws and regulations.

C. Water, Sewer, Materials Handling, Storage and Disposal

1. All solid wastes related to the construction, operation and maintenance of the WECS or CSEF shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.
2. All hazardous materials related to the construction, operation and maintenance of the WECS or CSEF shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.
3. The WECS or CSEF Project shall comply with existing septic and well regulations as required by the Morgan County Health Department and the State of Illinois Department of Public Health.

D. Shadow Flicker

1. Prior to the issuance of a Siting Approval Permit, the Applicant must present to the Board of Appeals, a Model Study presenting a conservative number of hours shadow flicker may appear on each Primary Structure of a non-participating property owner (non-participating residence) and Occupied Community Building. Shadow flicker shall not exceed thirty (30) hours per calendar year on any Primary Structure (non-participating residence) and Occupied Community Building using the Model Study information. The owner of any Primary Structure (non-participating residence) and Occupied Community Building may waive this 30-hour limitation on shadow flicker, whether the owner is a participating property owner or a non-participating property owner. Each waiver of the 30-hour shadow flicker limitation shall be set forth in a written waiver executed by the owner of the Primary Structure (non-participating residence) and Occupied Community Building, whether the owner is a participating property owner or a non-participating property owner. The executed waiver shall be filed with the County Recorder of Deeds Office against title to the affected real property.
2. The Applicant (WECS Permittee), at its cost, shall use commercially reasonable efforts to remedy and reduce shadow flicker affecting any property owner(s) who is not a participant in the WECS Project, where the property or properties receive more than thirty (30) of shadow flicker in a calendar year by promptly undertaking measures such as purchasing and installing trees and/or other vegetation plantings, screening or awnings on the affected property owner's property in a manner that remedies and reduces shadow flicker.

E. Signage

Signage regulations are to be consistent with ANSI and AWEA standards. A reasonably visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

F. Drainage Systems

The Applicant (WECS or CSEF Permittee), at its expense, will repair, in a prompt and timely manner, all waterways, drainage ditches, agricultural drainage systems, field tiles, or any other private and public infrastructure improvements damaged during construction, maintenance and operation phases of the WECS Project. A drainage plan sufficient to provide remediation shall be submitted by the Applicant (WECS or CSEF Permittee) for review and approval by the County.

G. Complaint Resolution

The Applicant (WECS or CSEF Permittee) shall, at its expense and in coordination with the County, develop a system for logging and investigating complaints related to the WECS or CSEF Project. The Applicant (WECS or CSEF Permittee) shall resolve such complaints on a case-by-case basis and shall provide written confirmation to the Regional Planner. All costs and fees incurred by the County in attempting to or resolving complaints shall be reimbursed by the Applicant (WECS or CSEF Permittee) of the WECS or CSEF Project. The Applicant (WECS or CSEF

Permittee) shall also designate and maintain for the duration of the WECS or CSEF Project either a local telephone number or a toll-free telephone number and an email address as its public information / inquiry / and complaint "hotline" which shall be answered by a customer service representative 24/7 basis. The Applicant (WECS or CSEF Permittee) shall post the telephone number(s) and email address(es) for the customer service representative(s) in an prominent, easy to find location on their websites and at the WECS or CSEF Project site on signage.

#### VIII. PUBLIC PARTICIPATION

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

#### IX. LIABILITY INSURANCE AND INDEMNIFICATION

Commencing with the issuance of a WECS or CSEF Building Permit, the Applicant shall maintain a current general comprehensive liability policy and automobile liability coverage covering bodily injury, death and illness, and property damage with limits of at least Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate; and, shall further maintain the above-stated lines of insurance from delivery of the "Notice to Proceed by the Applicant under the plant construction contract(s) for the WECS or CSEF Project, in coverage amounts of at least Five Million Dollars (\$5,000,000.00) per occurrence and Twenty Million Dollars (\$20,000,000.00) in the aggregate during the life of the WECS or CSEF Project. Such insurance may be provided, pursuant to a plan of self-insurance, by a party with a net worth of Fifty Million Dollars (\$50,000,000.00) or more. The County and its officers, appointed and elected officials, employees, attorneys, engineers and agents (the "County Affiliates") and all affected Road Districts and their officers, appointed and elected officials, employees, attorneys, engineers and agents (the "Road District Affiliates") shall be included additional insureds on the insurance certificate(s), endorsement(s) and policies for all aspects of the WECS and CSEF Project for both ongoing and completed operations and for all automobiles owned, leased, hired or borrowed, as applicable, by the Applicant for the WECS or CSEF Project. The coverage shall contain no special limitations on the scope of protection afforded to the County and the County Affiliates or the affected Road Districts and the Road Districts' Affiliates. The insurance coverage of the Applicant shall be primary as respects the additional insureds. The Applicant shall file the original certificate of insurance with the Regional Planner upon commencement of project construction prior to the issuance of a WECS or CSEF Building Permit, corresponding policies and endorsements to be provided within sixty (60) days of issuance, and at each subsequent renewal, at least annually thereafter.

