

RESOLUTION NO. 6 -22- 2022

A RESOLUTION TO AMEND THE 9 -27- 2016 STAND ALONE ORDINANCE FOR SITE PLAN REVIEW AND APPROVAL PERMITS FOR THE CONSTRUCTION AND MAINTENANCE OF WIND ENERGY CONVERSION SYSTEMS AND WIND ENERGY DEVICES IN PALO ALTO COUNTY

WHEREAS, the Palo Alto County Board of Supervisors adopted its Wind Energy Conversion System Ordinance, Ordinance No. 9-27-16, on Sept. 27th, 2016 (the “Ordinance”); and,

WHEREAS, the Palo Alto County Planning and Zoning Commission met on May 9th, 2022 recommending amendments to the Wind Energy Conversion System Ordinance, Ordinance No. 9-27-16; and,

WHEREAS, the Palo Alto County Board of Supervisors fulfilled the process to amend the 9-27-2016 W.E.C.S. Ordinance with three public hearings all held at the Veterans’ of Foreign Wars Hall in Emmetsburg, Iowa, on June 8th, 2022, June 15th, 2022 and June 22, 2022 listening to public input from both county land owners and county residents who recommended amendment of the following Sections of the W.E.C.S. Ordinance:

1. The Board of Supervisors amend Section 5, (l) **Lighting** of the 9-27-2016 W.E.C.S. Ordinance and require that Aircraft Detection Lighting Systems (A.D.L.S.) be installed on any and all future wind turbines; this will reduce the impact of continuous red flashing nighttime lights upon residents, communities and migratory birds and,
2. The Board of Supervisors amend Section 5, (h) **Public Lands or Waterways** of the 9-27-2016 W.E.C.S. Ordinance to restrict all future W.E.C.S Turbine construction within the Bird Conservation Area (B.C.A.) identified and described as “Beginning at the Northwest corner of section 6-97N-33W in Walnut township at the Palo Alto and Emmet County line; then proceeding two miles south along the western boundary of sections 6 and sections 7 of Walnut township to the intersection of 270th Street and 400th Avenue; then continuing to proceed south six miles further to the intersection of 400th Avenue and 350th Street in Emmetsburg township; then west three miles along 350th Street to its intersection with 370th Avenue; then south one mile along 370th Ave. to its intersection of 360th Street (Highway 18); then west one mile along 360th Street to its intersection of 360th Avenue; then south three miles along 360th Avenue to its intersection of 360th Avenue and 390th Street; then west two miles along 390th Street to its intersection of 390th Street and 340th Avenue (which is the western boundary between Palo Alto and Clay Counties); then north twelve miles along 340th Avenue to its intersection with 270th Street; then east six miles along 270th Street to the point of beginning at the Northwest corner of section

6-97N-33W in Walnut township, Palo Alto County Iowa, containing 57 square miles, more or less .

