

**This is the proposed Wind Energy Ordinance.
Changes are Bolded, Italicized, and Underlined.
June 10, 2013**

ORDINANCE

REGULATING THE SITING OF WIND ENERGY CONVERSION SYSTEMS IN IROQUOIS COUNTY

Drafted by: The Chicago Environmental Law Clinic and Baker & McKenzie

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**ORDINANCE REGULATING THE SITING OF
WIND ENERGY CONVERSION SYSTEMS IN IROQUOIS COUNTY**

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I. INTRODUCTION

A. Title

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

B. Purpose

This Ordinance is adopted for the following purposes:

1. To assure that any development and production of wind-generated electricity in Iroquois County is safe and effective;
2. **To assure the protection of health, safety, welfare, and property values for all Iroquois County residents and land owners.**
3. To facilitate economic opportunities for local residents;
4. To promote the supply of wind energy in support of Illinois' Statutory goal of increasing energy production from renewable energy sources.

II DEFINITIONS

- A. "Applicant" means the entity or person who submits to Iroquois County, pursuant to Section V of this Ordinance, an application for the siting of any WECS or Substation.
- B. "Financial Assurance" means cash escrow.
- C. "Operator" means the entity responsible for the day-to-day operation and maintenance of the WECS, including any third party subcontractors.
- D. "Owner" means the entity or entities with an equity interest in the WECS(s), including their respective successors and assigns. Owner does not mean (i) the property owner from whom land is leased for locating the WECS (unless property owner has an equity interest in the WECS); or (ii) any person holding a security interest in the WECS(s) solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the WECS(s) at the earliest practicable date.
- E. "Licensed Illinois Professional Engineer" means a qualified individual who is licensed as a professional engineer in Illinois.
- F. "L.A." refers to "Local Authority".
- G. "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, churches, schools and day care facilities. Primary Structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.

H. Rotor Diameter is the diameter of the circle created by rotating turbine blade tips.

I. Shadow Flicker is the phenomena that occurs when rotating wind turbine blades cast moving shadows upon stationary objects.

H. "Substation" means the apparatus that connects the electrical collection system of the WECS(s) and increases the voltage for connection with the utility's transmission lines.

I. "Wind Energy Conversion System" ("WECS") means all necessary devices that together convert wind energy into electricity, including the rotor, nacelle, generator, WECS Tower, electrical components, WECS foundation, transformer, and electrical cabling from the WECS Tower to the Substation(s).

J. "WECS Project" means the collection of WECSs and Substations as specified in the siting approval application pursuant to Section V. of this Ordinance.

K. "WECS Tower" means the support structure to which the nacelle and rotor are attached.

L. "WECS Tower Height" means the distance from the rotor blade at its highest point to the top surface of the WECS foundation.

III. APPLICABILITY

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

IV. PROHIBITION

No MET tower. no WECS or Substation governed by Section III of this Ordinance shall be constructed, erected, installed, or located within Iroquois County, unless prior siting approval has been obtained for each individual **MET tower.** WECS and Substation pursuant to this Ordinance.

V. SITING APPROVAL APPLICATION

- A. To obtain siting approval, the Applicant must first submit a siting approval application to Iroquois County. This application must be submitted in English.
- B. The siting approval application shall contain or be accompanied by the following information:
 - 1. A WECS Project summary, including, **to the extent available:** (1) a general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer(s), type(s) of WECS(s), number of WECSs, and name plate generating capacity of each WECS; the maximum height of the WECS Tower(s) and maximum diameter of the WECS(s) rotor(s); the general location of the project; and (2) a description of the Applicant, Owner and Operator, including their respective business structures; It being expressly allowed under any application by the Applicant to submit multiple WECS Project summaries which may vary in nameplate generating capacity and/or type of wind turbine generator used *provided that* each and every Project summary so submitted must still comply with these Ordinances and *provided further* that the County in its sole discretion may approve any one or more of such summaries and that the Applicant may at its discretion move forward on any County-approved Project summaries once the Applicant has finalized its supply agreements for wind turbine generators, substation transformers, and the like.
 - 2. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s), **if known.**
 - 3. A site plan for the installation of WECSs showing the planned location of each WECS Tower, guy lines and anchor bases (if any), Primary Structure(s), property lines (including identification of adjoining properties), setback lines, public access roads and turnout locations, Substation(s), electrical cabling from the WECS Tower to the Substation(s) ancillary equipment, third party transmission lines, and layout of all structures within the geographical boundaries of any applicable setback;