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



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

**X. DECOMMISSIONING AND SITE RECLAMATION PLAN REQUIRED**

- A. At the time of Siting Approval Permit application, the County and the Applicant must formulate a Decommissioning and Site Reclamation Plan to ensure that the WECS or CSEF Project is properly decommissioned. The Decommissioning and Site Reclamation Plan shall be binding upon the Applicant (WECS or CSEF Permittee), and its successors-in-interest and assigns, and shall apply to all participating parcels in the WECS or CSEF Project, irrespective of the owner of title to such parcels. The Decommissioning and Site Reclamation Plan shall be formulated to the standards of the Department of Agriculture's standard wind farm agricultural impact mitigation agreement, template 81818, or standard solar agricultural impact mitigation agreement, version 8.19.19., as applicable and in effect on December 31, 2022. A decommissioning payment shall be required in the amount of the cost identified in the decommissioning or deconstruction plan, as required by those agricultural impact mitigation agreements, minus the salvage value of the project. This Ordinance intends that the requirements of this Section be in conformity with and not in contradiction of 55 ILCS 5/5-12020 (j); and shall apply to WECS and CSEF Permittees as well as any Permittees whose projects require parity with these standards. In the event of any direct conflict, the statute shall control. A signed Decommissioning and Site Reclamation Plan must be submitted to the Regional Planner prior to the granting of the Siting Approval Permit. The Applicant shall ensure that the WECS facilities are properly decommissioned within twelve (12) months of the end of the WECS Project life or the facility abandonment; however, upon written request supported by evidence that the Applicant has diligently pursued activities toward decommissioning the WECS Project and that any delay in completion of decommissioning the WECS Project is due to conditions out of its control, the Applicant shall receive a day-for-day extension of the aforementioned twelve (12)-month deadline for any such documented delay. Subject to compliance with removal requirements of Subsection X.C(1) below, the Applicant shall include removal of all physical material of the project improvements to a depth of forty-eight (48) inches beneath the soil surface and the restoration of the area as near as practicable to the same condition prior to construction.
- B. A Decommissioning and Site Reclamation Plan shall be prepared by an independent Illinois Certified Professional Engineer and shall include:
1. Provisions describing the triggering events for decommissioning the WECS or CSEF Project;
  2. A description of the methodology and cost to remove all above ground and below ground WECS and CSEF facilities of the approved Siting Approval Permit;
  3. Provisions for the removal of all above ground and below ground WECS and CSEF facilities of the approved Siting Approval Permit;

4. Methodology and cost to restore all areas used for construction, operation and access to a condition equivalent to the land prior to the WECS and CSEF construction;
5. A work schedule and a permit list necessary to accomplish the required work;
6. Methodology to identify and manage any hazardous or special materials.
7. Submission of a draft form of Financial Security to the County in the form of a surety bond (performance and payment bond), irrevocable letter of credit or a cash escrow account that names Morgan County as the beneficiary, or other type of Financial Security that is approved by the County. If an irrevocable letter of credit or surety bond (performance and payment bond) is selected, the original of the irrevocable letter of credit or surety bond shall be held by the County. If a cash escrow is selected, the cash escrow shall be held and managed by an independent third party (e.g., escrow agent or title company) on behalf of the County, subject to escrow instructions that incorporate the applicable decommissioning and repair / replacement / restoration obligations of this Agreement as executed by the County and the Applicant. The amount of Financial Security shall be equal to the positive difference between the total cost of all decommissioning and restoration work and the net salvage value of all removed WECS and CSEF equipment or materials, plus a ten percent (10%) contingency, as adjusted by the County after input from the County's engineer (the "Decommission Security"); provided that any such amount will be capped at the maximum allowable amount of financial assurances pursuant to 55 ILCS 5/5-12020(j). To determine that amount, the Applicant and the Morgan County Board shall: (a) obtain bid specifications provided by a professional structural engineer; (b) request estimates from construction / demolition companies capable of completing the decommissioning of the WECS or CSEF Project; and (c) certification of the selected estimate by a professional structural engineer. The Morgan County engineer, an independent engineer of the County's choosing, and the Regional Planner will review all estimates and make a recommendation to the Morgan County Board for an acceptable estimate. Morgan County reserves the right to pursue other estimates. All costs to secure the estimates will be funded by the Applicant.
8. A provision that the terms of the Decommissioning and Site Reclamation Plan shall be binding upon the Applicant (which, for the avoidance of doubt, including any of its successors-in-interest and assigns);
9. Confirmation by affidavit that the obligation to decommission the WECS or CSEF facilities is included in the lease agreement for every parcel included in the Siting Approval Permit application. A list of all landowners should be kept current and affidavits shall be secured from Applicant and landowners stating their financial understanding;

10. A provision that allows for the County to have the legal right to transfer applicable WECS or CSEF material to salvage firms;

11. Identification of and procedures for Morgan County to access the Financial Assurances; and

12. A provision that Morgan County shall have access to the site, pursuant to reasonable notice to affect or complete decommissioning. A portion of the Decommission Security will be required to be held for one (1) year past the decommissioning to settle any potential disputes.



