

Chapter 40. Zoning Code

ARTICLE XI. Wind Energy Conversion Systems

§ 40-11-1. Purpose.

It is the purpose of this article to promote the safe, effective, and efficient use of wind energy conversion systems within Monroe County while preserving and protecting the public health, public safety, natural resources, property values, and aesthetic conditions within Monroe County.

§ 40-11-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

APPLICANT

The entity or person who has submitted an application for a special use permit for a WECS project, commonly known as a "wind farm."

FINANCIAL ASSURANCE

Reasonable assurance from a creditworthy party, examples of which include surety bond, cash escrow, or irrevocable letter of credit.

LANDOWNER

A person/persons or entity holding title to a tract of land.

LARGE WECS

Any WECS with a tower height over 80 feet or a rated system capacity over 100 KW.

NONCONSENTING PARCEL

A parcel on which the landowner has an easement agreement with the owner, operator or applicant of a WECS but does not consent to a tower being placed on the landowner's property.

NONPARTICIPATING PARCEL

A parcel on which the landowner has no financial or easement agreement with the owner, operator or applicant of a WECS project.

OPERATOR

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

OWNER

The entity or entities with an equity interest in the WECS, including their successors and assigns. Owner does not mean the landowner from whom land is leased for locating the WECS, unless the property

owner has an equity interest in the WECS.

PARTICIPATING PARCEL

A parcel on which the landowner has entered into a financial or easement agreement with the owner, operator or applicant of a WECS project.

PRIMARY STRUCTURE

The structure that one or more person(s) occupy the majority of the time on that property for either business or personal reasons. Primary structure includes structures such as residence, commercial building, hospital, and day-care facility. Primary structure excludes structures such as hunting shed, storage shed, pool house, unattached garage, and barn.

PROFESSIONAL ENGINEER

A qualified individual who is licensed as a professional engineer in the required area of expertise.

SETBACK

The distance from the closest point of a WECS feature to the center of a WECS tower or the edge of a substation to a property line.

SMALL WECS

Any WECS with a tower height of 80 feet or less and a rated system capacity of less than 100 KW.

SUBSTATION

The apparatus that connects with the electrical collection system of the WECS and increases the voltage for connection with the utility's transmission line or high-voltage electric transmission grid.

TOWER HEIGHT

The distance from the rotor blade at its highest point to the surface of the ground.

WECS

A wind energy conversion system is a system by which wind energy is converted to electricity, including wind turbines, towers, support systems, blades, and associated control and conversion electronics.

WECS PERIMETER

The outer boundaries of the WECS site.

WECS PROJECT

All WECS, substations and ancillary facilities, WECS towers, underground cable installations, and third-party transmission lines associated with the project up to the point of connection with the high-voltage electric transmission grid.

WECS SITE

All parcels of land making up a WECS project; may include nonparticipating parcels as well as participating parcels.

WECS TOWER

The support structure, nacelle, rotor, gear box and blades.

§ 40-11-3. Applicability.

This section shall govern all applications for special use permit for a large WECS.

§ 40-11-4. Special use permit and siting approval procedure.

(A) To obtain a special use permit and siting approval, the applicant must first submit a special use application to the County. The special use application shall contain or be accompanied by the following information:

- (1) WECS project summary, including to the extent available, a general description of the project, including:
 - (a) Approximate name plate generation capacity.
 - (b) Potential equipment manufacturer.
 - (c) Type of WECS.
 - (d) Number of WECS.
 - (e) Name plate generation capacity of each WECS.
 - (f) Maximum height of the WECS towers.
 - (g) Maximum diameter of the WECS rotor.
 - (h) Turbine color and rotor direction.
 - (i) General location of the project.
- (2) A description of the applicant, owner and operator, including the respective financial structures and financial statement.
- (3) The name, address, and phone number of the applicant, owner, and operator, and all property owners within the WECS perimeter.
- (4) A site plan for the installation of the WECS project showing the boundaries of the project, the location or planned location of:
 - (a) Each WECS tower.
 - (b) Guy wires and anchor bases (if any).
 - (c) Primary structures.
 - (d) Property lines (including identification of adjoining properties).
 - (e) Setback lines.
 - (f) Public access roads and turnout locations.
 - (g) Substation.
 - (h) Electrical cabling from WECS tower to the substation.
 - (i) Ancillary equipment.
 - (j) Third-party transmission lines.
 - (k) Private access roads.