3. The Board of Supervisors amend Section 5, (h) for ***Public Lands or Waterways*** of the 9-27-2016 W.E.C.S. Ordinance to restrict W.E.C.S. Turbines from within a One half Mile Setback (2,640 feet) from the shores of Silver Lake and from the shores of Rush Lake .
The setback contained in the 9-27-2016 W.E.C.S. ordinance from other public lands and other public waterways, (besides Silver Lake, Rush Lake) whether those public lands and public waterways are owned by the County, State or Federal government, will remain in full force and effect at a 1,500 foot setback; and,
4. The Board of Supervisors amend Section 3, (i) ***Total Height*** of the 9-27-2016 W.E.C.S. Ordinance setting the total W.E.C.S. Turbines tower and Blade Extension heights to 600 foot rather than the 550 foot in the current ordinance; and,
5. The Board of Supervisors amend Section 5, (e) ***Setbacks from Cemeteries*** of the 9-27-2016 W.E.C.S. Ordinance to restrict constructions of W.E.C.S. Turbines within one half mile (2,640 feet) from cemeteries rather than the 1,500 foot setback from cemeteries in the current ordinance; and,
6. The Board of Supervisors amend Section 5, (f) ***Setbacks from City Limits*** of the 9-27-2016 W.E.C.S. Ordinance to restrict W.E.C.S. Turbines from within one mile (5,280 feet) from beyond the city limits of Ayrshire, Curlew, Emmetsburg, Graettinger, Mallard, Rodman, Ruthven and West Bend, all located within Palo Alto County instead of the existing 1,500-foot setback; and,
7. The Board of Supervisors amend Section 5 , (b) ***Setbacks from Permanent Residential Dwellings*** of the 9-27-2016 W.E.C.S. Ordinance to restrict Turbines from within one half mile (2,640 feet) from permanent residential dwellings rather than the existing 1,500 feet- permanent residential setback in the current ordinance; and,
8. The Board of Supervisors amend Section 7: ***Decommissioning at End of Serviceable Life or Discontinuance or Abandonment Agreement*** of the 9-27-2016 W.E.C.S. Ordinance by striking through the entire existing Section 7, and inserting and substituting the underlined updated language in its place.

~~**Section 7. (2016 ordinance): Decommissioning at End of Serviceable Life or Discontinuance or Abandonment.** Each application for a Site Plan Review and Approval Permit for a WECS shall include a decommissioning plan outlining the anticipated means and cost of removing each Wind Energy Device at the end of its serviceable life or upon becoming a discontinued use. Such cost estimates shall be made by a professional engineer licensed in the State of Iowa, agreeable to the County. The decommissioning plan shall also outline proposed financing methods adequate for the decommissioning of the WECS. Prior to the issuance of a Site Plan~~

~~Review and Approval Permit, the County and the Owner/Developer shall enter into a separate decommissioning agreement, which shall clearly lay out the rights and obligations of the County and the Owner/Developer with respect to the management and potential decommissioning and removal of the Wind Energy Devices either at the end of their serviceable life or upon becoming a discontinued use.~~

~~A Wind Energy Device shall be considered discontinued or abandoned after one (1) year without energy production, unless a timely plan is developed and submitted within such one (1) year period to the Administrator outlining the steps and schedule for returning the Wind Energy Device to active service.~~

~~All Wind Energy Devices and accessory facilities shall be removed to a depth of four (4) feet below grade within 180 days of becoming a discontinued use.~~

And inserting and substituting the following language:

Section 7: Decommissioning

- (a) **Decommissioning Plan and Agreement.** The Applicant, Developer, or Owner shall submit a Decommissioning Plan to the Administrator for approval by the Board in conjunction with the issuance of the Permit. The purpose of the Decommissioning Plan is to specify the procedure by which the Applicant, Owner or Developer or its successor will remove the Project after the end of its useful life, or upon Abandonment, and to restore the property for its original uses. Prior to the issuance of the Permit, the County and the Applicant, Owner or Developer shall enter into a separate Decommissioning Agreement which shall clearly lay out the rights and obligations of the County and the Applicant Owner or Developer and its successor with respect to the management and Decommissioning of the Project at the end of its serviceable life or upon Abandonment. In the event of a conflict between the Ordinance and the Decommissioning Agreement, this Ordinance shall control.
- (b) **Decommissioning Cost Estimate.** The Decommissioning Plan shall include a Decommissioning costs estimate prepared by an Iowa-licensed professional engineer.
- (1.) The cost estimate shall provide the gross estimated cost to decommission the W.E.C.S. Turbine in accordance with the Decommissioning Plan and those conditions. The Decommissioning costs estimate shall not include any estimates or offsets for the resale or salvage values of the Project equipment and materials.
- (2.) The Applicant Owner or Developer or its successor, will update the Decommissioning cost estimate every five (5) years and reimburse the county

for an independent review and analysis by an Iowa-licensed engineer of each Decommissioning costs estimate.

(c)

Security.