C. Provisions triggering the decommissioning of any portion of the WECS or CSEF Project due to abandonment:

1. Inactive construction for twelve (12) consecutive months.

2. If no electricity is generated by the WECS or CSEF Project for twelve (12) consecutive months after electricity is initially generated, unless the inactivity is due to required or ongoing, active maintenance, repairs, replacement or rehabilitation work and written proof is provided that new parts have been ordered and will be received within six (6) months.

3. The Applicant dissolves or abandons the WECS or CSEF Project without first transferring the WECS or CSEF Project to a successor-in-interest or assign.

4. If any part of an individual turbine or the WECS or CSEF Project is taken off-line for more than thirty (30) consecutive calendar days, excluding where ongoing, active maintenance, repairs, replacement or rehabilitation work is being performed, falls into disrepair, is in threat of collapsing or any other health and safety issue.

5. The Applicant shall provide written notice to the County of any of the above decommissioning trigger events within five (5) calendar days of the event.

D. Provisions for the removal of structures, debris and cabling; both above and below the soil surface:

1. Items required to be removed include but are not limited to: turbines, transformers, foundation pads, electrical collection systems and transporters, underground cables, fencing, access roads and culverts. A landowner must sign an agreement if they wish for the access roads or culverts to remain.

E. Provisions for the restoration of soil and vegetation:

1. All affected areas shall be inspected, thoroughly cleaned and all construction related debris shall be removed.

2. Items required to be restored include but are not limited to: windbreaks, waterways, site grading, drainage tile systems and topsoil to former productive levels.

a. In work areas involving decommission from expansion of turbine crane pads, widening access roads or any other work areas, the topsoil must be first removed, identified and stored separate from other excavated material for later replacement as applicable.

b. The 48-inch below-surface excavation area shall be filled with clean sub-grade material of similar quality to that in the immediate surrounding area.

c. All sub-grade material will be compacted to a density similar to surrounding grade material.

d. All unexcavated areas compacted by equipment used in decommissioning shall be de-compacted in a manner that adequately restores the topsoil and sub-grade material to the proper density consistent and compatible with the surrounding area.

e. Where possible, the topsoil shall be replaced to its original depth and surface contours.

f. Any topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of the effected site.

3. Disturbed areas shall be reseeded to promote re-vegetation of the area to a condition reasonably similar to the original condition. A reasonable amount of wear and tear is acceptable.

4. Restoration measurements shall include: leveling, terracing, mulching and other necessary steps to prevent soil erosion; to ensure establishment of suitable grasses and forbs; and to control noxious weeds and pests.

5. Items required to be repaired after decommissioning include but are not limited to: roads, bridges and culverts.

6. An independent drainage engineer shall be present to ensure drainage tiles, waterways, culverts, etc. are repaired as work progresses.

7. A soil erosion control plan shall be approved by the Morgan County Soil and Water Conservation District.

8. All applicable stormwater management, floodplain and other surface water rules, regulations and ordinances shall be followed.

F. Estimating the costs of decommissioning:

1. Costs shall include but not be limited to engineering fees, legal fees, accounting fees, insurance costs, decommissioning and site restoration.

2. When factoring the WECS or CSEF salvage value into decommissioning costs, the authorized salvage value may be deducted from decommissioning costs if the following standards are met:

a. The net salvage value shall be based on the average salvage price of the past five (5) consecutive years, this includes any deconstruction costs.

b. The maximum allowable credit for the salvage value of any WECS or CSEF shall be no more than the estimated decommissioning costs of removal of the above ground portions of that individual WECS or CSEF or up to seventy-five percent (75%) of the total estimated decommissioning costs, whichever is greater.

3. Adjustments to the financial assurance amount that reflect changes in the decommissioning costs and salvage values shall be submitted every five (5) years after the initial ten (10) years of operation, subject to the provisions of Subsection VI.J.4 (Design and Installation; use of Public Roads; Financial Security) above, and shall be adjusted for inflation and other factors. The amount of the Decommission Security shall be adjusted accordingly within six (6) months of receiving the updated information as determined by an Illinois professional engineer. Failure to provide financial assurance as outlined herein shall be considered a cessation of operation.

4. When determining salvage values, demolition costs, transportation costs and road permits shall be a consideration.

5. If salvage value items are removed prior to decommissioning, then the Decommission Security may be adjusted to provide a credit.

G. Financial assurance:

1. The Applicant shall post the Financial Security for the WECS or CSEF Project, including the Decommission Security, to be eligible to receive a WECS or CSEF Building Permit, so long as such security does not exceed the maximum allowable security under 55 ILCS 5/5-12020(j), which shall act as a cap for the Decommission Security amount.