- (l) Wells.
 - (m) Septic fields.
 - (n) Existing easements.
 - (o) Floodplain location and elevation (if applicable).
 - (p) Wetland locations (if applicable).
 - (q) Layout of all structures within the geographic boundaries of any applicable setback.
- (5) Distances from proposed towers on each site to all property lines; existing residences within 2,000 feet of any tower; existing structures within two times the tower height; utility lines within two times the tower height; all underground utility lines on site.
- (6) A topographic map of the proposed site within the WECS perimeter including two-foot contour lines across the site and extending 100 feet in all directions from the limits of construction.
- (7) All required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this section, federal and state laws, and administrative provisions, including, but not limited to:
- (a) Noise assessment, including average and maximum noise levels at perimeter property lines and at housing units within the project.
 - (b) Avian screening report by a qualified third party and all correspondence with the Illinois Department of Natural Resources and United States Fish and Wildlife Service regarding the project.
 - (c) Letter from the Federal Aviation Administration stating the project is in compliance with Federal Aviation Administration height and lighting requirements.
 - (d) The applicant shall apply for consultation with the Illinois Department of Natural Resources.
 - (e) Emergency plan.
 - (f) An evaluation of the geotechnical stability of areas proposed for wind turbine areas, including a thorough investigation of soil and bedrock properties.
- (8) Any other information normally required by the County Zoning Ordinance.
- (9) Copies of all necessary access easements and necessary utility easements, copies of which shall be submitted to the Zoning Office.
- (10) Legal description for the planned location of the WECS project and/or substation.
- (B) The applicant shall notify the County of any changes to the information provided in the subsections above that occur while the special use application is pending.

§ 40-11-5. Used equipment.

Used equipment is permitted only if recertified to factory specifications or better by the factory or an appropriate professional engineer.

§ 40-11-6. Setbacks.

- (A) Tower setbacks.
 - (1) Tower setback from the WECS site perimeter shall be 1.25 times the WECS tower height.
 - (2) Tower setback from a principal structure shall be 1.25 times the WECS tower height.
 - (3) Tower setback from the property line of a nonparticipating parcels shall be 1.25 times the WECS tower height.
 - (4) Tower setback from the property line of a nonconsenting parcels shall be 1.25 times the WECS tower height unless waived.
 - (5) Tower setback from public road right-of-way lines, third-party utility property or easement lines, communication towers, and any other structures shall be 1.1 times the WECS tower height.
- (B) Substation setbacks shall be 50 feet from all front, rear and side property lines.
- (C) New principal structures adjacent to a WECS shall maintain the same setback from the WECS as the WECS is required to observe.

§ 40-11-7. Special use permit required; construction permit.

No WECS or WECS project governed by this article shall be constructed, erected, installed, or located within Monroe County unless prior special use permit application has been approved for each individual WECS or WECS project pursuant to this article. Upon special use approval, a construction permit shall be obtained from the Zoning Department prior to the commencement of construction of any WECS or WECS project or any part thereof.

§ 40-11-8. Noise.

Noise levels from each wind farm tower or wind farm shall be in compliance with the applicable Illinois Pollution Control Board (IPCB) regulations (35 Illinois Administrative Code, Subtitle H: Noise, Parts 900, 901, 910, and other applicable provisions of this code, as amended from time to time).

