

## Proposed Amendments

### Original Language:

4. General Standards. The following standards shall apply to all Testing Facilities, Private and Commercial WECS in Shiawassee County unless otherwise specifically noted:
  - R. All facilities must be maintained in an operational state. Any WECS or Testing Facility that is found to be abandoned, inoperable or in a state of disrepair that would be a potential threat to public health, safety and welfare or that which can be considered under the definition for facility abandonment shall be removed from the site.
5. Additional Standards for Commercial WECS Projects- The following additional standards shall apply to all commercial WECS in Shiawassee County:
  - G. Decommissioning Plan and Escrow. The commercial WECS project must contain a Decommissioning Plan to ensure it is properly decommissioned upon the end of the project life, inoperability of individual WECS turbine or facility abandonment. Decommissioning shall include removal of all structures (including transmission equipment and fencing) and debris to a depth of four (4) feet, restoration of the soil, and restoration of vegetation within one (1) year of the end of project life, inoperability of individual WECS turbine or facility abandonment. Extensions may be granted upon request to the Planning Commission prior to that expiration of the one (1) year requirement for decommissioning. The decommissioning plan shall state how the facility will be decommissioned, the Professional Engineer's estimated cost of decommissioning, the financial resources to be used to accomplish decommissioning, and the escrow agent with which the resources shall be deposited. The decommissioning plan shall also include an agreement between the applicant and the County that:
    1. The financial resources for decommissioning shall be in the form of a surety bond or letter of credit shall be deposited in an escrow account with an escrow agent acceptable to Shiawassee County.
    2. The County shall have access to the escrow account funds for the expressed purpose of completing decommissioning if decommissioning is not completed by the applicant within one (1) year of the end of project life, inoperability of individual WECS turbine or facility abandonment. Escrow funds may be used for administrative fees and costs associated with decommissioning.
    3. The County is granted the right of entry onto the site, pursuant to reasonable notice, to effect or complete decommissioning.
    4. The County is granted the right to seek injunctive relief to effect or complete decommissioning, as well as the County's right to seek reimbursement from applicant or applicant successor for decommissioning costs in excess of the amount deposited in escrow and to file a lien against any real estate owned by applicant or applicant's successor, or in which they have an interest, for the

amount of the excess, and to take all steps allowed by law to enforce said lien.

**Proposed Amendment:**

Provided below are recommended amendments to the existing language regarding setbacks. Due to the existing language being substantially consistent with the provisions of other communities in our review, staff is providing only one (1) option as opposed to two (2) options previously provided as part of this process.

5. *General Standards. The following standards shall apply to all Testing Facilities, Private and Commercial WECS in Shiawassee County unless otherwise specifically noted:*

R. Abandonment, Inoperability, and Safety Compliance. Any WECS or Testing Facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. At the Planning Commission's discretion, if it is found that a WECS or Testing Facility is inoperable or in a state of disrepair that would be a potential threat to public health, safety and welfare such WECS or Testing Facility shall cease operation immediately and be removed or repaired or otherwise made safe. Following a written notice to the applicant/owner/operator the Planning Commission shall conduct a hearing to determine if a WECS or Testing Facility is abandoned, inoperable, or in a state of disrepair. If a WECS or Testing Facility is repaired a Michigan professional engineer, hired at the expense of the applicant/owner/operator, shall certify is safety prior to the resumption of operation. The owner/operator shall notify the Shiawassee County Zoning Administrator within twenty-four (24) hours of an occurrence of a tower collapse, turbine failure, fire, thrown blade or hub, collector or feeder line failure, or injury.

6. *Additional Standards for Commercial WECS Projects- The following additional standards shall apply to all commercial WECS in Shiawassee County:*

G. Decommissioning Plan and Escrow. The commercial WECS project must contain a Decommissioning Plan to ensure it is properly decommissioned upon the end of the project life, inoperability of individual WECS turbine or facility abandonment. The decommissioning plan shall state how the facility will be decommissioned, the Professional Engineer's estimated cost of decommissioning, the financial resources to be used to accomplish decommissioning, and the escrow agent with which the resources shall be deposited. Within ninety (90) days of receipt of written notification from the County of an abandoned or inoperable WECS or Testing Facility, the owner/operator shall obtain a demolition permit to remove any WECS or testing facility. Decommissioning shall include removal of all equipment associated with the WECS or Testing Facility including all materials above and below ground. The site shall be restored to a condition that reflects the specific character of the site including topography, vegetation, soils, drainage, and any unique environmental features. The restoration shall include: road repair, if any, and all re-grading, soil stabilization, and re-vegetation necessary to return the subject property to a stable condition consistent with conditions existing prior to establishment of the wind energy system. The restoration process shall comply with all state, county, or local erosion control, soil stabilization and/or runoff requirements or ordinances and shall be completed within one (1) year. Failure to obtain a demolition permit within the 90-day period provided in this subsection shall be grounds for the County to remove the WECS or