2. The County shall have immediate access, upon written notice to the Applicant, to use the Decommission Security if:

a. After abandonment of the Project, the Applicant, upon a reasonable determination by the County Board, fails to address a health and safety issue in a timely manner; or

b. The Applicant fails to decommission the abandoned turbine(s) or the entire WECS Project in accordance with the Decommissioning and Site Reclamation Plan.

3. If possible for the type of Decommission Security provided, the Applicant shall grant perfected security in the Decommission Security by use of a control agreement establishing the County as an owner of record pursuant to the Secured Transit Article of the Uniform Commercial Code, 810 ILCS 9/ *et seq.*

4. The County Board or its escrow agent shall release the Decommission Security when the Applicant has demonstrated and Morgan County concurs that decommissioning has been satisfactorily completed, or upon written approval of the County to implement the decommissioning plan. Ten percent (10%) of the Decommission Security shall be retained one (1) year past the date to settle any outstanding concerns.

5. Any interest accrued on the Decommission Security that is over and above the total value as determined by the Illinois professional structural engineer shall go to the Applicant.

6. The Applicant shall identify procedures for Morgan County to assess the financial assurances, particularly if it is determined that there is a health and/or safety issue with the WECS and the principal company fails to adequately respond as reasonably determined by the County Board.

7. The County shall be listed as a debtor in connection with any proceeding in insolvency or bankruptcy, but shall not be responsible for any claims against the Applicant.

8. The Applicant shall agree that the obligations and liabilities under a Siting Approval Permit shall be binding upon the Applicant (which, for the avoidance of doubt, includes its successors-in-interest and assignees, such as the WECS Permittee) and the Operator. The Applicant further shall agree that the sale, assignment in fact or at law, or other transfer of the Applicant's financial interest in the WECS shall in no way effect or change the Applicant's obligation to continue to comply with the terms, covenants and obligations of a Siting Approval Permit unless such successor-in-interest or assignee agrees to assume all obligations of the Siting Approval Permit, including but not limited to the decommissioning obligations associated with the WECS.

9. Morgan County and its authorized representatives have the right of entry onto the WECS premises for the purpose of inspecting the methods of reclamation or for performing actual reclamation if necessary.

## XI. REMEDIES

- A. The Applicant's failure to materially comply with any of the provisions under the Siting Approval Permit granted herein shall be a default and shall be grounds for revocation of the Siting Approval Permit by the County Board. However, before the Board moves to revoke a Siting Approval Permit the provisions and procedures set forth in this Ordinance, including Subsection C (Siting Approval Permits for WECS and CSEF Projects) of Article XII (Fee Schedule And Permitting Process)

and this Article XI (Remedies), must be adhered to and followed. In addition, failure to comply with requirements set forth in this Ordinance may result in a fine in the amount of \$250.00-\$1,000.00. Each day that a violation remains outstanding will be considered a separate violation.

- B. Prior to implementation of the applicable County procedures for the resolution of such default(s), the County Board shall first provide written notice to the Applicant and Operator, setting forth the alleged default(s) and provide an opportunity for the Applicant (WECS or CSEF Permittee) or the Operator to cure any such default(s) within a thirty (30) calendar day period from the date of the notice; provided that, should the Applicant (WECS Permittee) commence the cure within that 30-day cure period, and diligently pursues a cure of the same, then the Applicant (WECS or CSEF Permittee) shall receive an additional sixty (60) days to continue to pursue the cure before the County may pursue applicable procedures for the resolution of such default. If the default relates to a life safety issue or interference with local, government public safety (police, fire, emergency medical services, emergency management services, 911 dispatch) communications, the Applicant (WECS or CSEF Permittee) or the Operator shall take all necessary and available commercial measures to immediately cure the default. Within the cure period, the parties may also engage in good faith negotiations to resolve the alleged default(s).
- C. If the Applicant or Operator cannot cure the default(s) or resolve the alleged default(s) within the cure period, then applicable County ordinance provisions addressing the resolution of such default(s) shall govern, including, specifically, Article XII(C)(5)(Revocation).

## XII. FEE SCHEDULE AND PERMITTING PROCESS

- A. Fees. The County finds and determines that the application fees, other applicable fees, charges and costs of any kind provided for under this Ordinance that relate to the site permitting, construction, operation, maintenance, repair, replacement and decommissioning / removal of a commercial wind energy facility or a commercial solar energy facility are reasonable and are consistent with such fees, charges and costs for projects in the County with similar capital value and cost.

Upon submittal of the application for a WECS Siting Approval Permit, the Applicant shall submit a check to Morgan County in the amount of Fifty Thousand Dollars (\$50,000.00) ("Plan Review Deposit"). These funds shall be placed in a guaranteed money market account and will be used to compensate and reimburse the County for actual, documented costs incurred during the review process for the WECS or CSEF application. Should the actual, documented costs to the County exceed Fifty Thousand (\$50,000.00), the Applicant shall be responsible for those additional costs and shall remit additional funds to the County within fifteen (15) calendar days of receipt of a request from the County. Any amount remaining in the money market account after the County completes the application process and pays all bills and invoices shall be refunded to the Applicant.