- (1) Prior to the Count's approval of the Permit, the Board shall require the Applicant, Owner Developer, to provide Decommissioning security. Such security shall be in the form of, at the County's sole option to choose, cash in the full amount of the Decommissioning cost estimate, a cash sinking fund, a letter of credit or a bond, the type and details of which shall be set out in the Decommissioning Agreement.
 - (2) Upon receipt of the first revised Decommissioning cost estimate (following the 5th anniversary), any increase or decrease in the Decommissioning security shall be funded by the Applicant, Owner or Developer, or refunded to the applicant (if permissible by the form of security) within 90 days and will be similarly trued up for every subsequent five-year updated Decommissioning costs estimate.
 - (3) The Decommissioning security must be received prior to the issuance of the Permit and must stay in force in the duration of the life span of the Project and until all Decommissioning is completed. If the Board receives notice or reasonably believes that any form of security has been or may be revoked, the County may revoke the Permit and shall be entitled to take all action to obtain the rights to the form of security. In the event that the County reasonably believes that a specified form of security is no longer sufficient to cover the Decommissioning costs estimate, the County shall require the Applicant, Owner, Developer or its successor to provide a different form of security that will be sufficient to cover the Decommissioning costs estimate tin the County's reasonable judgment.
- (d) **Applicant/Successor Obligation.** Within six (6) months after the end of the useful life of the Project for electrical power generation or transmission, or after Abandonment, the Applicant Owner or Developer or its successor, at its sole costs and expense shall commence to Decommission the Project in accordance with the Decommissioning Plan and Agreement approved by the Board and complete the Decommissioning within six (6) months thereafter. If the Applicant owner or Developer or its successor fails to commence Decommissioning within six (6) months, the underlying property owner shall commence Decommissioning activities in accordance with the Decommissioning Plan within six (6) months, after being notified by the County of the Applicant, Owners, Developer's failure to refusal to Decommission the Project, and shall complete the Decommissioning within six (6) months. Following the completion the Decommissioning of the entire Project arising out of a default by the Applicant Owner or Developer or its successor, the security

funds held by the County shall be distributed to the underlying property owners to reimburse them for the actual costs incurred by them to Decommission the Project. In the event that any funds remaining in the security fund after the property owners have been reimbursed for their actual Decommission costs, such remaining funds shall become the property of the County.

(e) **Applicant Reporting Requirements.** The Applicant shall notify the County in writing within thirty (30) days of the end of the useful life of the Project or of its Abandonment of the Project. In addition, the Applicant Owner Developer shall provide the County with a copy of the Replacement Tax Return filed with the Iowa Department of Revenue during each year of operation of the Project. Said copy shall be provided to the County within fourteen (14) days of filing.

(f) **Applicant/property owner default ; Decommissioning by the County;**

(1) If the Applicant Owner Developer or its successor or the underlying property owners fail to Decommission the Project as required by Section 7 of this Ordinance, the County shall have the right to exercise all legal remedies available to its to enforce the Decommissioning obligations of the Applicant Owner Developer , its successor and the underlying property owners. The county shall also have the right but not the obligation, at its option to commence Decommissioning activities and shall have access to the property, shall own the full amount of the Decommissioning security, and the rights to the Project equipment and materials on the property whether or not the County opts to Decommission the Project.

(2) Prior to the issuance of the Permit, the Applicant Owner Developer and the underlying property owner shall deliver a legal instrument to the Administrator granting the County (1) the right to access the property , and (2) an interest in the Project equipment and material to complete the decommissioning upon the Applicant's Owner's Developer's default and (3) an interest in the Decommissioning security fund. Such instrument(s) shall bind the Applicant Owner Developer and property owners and their successors, heirs and assigns. Nothing herein shall limit other rights or remedies that may be available to the County to enforce the obligations of the Applicant, including under the County's zoning powers.