4. All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance; and
 5. Any other information normally required by the County as part of its Zoning Ordinance.
- C. The Applicant shall notify Iroquois County of any changes to the information provided in Section V.B. above that occur while the siting approval application is pending.
- D. The Applicant shall pay a minimum fee of ten thousand dollars (\$10,000) for **up to and including** the first ten WECS towers of the project and one thousand dollars (\$1,000) per tower for each additional tower up to a maximum initial fee of fifty thousand dollars (\$50,000). For this fee, the Zoning Administrator will review the application, get the necessary reviews by legal council and engineering consultants, publish the legal notices, hold the Zoning Board of Appeals Hearing, obtain and pay for the court stenographer, take it to the Planning and Zoning Committee for their review, and place it before the County Board for final approval. If the County's expenses exceed fifty thousand dollars, the applicant will be billed and shall reimburse the County in a timely fashion. **If the County's expenses exceed the amount of the initial application fee; the Applicant will be billed and shall reimburse the County for said excess expenses prior to the issuance of any permits.**
- E. **Following application approval the Applicant is eligible to apply for Wind Tower building permits. Refer to Iroquois County main Zoning Ordinance for Fee Schedule.**
- F. **Actual on site construction must commence within one year of application approval by the County Board or permits will no longer be valid.**

VI DESIGN AND INSTALLATION

A. Design Safety Certification

1. **All MET TOWERS must be painted in seven, equal, alternating bands of aviation orange and white, beginning with orange at the top of the tower and ending with orange at the base. There shall be three (3) orange marker balls at least 36 inches in diameter on each quadrant of guy wires, one twenty feet from the ground level, one approximately half the way to the top, and one fifteen feet from the top. Towers shall be lighted with a strobe light during daylight hours and with a flashing red light during nighttime hours each of which is visible for**

a minimum of 2.5 miles.

1. WECSs shall conform to applicable industry standards, including those of the American National Standards Institute ("ANSI"). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories ("UL"), Det Norske Veritas ("DNV"), Germanischer Lloyd Wind Energie ("GL"), or an equivalent third party. **For the avoidance of doubt**, the provision of a design compliance certificate from any one of ANSI, UL, DNV or GL shall be deemed to satisfy this requirement.
2. Following the granting of siting approval(s) under this Ordinance, a Licensed Illinois Professional Engineer shall certify, as part of the building permit application, that the foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions; it being understood that an Applicant may submit different building permit applications hereunder in keeping with the project flexibility based on equipment type to be used allowed for in Section V.B.1 hereof, it being further understood that any and all such permit applications shall still be certified by a Licensed Illinois Professional Engineer as contemplated hereunder.

B. Controls and Brakes

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

C. Electrical Components

All electrical components of the WECS shall conform to applicable local, state, and national codes, and relevant national and international standards (e.g. ANSI, UL and International Electrical Commission). All electrical wire and lines connecting WECS to another WECS or substation must be installed no less than **6 (six)** feet deep. The owner/operator of the WECS Installation shall be a member of J.U.L.I.E and follow their rules and regulations. **During the installation and before wires and lines are covered; there will be an inspection for compliance by an independent inspector chosen by the County and paid for by the Owner/Operator.**

D. Color

Towers and blades shall be painted white or gray or another nonreflective, unobtrusive color.

E. Compliance with the Federal Aviation Administration

The Applicant for the WECS shall comply with all applicable FAA requirements.

F. Warnings

1. A 911 address sign which conforms to the specifications of the County Ordinance for size, color and reflectivity shall be placed and maintained by the owner/operator at the entrance to each WECS access road from a public road. A sign or posting no more than four (4) square feet in area shall be placed and maintained in conjunction with, but in a subordinate position of, that same 911 sign and shall provide the tower number(s) and a toll-free telephone number, answered by a person twenty-four hours a day seven days per week, for emergency calls and informational inquiries.
2. A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and Substations.
3. No wind turbine generator tower or anemometer tower or site shall include any advertising sign, but logos of the Owner or Operator or the wind turbine generator manufacturer shall not be considered "advertising" for the purpose of this Ordinance.
4. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of fifteen (15) feet from the ground. Another method of protection for general safety may be officially presented to the County Engineer for his approval.
5. **Warning signs identifying underground wire locations shall be placed at all road crossings, creek, waterway, and ditch crossings, and at the base of WECS Towers. All underground wire locations shall be GPS mapped and given to the L.A.**

G. Climb Prevention

All WECS Towers must be unclimbable by design for the first twelve feet or protected by anti-climbing devices or otherwise be protected by fences with locking portals at least eight (8) feet high.