- B. Review and Consideration of Siting Approval Permit Application



1. Review by the County Board:

- a. The Regional Planner shall review the application for completeness with the requirements of this Ordinance in a preliminary investigation and issue a written report to the County Board.
- b. Upon completion of this preliminary investigation and report, the Regional Planner shall schedule a date for a public hearing before the Board of Appeals. The public hearing shall be conducted in accordance with the Open Meetings Act and shall be held not more than forty-five (45) calendar days after the filing of the application for the facility. The county shall make its siting and permitting decisions not more than thirty (30) calendar days after the conclusion of the public hearing.

c. HEARING FACILITATOR

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

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

- d. Notice Requirements: The County shall comply with the public hearing notice requirements contained in Section 5-12020 of the Illinois Counties Code (55 ILCS 5/5-12020). In the event that Section 5-12020 does not provide specific notice requirements, then the County will comply with the then-current public hearing notice requirements of Section 5-12009.5 (Special Uses) (55 ILCS 5/5-12009.5), which as of the approval date of this Ordinance require: There must be at least thirty (30) calendar days' notice before the hearing. The notice must include the time, place and date of the hearing and must be published in a newspaper published in the township or road district where the property is located. If there is no newspaper published in the township or road district where the property is located, the notice must be published in a newspaper of general circulation in the County. The notice must also contain: (i) the particular location of the property for which the Siting Approval Permit is requested by legal description and by street address, or if there is no street address, by locating the property with reference to any well-known landmark, highway, road, thoroughfare, or intersection; (ii) 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; (iii) whether the petitioner or applicant is a corporation, and, if so, the correct names and addresses

of all officers and directors of the 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; (iv) 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; (v) whether the 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; and (vi) a descriptive statement of the proposed WECS or CSEF Project.

In addition to any other notice required by this Section, the County must give at least fifteen (15) calendar days' notice before the hearing to: (i) any municipality whose boundaries are within 1-1/2 miles of any part of the property proposed as a WECS or CSEF Project; and (ii) the owner or owners of any land adjacent to or immediately across any street, alley or public right-of-way from the property proposed as a WECS or CSEF Project, or any real property that could be defined as an affected Non-participating Property.

The petitioner or applicant must pay the cost of the publication of the notice required by this Section.

- e. The Board of Appeals shall hold the public hearing and review and consider the Siting Approval Permit application, allow oral and written testimony of the Applicant and its consultants, any interested parties, the County staff and the County's consultants and all other written submittals received during the public hearing. After the public hearing, the Board of Appeals shall issue its written recommendation and deliver it to the County Board.
- f. The County Board shall conduct an open, public meeting at which it reviews and considers the recommendation of the Board of Appeals and then the Board will either grant or deny the application in accordance with the provisions of Section 5-12020 of the Illinois Counties Code (55 ILCS 5/5-12020). If the County Board approves the Siting Approval Permit application, such approval may be with or without conditions and restrictions. The County Board may also return the application to the Board of Appeals to conduct another public hearing to require and evaluate additional information from the Applicant and its consultants, any interested parties and the County staff and the County's consultants in order to respond to any issues or concerns raised by the County Board before making its final decision. In such case, the Board of Appeals shall issue a supplemental written recommendation and deliver it to the County Board.

- g. If the County Board approves the application, it shall approve by ordinance a Siting Approval Permit with or without conditions and restrictions and affix the Board's seal upon the ordinance approving the Siting Approval Permit together with the signature of the County Board's Chairman and the Morgan County Clerk. If it disapproves, the County Board shall set forth its reasons in its records and provide the applicant with a copy.

C. Siting Approval Permits for WECS and CSEF Projects

1. Siting Approval Permit and Standards. Pursuant to 55 ILCS 5/5-12020, this Ordinance establishes permit standards for the siting approval of a WECS or CSEF Project, each Supporting Facility, which require approval of the County Board, after at least one (1) public hearing, before a WECS or CSEF Project, WECS Tower, Substation and Supporting Facilities can be constructed, installed and operated within Morgan County.
2. Authority and Public Hearing. The County Board shall render final decisions on all WECS and CSEF Siting Approval Permit applications. If a WECS or CSEF siting application is approved, the County Board will pass an ordinance that confirms the approval and may stipulate in the ordinance any conditions and restrictions imposed on the WECS or CSEF Project. Prior to the County Board issuing its final decision on a WECS or CSEF Siting Approval Permit application, the Board of Appeals shall hold a public hearing on the application in accordance with the applicable provisions of the Illinois Counties Code, including but not limited to Section 5-12020 (55 ILCS 5/5-12020) and the provisions of this Ordinance. .
3. Siting Approval Permit Standards. The County Board may approve a WECS Project Siting Approval Permit application, if it finds:
  - a. The establishment, maintenance or operation of the WECS or CSEF Project will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare;
  - b. The WECS or CSEF Project will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values of surrounding properties;
  - c. The establishment of the WECS or CSEF Project will not impede the normal and orderly development and improvement of the surrounding properties;
  - d. Adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided;
  - e. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;
  - f. The proposed WECS or CSEF Project is not contrary to the objectives of the current comprehensive plan of the County (if any); and
  - g. The WECS or CSEF Project shall, in all other respects, conform to the applicable regulations of this Ordinance and the zoning district in which it is located (if a zoning ordinance is in effect), except as

such regulations may, in each instance, be modified pursuant to the recommendations of the Board of Appeals and approved by the County Board.