- (A) The applicant shall submit manufacturer's wind sound power level characteristics and other relevant data regarding wind turbine noise adequate to provide an evaluation and review for determining compliance with all noise regulation.
- (B) The applicant, through the use of a qualified professional, as part of the siting approval application process, shall appropriately demonstrate compliance with the above noise requirements.
- (C) The applicant shall submit a map of the relevant noise contours for the proposed wind farm and indicate the proposed wind farm towers and all existing principal buildings within at least 2,000 feet of any wind farm tower.
- (D) If a computer model is used to generate the required noise contours, the applicant shall state the assumptions of the model's construction and algorithms so that a competent and objective third party can as simply as possible verify the adequacy of the methodology and resultant data.
- (E) After construction of the wind farm the Zoning Administrator shall take appropriate enforcement action

as necessary to investigate noise complaints in order to determine the validity of the complaints and undertake any necessary enforcement actions as required to mitigate the noise violation. Such actions may include, but not be limited to:

- (1) The Zoning Administrator may seek authorization from the County Board to retain the services of a noise consultant to determine compliance with the relevant regulations and applicable laws. In such instance the wind farm owner shall be notified of the action and the cost of such service and shall submit an adequate escrow payment to cover the cost of the consultant's services.
- (2) The Zoning Administrator may require the wind farm owner to cooperate fully with the noise consultant in the enforcement action, including shutting down all wind turbines, in order to allow proper documentation of ambient noise levels. The Zoning Administrator shall fully cooperate with the wind farm owner in order to minimize any harmful effect on the operation, maintenance and economic viability of the wind farm.
- (3) In the event that a violation of the IPCB noise regulations is identified, the Zoning Administrator may require the wind farm owner to take whatever actions are necessary to stop the violation. The Zoning Administrator may seek further consultation from other sources, including, but not limited to, the Monroe County States Attorney. The wind farm owner shall be responsible for all costs incurred by the County for evaluating identifiable violations. The wind farm owner shall not be responsible for County services in which there are no identifiable violations.

§ 40-11-9. Appearance.

The WECS surface shall be a nonreflective, unobtrusive color (usually gray or white). No advertising signs or graphic designs shall be permitted on the WECS. The manufacturer's identification with kilowatt ratings is allowed.

§ 40-11-10. Certification.

The WECS shall conform to applicable industry standards, including, but not limited to, those of the American National Standards Institute (ANSI). Applicants shall submit certificates of design compliance that equipment manufactures have obtained from Underwriters Laboratories (UL), Det Norske Veritas (DNV), Germanischer Lloyd Wind Energie (GL), or an equivalent third party. Following the granting of a special use permit under this article, a professional engineer shall certify, as part of the building permit application, that the foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.

§ 40-11-11. Compliance with construction and electrical codes.

All applicable County, state and national construction and electric codes shall be followed.

§ 40-11-12. Braking.

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

§ 40-11-13. Power lines.

All new power lines used to collect power from wind farm turbines to the substation and all communication lines shall be underground. In instances where they cross public roads they shall be bored as required in the County road agreements, and located underground at a depth of at least four feet or what the National Electric Safety Code requires, whichever is greater. In certain instances the County may authorize the location of utilities in public rights-of-way. All electrical lines connecting each turbine to other turbines shall be installed underground. The applicant shall install marker tape in any cable trench.

§ 40-11-14. One-call notification system.

The applicant shall become a member of the Illinois statewide one-call notice system (otherwise known as the "joint utility locating information for excavators" or "JULIE" and provide JULIE with all of the information necessary to update its records with respect to the wind farm project.

§ 40-11-15. Compliance with Federal Aviation Administration requirements.

The wind farm shall comply with all applicable Federal Aviation Administration (FAA) requirements, which shall be explained in the application. The applicant shall obtain all of the necessary approvals and permits from the FAA and be responsible for a determination of no significant impact to air navigation. The application shall contain all construction drawings illustrating the location, number of lights, and color of lights and intensity of lights as approved by the FAA.