(g) **Equipment/ Building Removal.** All physical improvement, material, and equipment related to W.E.C.S. Turbines and blades, shall be removed in their entirety unless the property owner consents in writing to a different removal depth. The soil grade will

also be restored following disturbance caused in the removal vocal process. Perimeter fencing will be removed and recycled or reused. Where the current or future landowner prefers to retain the fencing, these portions of fence shall be left in place.

*(h) **Infrastructure Removal.*** All access roads will be removed, including any geotextile material beneath the roads and granular material. The exception to removal of the access roads and associated culverts or their related material would be upon written request from the current or future landowner to leave all or a portion of these facilities in place for use by that landowner. Access roads will be removed within areas that were previously used for agricultural purposes and top soil will be redistributed to provide substantial similar growing medial as was present within the areas prior to site disturbance.

*(i) **Partial Decommissioning.*** If Decommissioning is triggered for a portion, but not the entire Project, then the Applicant Owner or Developer or its successor will commence and complete the Decommissioning, in accordance with the Decommissioning Plan for the applicable portion of the Project; the remaining portion of the Project would continue to be subject to the Decommissioning Plan. Any reference to Decommissioning the Project shall include the obligation to Decommission all or a portion of the Project whichever is applicable with respect to a particular situation.

9. The Board of Supervisors amend Section 5, (i) **Density or Spacing** of the 9-27-2016 W.E.C.S. Ordinance ~~by striking: Wind Energy Device spacing will vary depending on common industry practice and manufacturer specifications. The Owner/Developer shall consider the public interest and the natural environment, and maintain the intent and purpose of this Ordinance.~~ In its place the following language will be inserted and substituted:

The Oct. 24th, 2017 W.E.C.S. Invenergy project in Northeast Palo Alto County carries a name-plate production generating capacity of 240 Megawatts.

The Vestas W.E.C.S. project to be located in Northwest Palo Alto County will have the name-plate production generating capacity of 210 Megawatts.

There shall be no W.E.C.S. Project which would be covered by the Palo Alto County Ordinance constructed or erected that causes the total name-plate production generating capacity in Palo Alto County to exceed 600 megawatts.

NOW THEREFORE, BE IT RESOLVED by the Palo Alto County Board of Supervisors that following the three consecutive open public hearings of June 8th, June 15th, and June 22nd, 2022, and following due consideration and public open discussion, that the above recommended Amendments and or Substitutions should be made part of the 9-27-2016 W.E.C.S. Ordinance as so amended; and,

BE IT FURTHER RESOLVED that the June 22nd, 2022 Amendments to the 9-27-2016 W.E.C.S. Ordinance should be recorded with the Palo Alto County Auditor and posted on the Palo Alto County Auditor's website and that these Amendments be duly recorded with the Palo Alto County Recorder's Office and spread of record in both offices, and the amendments be duly published in the official Palo Alto County newspapers.

All resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed.

The remaining portions of the W.E.C.S. Ordinance dated 9-27-2016 which are not affected by the above *Amendments and Substitutions in the* 6-22-2022 Resolution shall continue and shall remain in full force and effect. If any section, provision, or part of this resolution shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the resolution as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

ADOPTION

Supervisor Graettinger therefore moves for the approval and passing of the resolution and adoption of the above amendments and or substitutions to the 9-27-2016 W.E.C.S. Ordinance.

Supervisor Merrill seconded the motion to adopt the resolution and adopt the above amendments and or substitutions to the 9-27-2016 W.E.C.S. Ordinance.

THE RECORDED VOICE VOTE WAS MADE:

Keith Wirtz: Aye
Ron Graettinger: Aye
Roger Faulstick: Aye
Craig Merrill: Aye
Linus Solberg: Aye

Passed and approved this 22nd day of June, 2022.

MOTION CARRIED RESOLUTION ADOPTED and the Palo Alto County W.E.C.S. Ordinance is hereby amended as set forth above.

/s/ Keith Wirtz
Chairperson, Palo Alto County Board of Supervisors

Attest: /s/ Jordan Morey, Palo Alto County Auditor Clerk