4. Siting Approval Permit Conditions and Restrictions. The County Board may stipulate such conditions, guarantees and restrictions, upon the establishment, location, construction, maintenance, and operation of the WECS or CSEF Project as are deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements of this Ordinance. In all cases in which a WECS or CSEF Project is granted for a WECS or CSEF Project, the County Board shall require such evidence and guarantees as it may deem necessary as proof that the conditions and restrictions stipulated in connection therewith are being and will be complied with. At a minimum, each approved WECS or CSEF Project shall be subject to the following conditions:
  - a. The Applicant shall have the WECS or CSEF Project inspected annually by qualified wind power professionals and shall submit a certificate from said professionals reciting the annual maintenance done on the facility. Failure to submit such annual certificate shall be a default under this Ordinance and shall be subject to the provisions of Article XI (Remedies) and Article XII(C)(5)(Revocation).
  - b. The Applicant shall obtain all necessary access easements and necessary utility easements prior to construction of the WECS or CSEF Project or any phase of the WECS or CSEF Project that is dependent on such easements, copies of which shall be submitted to the Regional Planner.
  - c. No appurtenances shall be connected to any WECS or CSEF Facility except in accordance with this Ordinance and as approved as part of a Siting Approval Permit or an amended Siting Approval Permit.
  - d. Restriction on Project Real Estate. Unless the required waiver is obtained from a nonparticipating property owner, the Applicant shall not convey, subdivide, transfer or otherwise alter the lot lines of any portion of the real estate on which a WECS or CSEF Facility is proposed or already improved with a WECS or CSEF Facility that will cause or create a setback violation or nonconformity under the applicable regulations of this Ordinance, including Article VI (Design and Installation), Subsection H (Setback) above.
5. Revocation.
  - a. In any case where a Siting Approval Permit has been approved for a WECS or CSEF Project, the Applicant shall apply for a WECS or CSEF Building Permit from the County and all other permits required by other government or regulatory agencies to commence construction, and commence and actively pursue construction of the Project within thirty-six (36) months from the date of the granting of the Siting Approval Permit. If the Applicant fails to apply for a WECS or CSEF Building Permit from the County and all other permits required by other government or regulatory agencies prior to construction and/or fails to commence and actively pursue

construction of the Project within the thirty-six (36) month period, then without further action by the County Board, the Siting Approval Permit authorizing the construction and operation of the WECS or CSEF Project shall be automatically revoked and void. Upon written request supported by evidence that the Applicant has diligently pursued issuance of all necessary government and regulatory permits for the Project required to commence construction and that any delay in commencement of construction of the Project is due to conditions out of his/her/its control, the County Board, in its sole discretion, may extend the above thirty-six (36) month period by passage of an ordinance that amends the Siting Approval Permit.

- b. A Siting Approval Permit approval for a WECS or CSEF Project shall be deemed to authorize only the particular construction and operational activities related to the WECS Project. The Siting Approval Permit shall be subject to revocation if the Applicant (WECS or CSEF Permittee) dissolves or ceases to do business, abandons the WECS or CSEF Project or the WECS or CSEF ceases to operate for more than twelve (12) consecutive months for any reason, excluding any time period where the WECS or CSEF Project or any component of the WECS or CSEF Project, including any individual WECS or Supporting Facility, is inoperable due required or ongoing, active construction, maintenance, repairs, replacement or rehabilitation work.
- c. Subject to the provisions of Article XI (Remedies), a Siting Approval Permit may be revoked by the County Board if the WECS or CSEF Project is not constructed, installed and/or operated in substantial conformance with the County-approved Project plans, the regulations of this Ordinance and the stipulated Siting Approval Permit conditions and restrictions. The Regional Planner will be responsible for advising the County Board, in writing, of any violation(s) and the County Board may then schedule and conduct a public hearing to consider revoking the Siting Approval Permit. Notice of the violation(s) will be provided to the Applicant, Owner and Operator along with a notice of the public hearing time, date and location. At the public hearing, the Applicant will have an opportunity to respond to the violation(s). After conducting the public hearing, the County Board shall then render a final decision on whether to revoke the Siting Approval Permit or not. If it decides to revoke the Siting Approval Permit, the County Board will pass an ordinance that memorializes the revocation.