§ 40-11-16. Warning signs.

A visible warning sign stating "High Voltage" must be placed at the base of all WECS projects, pad-mounted transformers, and substations and other elements that may be impacted by high voltage. The sign must have, at a minimum, six-inch letters. Signs shall also be placed at all points of site ingress and egress. Visible, reflective, colored objects, such as flags, reflectors, or tape, shall be placed on the anchor points of guy wires and along the guy wires up to a height of 15 feet vertically from the ground.

§ 40-11-17. Climb prevention.

All WECS towers must be unclimbable by design or protected by anticlimbing devices such as fences with locking portals at least six feet high or anticlimbing devices 15 feet vertically from the base of the WECS tower.

§ 40-11-18. Lighting.

The WECS shall not be lighted except as required by the Federal Aviation Administration or other state or federal laws.

§ 40-11-19. Height.

WECS tower height must comply with all applicable FAA regulations and not exceed 650 feet above ground level.

§ 40-11-20. Use of public road.

Prior to a special use permit being granted, an agreement shall be entered into between the applicant/owner/contractor, the County Engineer, and any other road authority. Such agreement shall detail the use of public roads for construction/maintenance of said WECS, to include but not be limited to:

- (A) Access routes identified.
- (B) Overweight/oversize loads presented.
- (C) Preconstruction survey of roads for potential damage, including site photos and documentation of existing condition.
- (D) Schedule of construction operations.
- (E) Setting up an escrow fund, letter of credit or surety bond to cover future road repairs.
- (F) Approval of Monroe County, Illinois utility petition and permit if applicable.
- (G) Payment for County costs to retain a consultant, if necessary, to make a study of any structure or road on the proposed route that the County Engineer determines may not carry the loads and weight and use during wind farm construction.

§ 40-11-21. Interference.

- (A) No WECS shall be installed in any location where its proximity to existing fixed broadcast, retransmission, or reception antenna for radio, television, wireless phone, or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in a location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
- (B) The applicant shall provide the applicable microwave transmission providers, local emergency service providers, and the local phone company copies of the project summary and site plan. If these providers demonstrate a likelihood of interference with their communications resulting from the WECS, the applicant shall take measures to mitigate anticipated interference or relocate the WECS tower or facility. If, after construction of the wind farm, the owner or operator receives a written complaint related to the above-mentioned interference, the owner or operator shall take corrective measures to cure the problem.

§ 40-11-22. Shadow flicker.

The applicant shall conduct a study on potential shadow flicker. The study shall identify the locations of shadow flicker that may be caused by the project and expected durations of the flicker at these locations. The study shall identify problem areas where shadow flicker may interfere more than 30 hours per year with residences and other existing uses and describe measures that shall be taken to eliminate or mitigate the problems. Any safety problems identified by the County Engineer caused by shadow flicker on roads shall be mitigated.

§ 40-11-23. Use of third-party consultants for application review.

The County may desire to retain experts in the areas of engineering, planning, environmental, and legal in order to properly and efficiently review the documentation submitted by the applicant. In such instance the applicant will be advised of the required service and be provided an estimate of the expert's fees. Since such

fees are beyond the customary fees associated with smaller and less complex matters, the applicant will be required to pay for the expert services as part of the review process, and such payments shall occur regardless of the findings of the expert or the action ultimately taken by the County on the application. After notice to the applicant of the cost of such required experts, the applicant will be required to escrow all fees into a County account. The applicant will be provided with duplicate copies of consultant invoices and may comment on each invoice. A monthly statement of the manner in which the escrowed funds in the account are utilized will be made available to the applicant and, if required, the applicant shall replenish the account.

§ 40-11-24. Emergency providers.