H. Setbacks

1. All WECS Towers shall be set back at least one thousand feet (1000) for participating property owners and **at least twelve (12) rotor diameters from Primary Structures and one thousand five hundred (1500) feet from property lines** for non-participating property owners from any Primary Structure with the exception of Douglas Township. Douglas Township has a setback from any non-participating Primary Structure of two thousand feet (2000) . The distance for the above setback shall be measured from the point of the Primary Structure foundation **and the Property Line** closest to the WECS Tower to the center of the WECS Tower foundation. The owner of the Primary Structure **or the Property in Question** may waive this setback requirement; but in no case shall a WECS Tower be located closer to a Primary Structure then **one thousand feet.**
2. All WECS Towers shall be set back a distance of at least **one thousand feet** from public roads, third party transmission lines, and communication towers. The County may waive this setback requirement.
3. All WECS Towers shall be set back a distance of at least **one thousand (1000) feet** from adjacent property lines. The affected adjacent property owner may waive this setback requirement.
4. Any WECS site proposed within one and one half (1 ½) mile of the corporate limits of any incorporated village or city shall require **an approval** sign-off by that corporate authority.
5. WECS Towers will be able to be sited only in A-1 Zoned areas, except as otherwise waived by the above referred to village or city.
6. A two-mile radius around an existing private airstrip recognized by the FAA will be left free of wind turbines. The airstrip owner may waive this regulation.
7. 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.

J. Use of Public Roads

1. An Applicant, Owner, or Operator proposing to use any County, Municipality, Township or Village 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:
 - a. Identify all such public roads intended for use; and
 - b. Identify all agencies involved; and
 - c. Enter into legal agreement concerning road upgrade and maintenance with each of the affected jurisdictions; and
 - d. Obtain applicable weight and size permits from relevant government agencies prior to construction **and/or maintenance activities.**
2. To the extent an Applicant, Owner, or Operator must obtain a weight or size permit from the local agency of jurisdiction [County, the Applicant, Owner, or Operator], the agreement shall contain a minimum of the following:
 - a. A pre-construction **and/or pre-maintenance** baseline survey to determine existing road conditions and R.O.W. [Conduct a pre-construction **and/or maintenance** baseline survey to determine existing road conditions for assessing potential future damage; and];
 - b. Outline exact routes intended for construction **and/or maintenance** use.
 - c. Detail of maintenance responsibility and method of reimbursement if it is deemed the L.A. responsibility
 - d. Expectations of the L.A. when road reconstruction is involved.
 - e. Easement on private property will be the sole responsibility of the applicant, owner or operator

- f. Outline of time schedule including any and all provision during the Feb. 1 to May 1 posting season
 - g. Outline any and all permits required for entrance off the L.A. roads.
 - h. Provide financial assurance **(refer to definition on page three) in the form of a sufficient cash escrow** to be held by the to the L.A. for the purpose of repairing any damage to public roads caused by constructing, operating or maintaining the WECS.
 - i. Limitation on Liability Clause
- K. Minimum Rotor or Wind Vane Clearance. The lowest point of the arc created by rotating wind vanes or blades on a wind turbine generator shall be no less than 15 feet measured from the highest point of the terrain within one blade radius from the base of the tower.
- other
 - L. Lighting. There shall not be strobe lighting, intermittent white lighting or lighting, unless expressly required by the FAA.
 - M. The Applicant shall provide all studies to be updated to the final number, size, etc. of towers to be in the final plan.

VII. OPERATION

A. Maintenance

1. The Owner or Operator of the WECS must submit, on an annual basis, a summary of the operation and maintenance reports to the County. In addition to the above annual summary, the Owner or Operator must furnish such operation and maintenance reports as the County reasonably requests. It being understood that nothing in this Section VII (A)(1) shall be construed so as to require any Owner or Operator of the WECS to violate any non-disclosure or confidentiality covenant that the Owner or Operator may have with any of (i) its equipment supplier(s), (ii) the purchasers of electricity and/or environmental attributes from the WECS, or (iii) any debt or equity financier of the WECS.
2. To the extent that, under Section VI (A)(1) of this Ordinance, any physical modification to the WECS that alters the mechanical load, mechanical load path, or major electrical components so that such

modification requires re-certification from the original third-party certifying entity of the WECS (i.e. DNV, GL, UL, etc.), then the Owner or Operator of the WECS shall obtain such re-certification for the affected WECS from such entity in accordance with its then-existing design standards and processing times for re-certification certificates. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the owner or operator shall confer with a relevant third-party certifying entity identified in Section VI (A)(1) of this Ordinance to determine whether the physical modification requires re-certification.