6. Transferability; Owner or WECS or CSEF Permittee. The Applicant (WECS or CSEF Permittee) shall provide written notification to the County Board at least thirty (30) days prior to any change in ownership of a WECS or CSEF Project of any such change in ownership. The phrase "change in ownership of a WECS or CSEF Project" includes any kind of assignment, sale, lease, transfer or other conveyance of ownership or operating control of the Applicant (WECS or CSEF Permittee), the WECS or CSEF Project or any portion thereof. The Applicant (WECS or CSEF Permittee) or successors-in-interest or assignees of the Siting Approval Permit, as applicable, shall remain liable for compliance with all

conditions, restrictions and obligations contained in the Siting Approval Permit, the provisions of this Ordinance and applicable County, state and federal laws. The Applicant or its successors-in-interest or assigns may replace the Financial Security for the WECS or CSEF Project at the time of a change in ownership of a WECS or CSEF Project, provided that the replacement Financial Security is in substantially the same form as the Financial Security currently in place. If the Applicant or its successors-in-interest or assigns would like to replace the Financial Security with a form of Financial Security that differs substantially from the current Financial Security, the Applicant or its successors-in-interest or assigns may provide a form of a surety bond (performance and payment bond), irrevocable letter of credit or a cash escrow account that names Morgan County as the beneficiary, or other type of Financial Security for the County's approval (such approval not to be unreasonably withheld.) For the avoidance of doubt, such replacement Financial Security must comply with the requirements of the Siting Approval Permit and this Ordinance.

7. Change in Operator. The Applicant (WECS or CSEF Permittee) shall provide written notification to the County Board at least thirty (30) days prior to any change in the Operator. Although the Applicant may satisfy certain of its obligations under this Ordinance and the Siting Approval Permit by way of third party consultants, including the Operator(s), the Applicant or its successors-in-interest or assigns, as applicable, will remain liable for compliance with all of the conditions, restrictions and obligations relating to the Operator of the WECS Project that may be contained in the Siting Approval Permit and the applicable provisions of this Ordinance and applicable County, state and federal laws regardless of its subcontracts with any Operator or a change in the Operator(s).
8. Modification. Any modification of a WECS or CSEF Project that alters or changes the essential character or operation of the WECS or CSEF Project in a way not intended at the time the Siting Approval Permit was granted, or as subsequently amended, shall require a new Siting Approval Permit. The Applicant or authorized representative, shall apply for an amended Siting Approval Permit prior to any modification of the WECS or CSEF Project. The Regional Planner will review the proposed modification and shall provide to the County Board a written opinion as to whether the proposed modification represents an alteration or change in the essential character or in the operation of the WECS or CSEF Project as approved. The Applicant, or authorized representative, of the WECS or CSEF Project shall provide the Regional Planner with all the necessary information related to the WECS or CSEF Project in order for the Regional Planner to prepare his/her written opinion. In determining whether a proposed modification of a WECS or CSEF Project alters or changes the essential character or operation of the WECS or CSEF Project in a way not intended at the time the Siting Approval Permit was granted, or as subsequently amended, the Regional Planner's decision shall be based on the following criteria: (a) the information and documents on file with the County relating

to the approval of the original Siting Approval Permit or any modification thereto; (b) the ordinance(s) approving the original Siting Approval Permit or any modification thereto; (c) the information and documents relied upon by the Regional Planner in preparing his/her opinion; (d) the scope and nature of the existing uses of the property; and (e) any additional information and documents relating to the proposed modification of the Siting Approval Permit provided by the Applicant, or authorized representative. If the Regional Planner determines that the proposed modification will not alter or change the essential character or operation of the original WECS Project, as approved, a new Siting Approval Permit shall not be required.

9. Permit Effective Date: The Siting Approval Permit shall become effective upon approval of the ordinance by the County Board.

Test Wind Tower or Test Solar Energy System. Pursuant to 55 ILCS 5/5-12020 and Public Act 102-1123, the County Board, in its sole discretion, may adopt regulations to allow a test wind tower or a test solar energy system to be constructed and operated for a temporary period of time with County Board approval or with County staff administrative approval, subject compliance with the application, permitting, construction, operation and decommissioning standards and regulations adopted by the County Board.

### XIII. VARIANCE AND MODIFICATION:

#### A. Standards for Granting Variances

1. Where an applicant demonstrates that a provision of this Ordinance would cause unnecessary hardship, delay or impediments to the development of a WECS or CSEF Project if strictly adhered to, and where, in the opinion of the Chair of the County Board, because of topographical or other conditions peculiar to the site, a departure may be made without destroying the intent of such provisions, the County Board, after input from the Regional Planner and the Board of Appeals, may authorize a variance, if the variance complies with the following provisions:
  - A. The requested variance is required for the development of the WECS or CSEF Project, and the failure to obtain the requested variance would result in a practical difficulty or unnecessary hardship for the applicant;
  - b. The granting of the requested variance will not be materially detrimental or injurious to any adjacent property;
  - c. The granting of the requested variance will not violate the general spirit and intent of this Ordinance.
2. Any variance thus authorized is required to be approved by ordinance passed by the County Board and be entered in the minutes of the County Board's meeting, and the reasoning on which the variance was justified must be described in the minutes as well.