- (A) The applicant shall submit to the local fire protection district(s), the Sheriff's Department and other relevant police authorities a complete copy of the application for the wind farm project along with an analysis of the anticipated fire and police protection needs.
- (B) The applicant shall cooperate with the fire protection district(s) and Sheriff's Department and other relevant police authorities and develop emergency response plans that describe the potential emergency services that may be required and an analysis of the fire and police capabilities in terms of equipment and manpower to respond to potential emergency conditions. The applicant, owner, or operator shall work with local rescue authorities to provide training (at the applicant, owner, or operator's expense) to personnel who can assist with a rescue from a wind turbine or tower. If necessitated by lack of personnel or equipment, the applicant shall be required prior to final special use approval to develop a financial plan to ensure the provisions of emergency services and demonstrate that such plan will be implemented precedent to the start of construction. The level of training is to be determined by the emergency service provider.

§ 40-11-25. Solid and hazardous material handling, storage and disposal.

- (A) All solid waste related to the construction, operation, and maintenance of the WECS shall be removed from the site promptly and disposed of in accordance with all applicable local, state, and federal procedures.
- (B) 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 procedures.

§ 40-11-26. Birds, bats and wildlife.

- (A) A qualified professional, such as an ornithologist or wildlife biologist, shall conduct a preconstruction site risk assessment study to estimate the impacts of the construction and operation of the proposed WECS on birds, bats and wildlife. The preconstruction site risk assessment shall be submitted with the application and shall include the following minimum information:
 - (1) A literature review of existing information on species and potential habitats and results of agency database queries for records of rare, threatened, and endangered species and important habitats, such as Illinois Natural Areas Inventory sites and registered/dedicated nature preserves, land and water reserves, and wetland reserves within two miles of the proposed WESC.
 - (2) A general mapping of the significant vegetation and land cover types, wildlife habitat and quality, and physical characteristics of the proposed WECS.

- (3) A field examination that verifies results of the literature review and agency queries and documents general site habitat conditions.
 - (4) A review of existing literature of avian and bat mortality field results within North America and in similar physiographic settings as the proposed WECS.
 - (5) If the risk assessment indicates that risk may be low, no further surveys are required.
 - (6) If the risk assessment indicates risk may be high enough to potentially adversely effect the sustainability of bird or bat populations, a site specific bird and bat use survey may be required to address those species and conditions representing high risk from the beginning of the spring migration for birds and bats, and extending through the end of the fall migration.
 - (7) The site specific bird and bat use survey may include surveys focused upon state or federal threatened or endangered sensitive status species in the proposed WECS area during the appropriate seasons to determine the potential adverse impact.
 - (8) The results of the survey shall be used to design siting and mitigation measures to lower risk to a sustainable level of mortality.
- (B) Mortality monitoring.
- (1) A qualified professional, such as a ornithologist or wildlife biologist, shall also conduct a post-construction mortality monitoring study to quantify the mortality impacts, if any, from the WECS on birds and bats. The post-construction mortality study shall consist of the following information at a minimum:
 - (a) At least two full years of site specific mortality monitoring from the beginning of the spring migration for birds or bats, and extending through the end of the fall migration for birds or bats and including both spring and fall migration, and from fall through spring for winter season gatherings of bird species or for other state/federally listed wildlife species.
 - (b) If mortality rates are above those initially anticipated at the preconstruction stage, then the owner shall submit a program to reduce such rates to an acceptable level.
 - (2) Post-construction mortality studies will be submitted to the Monroe County Zoning Administrator and will be available to the public upon request to that office. The requirements of the study reviews section apply to wildlife mortality studies. Third-party consultants and expertise, at the expense of the applicant/owner/contractor, may be required as a part of the mortality study process.
- (C) Standard conditions for endangered species consultation. The applicant shall apply for consultation with the endangered species program of the Illinois Department of Natural Resources. The application shall include a copy of the agency action report from the endangered species program of the Illinois Department of Natural Resources.
- (D) Standard conditions for acceptable wildlife impacts. The WECS shall be located, designed, constructed, and operated so as to avoid and if necessary mitigate impacts to wildlife to a sustainable level of mortality including the following:
- (1) Avoid locating WECS in known bird and bat migration pathways and daily movement flyways and known hibernacula and flight paths between bat colonies and bat feeding areas.
 - (2) Site WECS and design mitigation measures in a manner that will reduce the level of mortality to birds and bats and protect their populations.