B. Interference

1. The Applicant shall provide the applicable microwave transmission providers and local emergency service provider(s) (911 operators) copies of the project summary and site plan (or various project summaries and site plans if the Applicant should seek approval of differently sized projects and/or projects constructed with differing wind turbine generators), as set forth in Section V.B.1. and V.B.3. of this Ordinance. To the extent that (a) the above provider(s) demonstrate a likelihood of interference with its communications resulting from the WECS(s) and (b) the United States Federal Communication Commission ("FCC") agrees with such demonstrated interference, then the Applicant shall take all measures prescribed by the FCC to mitigate or eliminate such anticipated interference in compliance with then-existing, FCC-promulgated regulations. If, after construction of the WECS, the Owner or Operator receives a written complaint from the FCC related to the above-mentioned, or any other type of interference with the regulated airwaves, the Owner or Operator shall take all steps required by the FCC to mitigate or eliminate such complaint. All interference issues must first be taken to the Owner or Operator for consideration before going to the FCC.
2. If, after construction of the WECS, the Owner or Operator receives a written complaint related to interference with local broadcast residential television or any other regulated airwave, the Owner or Operator shall take all steps required by the FCC to respond to the complaint.

C. Coordination with Local Fire Department

1. The Applicant, Owner or Operator shall submit to the local fire department a copy of the site plan.
2. Upon request by the local fire department, the Owner or Operator

shall cooperate with the local fire department to develop the fire department's emergency response plan. In addition, at no cost to the local fire department, the Owner or Operator shall provide to the local fire department any and all specialized and necessary rescue or retrieve equipment occasioned by the use of the particular wind turbine generators being used at the project (i.e. gurney, body harnesses, etc.). In addition, the Owner or Operator shall have the responsibility to update—at no cost to the local fire department—any such equipment in possession of the local fire department as any updates are received by the Owner or Operator in the normal course of business.

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

D. Materials Handling, Storage and Disposal

1. All solid wastes related to the construction, operation and maintenance of the WECS shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.
2. All hazardous materials related to the construction, operation and maintenance of the WECS shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.

VIII. **NOISE LEVELS**

The noise emitted by the WECS shall not exceed 35db during the hours of 7:00 AM to 10:00 PM and 30 db during the hours of 10:00 PM to 7:00 AM. The sound measurements must also be "A" weighted for consideration of the low frequency sound pressure. The non-participant property owner may waive this requirement.

Should the County Board determine that noise emissions appear to exceed allowable levels, an acoustic engineering firm shall be hired by the County and paid for by the owner of the WECS facility to determine compliance.

IX. **SHADOW FLICKER**

There shall be no Shadow Flicker allowed at any time within a one mile radius of a WECS on a non-participant's property or on a participant's primary structure. The non-participant property owner and/or participant may waive this requirement.

X. PUBLIC PARTICIPATION

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

XI. LIABILITY INSURANCE

The Owner or Operator of the WECS(s) shall maintain a current general liability policy covering bodily injury and property damage with limits of at least **\$20 million** per occurrence and **\$20 million** in the aggregate. **The Owner or Operator of the WECS shall maintain this policy for the lifetime of the WECS and submit a copy of same to the Iroquois County Board at each renewal. The County of Iroquois and its officials shall be named as additional insureds.**

XII. Decommissioning Plan

Prior to receiving the issuance of a building permit under this Ordinance, the County, the Applicant or Owner, and/or Operator (Applicant) must agree to a Decommissioning Plan that ensures the WECS Project is properly decommissioned. The Decommissioning Plan shall include:

- A. Provisions describing the triggering events for decommissioning the WECS Project which shall include but not be limited to any wind turbine generator or anemometer tower that is not generating electricity for a continuous period of **six** months.
- B. Removal of all transmission equipment, buildings and fences.
- C. Removal of all structures, debris and cabling and all physical material pertaining to the project improvements to a depth of **72 inches** beneath the soil surface.
- D. Provisions for the restoration of the soil surface to the same condition that existed immediately before construction of such improvements.
- E. Financial assurances to Iroquois County to include:
 - a. A **basis formed by a** licensed Illinois professional engineer's cost estimate for demolition and removal of the WECS facility; **repairs to be made to bring roads back to the same condition as they were immediately preceding actual decommissioning; any associated expenses such as operating night time warning lights during the six month period the Project may be abandoned; and the like.** The licensed Illinois Professional Engineer, selected by Iroquois County, shall provide the original decommissioning **cost** estimate prior to the issuance of the building permit and a new cost estimate shall be prepared every three years. The Applicant shall pay the engineer's fee. **Payment for said engineer's fee to prepare decommissioning cost estimates is not included in the initial Application Fee.** Financial assurances to the County

shall be adjusted every three years to reflect new cost estimates prepared by the engineer.