#### B. Application for Variance

1. An applicant for a variance shall file a request for a variance with the Chairman of the County Board within at least ten (10) calendar days prior to the next regularly-scheduled County Board meeting. The County Board shall refer the application to and place the applicant's request on the agenda for the next Board of Appeals meeting for scheduling of a public hearing.
2. The burden of proof shall rest with the applicant to clearly establish that the requested variance satisfies the criteria for granting such a variance under this Ordinance.

C. Public Hearing

The Board of Appeals shall conduct a public hearing on the application, after publication of notice is made in accordance with the provisions of Section 5-12009 of the Illinois Counties Code (55 ILCS 5/5-12009), and shall issue its written recommendation to the County Board.

D. Approval and Conditions

The County Board may grant or deny the application after receiving and considering the written recommendation of the Board of Appeals in accordance with the provisions of Section 5-12009 of the Illinois Counties Code (55 ILCS 5/5-12009). In granting a variance, the County Board may impose such conditions and restrictions upon the applicant and the property benefiting from the variance as may be necessary to reduce or minimize any potentially negative impacts on any adjacent properties, and to carry out the general purpose of this Ordinance, which conditions and restrictions shall be set forth in the ordinance approving the variation.

#### XIV. INTERPRETATION

The provisions of these regulations shall be held to the minimum requirements adopted for the promotion and preservation of public health, safety and general welfare of County of Morgan. These regulations are not intended to repeal, abrogate, annul or in any manner interfere with existing regulations or laws of the County of Morgan nor conflict with any statutes of the State of Illinois, except that these regulations shall prevail in cases where these regulations impose a greater restriction than is provided by existing statutes, laws or regulations.

#### XV. SEVERABILITY

If any section, paragraph, clause, phrase or part of this Ordinance is for any reason held invalid by any court or competent jurisdiction, such decision shall not affect the validity of the remaining provisions of these regulations, and the application of those provisions to any persons or circumstances shall not be affected thereby.

#### XVI. REPEAL



All ordinances and standards and regulations and amendments thereto enacted and/or adopted by the County Board that are inconsistent with the provisions of this Ordinance are repealed, as of the effective date of this Ordinance. Except as to the regulations set forth above in this Ordinance, all other ordinances and regulations of Morgan County, Illinois, as amended, shall remain in full force and effect. The repeal of any prior ordinance or its amendments does not affect or impair any act done, offense committed or right accruing, accrued or acquired or liability, penalty, forfeiture or punishment incurred prior to the time enforced, prosecuted or inflicted. In the event that Illinois Public Act 102-1123, effective January 1, 2023, is repealed or amended, this Ordinance shall remain in effect as a matter of law and shall be enforceable by the County, subject to compliance with any mandatory standards and regulations that may be enacted by the State Legislature that replace or amend the mandatory standards and regulations enacted under Illinois Public Act 102-1123. To the extent the standards and regulations set forth in Illinois Public Act 102-1123, as amended, are described as minimum standards and regulations and are discretionary and not mandatory, those standards and regulations set forth in this Ordinance, as amended, that exceed the minimum standards and regulations shall be enforceable by the County. To the extent, the standards and regulations enacted and/or adopted by the County Board in this Ordinance, as amended, are inconsistent with the mandatory standards and regulations set forth in Illinois Public Act 102-1123, as amended, the County shall enforce the State's mandatory standards and regulations. .

#### XVII. CERTIORARI PROCEDURE

In regard to any final decision by the County Board or any final decision by any other County Board, commission or committee with final decision-making authority and jurisdiction under this Ordinance, any person aggrieved may petition the Circuit Court of Morgan County, Illinois, for a writ of certiorari or administrative review or other judicial relief as provided by applicable statutory or common law.

#### XVIII. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage, publication and approval as required by law.

#### XIX. ENACTMENT; PRIOR UPDATES

The Ordinance Regulating The Siting Of Wind Energy Conversion Systems In Morgan County, Illinois was initially enacted by the Morgan County Board of Commissioners with the adoption Ordinance No. 09-08 on May 4, 2009. Since its initial enactment, this Ordinance has been updated as follows: (a) adoption of the 2019 Wind Energy Conversion Systems Siting Ordinance on July 22, 2019 (Ordinance No. 2019-10A); (b) adoption of the 2023 Wind And Solar Energy Conversion Systems Siting Ordinance on May 22, 2023 (Ordinance No.. 2023-\_\_\_).

Passed this 22nd day of May, 2023

DT aye

W aye

3Z aye

Ginny Fanning  
Ginny Fanning, Chairman

Michael Wankel  
Michael Wankel, Vice-Chair

Bradley A. Zeller  
Bradley A. Zeller, Commissioner

Certification:

Jill Waggener  
Jill Waggener, County Clerk