§ 40-11-27. Wetland mitigation.

Any mitigation of wetlands shall be done within Monroe County.

§ 40-11-28. Invasive plants.

Any clearing of woods for the purpose of a WECS project shall require the control of invasive plants in the cleared area for the length of the project.

§ 40-11-29. Stormwater and drainage.

All WECS sites must comply with the Monroe County Stormwater Drainage and Detention, Soil Erosion and Sediment Control for Commercial and Industrial Developments Ordinance. All WECS sites must comply with United States Environmental Protection Agency and Illinois Environmental Protection Agency groundwater drainage standards.

§ 40-11-30. Energy deliverability.

As part of the application process, the owner or operator shall certify to the County Zoning Department that it has secured all necessary rights to deliver energy to a high-voltage electric transmission grid.

§ 40-11-31. Certification of construction and installation.

A professional engineer shall certify that the construction and installation of the WECS project meets or exceeds the manufacturer's construction and installation standards.

§ 40-11-32. Annual inspection and maintenance.

Each applicant or successor in interest shall have the applicant's facility inspected annually by qualified wind power professionals, approved by the Zoning Department, and shall submit a certificate from said professionals reciting the annual maintenance done on the facility and stating that the facility is in good working condition and not a hazard to the public. Failure to submit an annual certificate shall be grounds for revocation of the special use permit by the Zoning Department.

§ 40-11-33. Effect on other regulations.

Nothing in this article is intended to preempt other applicable federal, state or local laws and regulations.

§ 40-11-34. Decommissioning and site reclamation plan.

(A) A decommissioning and site reclamation plan must be submitted with the special use application to ensure that the WECS project is properly decommissioned and the site properly reclaimed. The decommissioning and reclamation plan shall, at a minimum, include:

- (1) Provisions describing the triggering events for decommissioning the WECS project.

- (2) An estimate of the decommissioning costs certified by a professional engineer. The manner in which salvage value will be considered must be considered and documented. All costs will be itemized.
 - (3) Provision for anticipated repairs to any public roads or facilities used for the purpose of reclamation of the WECS project and all costs related to removal of structural materials and access roads.
 - (4) Provisions for the removal of structures, concrete, debris and cabling, including those below the soil surface to a depth of five feet.
 - (5) Provisions for the disconnecting of all cabling from the high-voltage power grid or any other possible source of energy.
 - (6) Provisions for the restoration of the soil and vegetation.
 - (7) A provision that the terms of the decommissioning plan shall be binding upon the owner or operator and any of their successors, assigns, or heirs by way of sale, gift, and assignment in fact or at law or any other such transfer of financial interest of ownership in the WECS project. Any successor or assigned shall assume the terms, covenants, and obligations of this plan and must agree to assume all reclamation liability and responsibility for the WECS project.
 - (8) A provision that this plan is governed by Illinois law.
 - (9) A provision that indemnifies the County with respect to any and all liability arising out of the decommissioning and site reclamation plan.
 - (10) A provision that the County shall have access to the site, pursuant to reasonable notice, to effect, inspect or complete decommissioning if necessary.
 - (11) A provision that the applicant, owner and operator shall notify the County Zoning Administrator by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding, naming the applicant, owner or operator as debtor, within 30 days of the beginning of the proceeding.
 - (12) Financial assurance, in the form of an irrevocable letter of credit, secured by the owner or operator, for the purpose of adequately performing decommissioning and site reclamation, in an amount equal to 150% of the professional engineer's certified estimate of the decommissioning and site reclamation costs.
- (B) Every five years a professional engineer's certified estimate of decommissioning and site reclamation costs will be submitted and an adjustment to the financial assurance will be required.