Testing Facility at the Owner's expense. Extensions may be granted upon request to the Planning Commission prior to that expiration of the one (1) year requirement for completed decommissioning. The decommissioning plan shall also include an agreement between the applicant and the County that:

1. The financial resources for decommissioning shall be in the form of a surety bond or letter of credit and shall be deposited in an escrow account with an escrow agent acceptable to Shiawassee County.
  2. The financial resources for decommissioning shall be equal to the estimated removal and restoration cost. The Planning Commission shall require independent verification of the adequacy of this amount.
  3. During the useful life and operation of the WECS, Shiawassee County Planning Commission may from time to time determine, in its sole discretion, whether the amounts deposited for removal, site restoration, and administration costs are adequate for these purposes. (Costs of removal, restoration and administration may change due to technology, environmental considerations, inflation, and many other causes.) If the County determines that these amounts are not adequate, the County shall require the owner/operator to make additional deposits, to the account described above, to cure such inadequacy.
  4. The County shall have access to the escrow account funds for the expressed purpose of completing decommissioning. If decommissioning is not completed by the applicant within one (1) year of the end of project life, inoperability of individual WECS turbine or facility abandonment. Escrow funds may be used for administrative fees and costs associated with decommissioning.
  5. The County is granted the right of entry onto the site, pursuant to reasonable notice, to effect or complete decommissioning.
  6. The County is granted the right to seek injunctive relief to effect or complete decommissioning, as well as the County's right to seek reimbursement from applicant or applicant successor for decommissioning costs in excess of the amount deposited in escrow and to file a lien against any real estate owned by applicant or applicant's successor, or in which they have an interest, for the amount of the excess, and to take all steps allowed by law to enforce said lien.
- J. Enforcement: The enforcement of the Ordinance shall be the responsibility of the Shiawassee County Zoning Administrator, unless otherwise specified in the ordinance or designated by the County. An owner/operator, landowner, firm, association, corporation or representative agent of any wind energy system that is found by Shiawassee County, or its designee, to be in violation of the special use permit, or to be abandoned, inoperable, or unsafe as defined in this Ordinance, or to have a serious adverse impact as defined in this Ordinance:
1. Shall provide abatement by shut down, repair, or removal of the wind energy system upon written notification from the Zoning Administrator (or other County designee).

2. Shall be subject to all enforcement mechanisms available to the County.
3. May be subject to revocation of the special use permit for excessive and continued violations.
4. May be required to reimburse Shiawassee County for cost(s) and expenses of obtaining other relief including a temporary or permanent injunction; such reimbursement may include costs and reasonable attorney fees.

Staff Comment: By explicitly stating enforcement procedures the County encourages developers to follow the provisions of the Ordinance or accept penalties associated with violating it. Similarly, by outlining decommissioning procedures the County ensures that developers will reclaim wind development sites to their natural state, following the life of a project. The standards set forth above reflect a review of decommissioning and enforcement standards for utility-scale commercial wind developments from nineteen (19) communities across Michigan. Of these communities, all required some type of decommissioning plan; however, the intensity of these standards varied significantly. There was notable consensus among municipal ordinances addressing facility abandonment and performance guarantee. Of the nineteen (19) communities assessed, seventeen (17) required money to be held in escrow for the purposes of decommissioning and eleven (11) of the nineteen (19) communities assessed considered a facility to be abandoned after twelve (12) months with no operation. Regarding performance guarantee, the amount money required in escrow varied from “at the developer’s discretion” to “100% of the decommissioning cost”. Several communities included enforcement provisions, however each community varied significantly in their approach. As a result, the County has decided to explicitly state enforcement measures for WECS facilities and utilize existing enforcement procedures outlined in Section 17 of the Ordinance.

Overall, due to the rather inconsistent nature of the decommissioning and enforcement standards within the communities evaluated, this proposal also relies upon recommendations from the *Sample Zoning for Wind Energy Systems*, produced by Michigan State University and the Greening Michigan Institute. The article suggests that “There should also be an administrative system for periodic review of the decommissioning plan to make sure the amount of performance guarantee and other aspects of the plan are updated... to make sure the decommissioning funds cover costs 20-30 years down the road when it is decommissioned.” (2017, page 20). In developing the recommended amendments, it was found that the current language used by Shiawassee County was within reason given other community standards and suggested requirements from Michigan State University.