- b. A minimum cash deposit of \$50,000.00 for each tower shall be placed in an escrow account acceptable to and controlled by Iroquois County. An additional financial assurance shall be supplied, if necessary, to bring the total amount of assurance per tower to an amount at least equal to the said engineer's estimate for demolition and removal with consideration of salvage value, plus road repairs to be made to the same condition as they were immediately preceding actual decommissioning. This assurance shall again, if necessary, be adjusted to reflect the changes in the engineer's estimates as they are adjusted every three years. This additional assurance may be made **in the form of cash.** All cash security shall be paid into an acceptable escrow account and all other financial security shall be completed before the issuance of any building permits. Said securities shall be released when each tower site and associated infrastructure are completely decommissioned and the road repairs are properly completed as determined by the Iroquois County Zoning Administrator, all affected public road authorities, and **final approval by the Iroquois County Board.**
- c. In the event of abandonment of the project, the Applicant shall provide an affidavit to the Iroquois County Zoning Administrator representing that all easements for wind turbines shall contain terms that provide financial assurance, including access to the salvage value of the equipment, and for the property owners to ensure that the WECS and related improvements are properly decommissioned within **six** months of abandonment or earlier termination of the wind project.
- d. A provision that the terms of the Decommissioning Plan shall be binding upon the Applicant and any of their successors, assigns, or heirs.

- F. The County may sell any salvage material to reduce the County's expenses related to the decommissioning of any project site and shall be granted access to each site to effect or complete decommissioning.

In the event of project abandonment, the County reserves the right to remove the towers and access any related salvageable materials for the County to sell but the County is not obligated to remove the concrete improvements which provide the structural base for the towers.

XIII. PUBLIC NUISANCE

Any WECS declared to be unsafe by the Iroquois County Board by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage, or abandonment is hereby declared a Public Nuisance and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures set forth in this ordinance.

XIV. DEFAULTS AND REMEDIES

A. The Applicant's, Owner's, or Operator's failure to **materially** comply with any of the above provisions shall constitute a default under this Ordinance.

~~B. The Applicant, Owner, or Operator agrees to mediate all alleged violations of this Ordinance with the **Iroquois County Board or its appointed representative.**~~

B. Prior to implementation of the existing County procedures for the resolution of such default(s), the appropriate County body shall first provide written notice to the Owner and Operator, setting forth the alleged default(s.) Such written notice shall provide the Owner and Operator a reasonable time period, not to exceed 60 days, for good faith negotiations to resolve the alleged default(s).

~~C. The Applicant, Owner, Operator, **County, or any citizen** shall have the right to apply for judicial relief only after exhausting the above described administrative remedies.~~

D. Any violation of this ordinance shall be an offense punishable by a fine not to exceed \$1,000.00. Each violation shall be a separate offense. Each day a violation occurs or continues shall be a separate offense. A court may set any appropriate per day fine for each day the infraction exists or until such infraction is remedied. It is the goal of this ordinance to promote structural safety to protect the public and the court in setting any appropriate fine shall consider the nature of the offense, the degree of public safety involved, the efforts of the County and responsible owner or applicant to quickly and safely resolve and infractions. It is the intent that any dispute between the parties be resolved promptly and where possible by informal discussions as outlined elsewhere in this ordinance.

D. The County reserves the right to hire outside Counsel to enforce this ordinance. The Owner/Operator is liable for payment of reasonable Attorney's fees in this regard.

XIII. SEVERANCE

If any section, clause, or provision of the Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the validity of the remainder of the Ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

XIII. INDEMNIFICATION

The applicant, owner and/or operator of the WECS project shall defend, indemnify and hold harmless the County of Iroquois and its officials from and against any and all claims, demands, losses, suites, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including attorney's fees, without limitation arising out of acts of omissions of the applicant, owner and/or operator associated with the construction and/or operation of the WECS project.