§ 40-11-35. Financial assurance for decommissioning and site reclamation.

- (A) At time of approval of the special use permit the amount of the irrevocable letter of credit shall be 150% of an independent engineer's cost estimate to complete the work. The County has the right to require multiple letters of credit based on the regulations governing federal insurance for deposits or other federal and state regulations and laws.
- (B) It is recognized that there may be a salvage value that will result from the reclamation process; however, the County may limit the amount that can be used for determining the amount of the irrevocable letter of credit.
- (C) The owner, operator, applicant or legally responsible party shall gradually pay down the value of the

irrevocable letter of credit by placing cash deposits in an escrow account over the first seven years of the wind farm operation as follows, and replacement letters of credit shall be simultaneously issued in the reduced amount.

- (1) The owner of the WECS project and the County shall agree upon a mutually accepted financial institution in excellent financial standing at which an escrow account shall be established.
 - (2) The County shall be the beneficiary of the escrow account for the purpose of the reclamation of the WECS in the event that the wind farm owner is unwilling to or incapable of decommissioning the WECS project.
 - (3) The owner of the WECS project shall grant perfected security in the escrow account by use of a control agreement establishing the County as an owner of record.
 - (4) At all times the total combined value of the irrevocable letter of credit and the escrow account shall be increased annually as necessary to reflect actual rates of inflation over the span of the wind farm, and the amount shall be equal to or exceed the following:
 - (a) The amount of the engineer's cost estimate as increased by known and documented rates of inflation since the WECS project was approved; plus
 - (b) An amount for any future years left in the anticipated life span of the wind farm at an assumed rate of inflation of 3% per year.
 - (5) Interest accrued on the escrow account that is over and above the total initial valuation value required shall go to the WECS owner, subject to the terms of the decommissioning and site reclamation agreement.
 - (6) In order to provide funding for the decommissioning at the time of decommissioning, the owner may exchange a new irrevocable letter of credit in an amount equal to the amount in the escrow account in exchange for the County agreeing to a release of the full amount of the escrow account.
- (D) The County may draw down on the funds in the escrow account in the event of the following situations and when the owner shall determine not to take any action to remedy the conditions. The terms under which such action may be taken should be defined in the decommissioning agreement but generally be limited to the following examples:
- (1) In the event that any wind turbine or component thereof ceases to function and becomes mechanically inoperative for more than six consecutive months and the owner is not diligently repairing such turbine or component thereof.
 - (2) In the event that the owner declares any wind turbine or component to be functionally obsolete for tax purposes.
- (E) The decommissioning and site reclamation provision shall be included as part of the project special use application. The irrevocable letter of credit and evidence of the escrow account must be submitted to the County prior to any construction permit being issued.

§ 40-11-36. Cessation of operation.

If any WECS provided for in this article has not been in operation and producing electricity for at least 270 consecutive days, it shall be removed. The Monroe County Zoning Department shall notify the owner to remove the system. Within 30 days, the owner shall either submit evidence showing that the system has been operating and producing electricity or under repair or remove it. If the owner fails to or refuses to remove

the WECS, the violation shall be referred to the Monroe County States Attorney for enforcement.

§ 40-11-37. Failure to comply to constitute default.

The applicant's, owner's, or operator's failure to materially comply with any of the above provisions shall constitute a default under this article. Prior to implementation of the existing County procedures for the resolution of such default, the appropriate County body shall first provide written notice to the owner, and operator, setting forth the alleged default. Such written notice shall provide the owner and operator a reasonable time period, not to exceed 30 calendar days, for good-faith negotiations to resolve the alleged default. If the County determines in its discretion that the parties cannot resolve the alleged default within the good-faith negotiation period, the existing County ordinance provision addressing the resolution of such default shall govern.