

APPLICATION FOR **TEXT AMENDMENT** UNDER THE REGULATIONS OF THE McLEAN COUNTY ZONING ORDINANCE

<p align="center">APPLICANT</p> <p>NAME: McLean County Zoning Board of Appeals ADDRESS: 115 E Washington Street, Room M102 Bloomington, IL 61701 PHONE: - home: work: 309-888-5160</p>	<p align="center">FOR OFFICIAL USE ONLY</p> <p align="center">CASE NO.: ZA - 20 - 01</p>																					
<p align="center">ATTORNEY</p> <p>NAME: ADDRESS: PHONE:- home: work:</p>	<table> <tr><td>FILING FEE</td><td>\$ 0.00</td></tr> <tr><td>RECEIPT NO.</td><td></td></tr> <tr><td>PUB. COSTS</td><td>\$129.56 2/15/20</td></tr> <tr><td>RECEIPT NO.</td><td></td></tr> <tr><td>HEARING DATE</td><td>3-3-20</td></tr> <tr><td>HEARING TIME</td><td>7-20-20</td></tr> <tr><td>DECISION DATE</td><td>7:30 p.m. 3/3/20</td></tr> <tr><td></td><td>7:15 p.m. 7/20/20</td></tr> <tr><td></td><td>8/18/20</td></tr> <tr><td></td><td>11/17/20</td></tr> </table>	FILING FEE	\$ 0.00	RECEIPT NO.		PUB. COSTS	\$129.56 2/15/20	RECEIPT NO.		HEARING DATE	3-3-20	HEARING TIME	7-20-20	DECISION DATE	7:30 p.m. 3/3/20		7:15 p.m. 7/20/20		8/18/20		11/17/20	<p align="center">RECEIVED</p> <p align="center">11-2-20 FEB 10 2020</p> <p align="center">7:15 p.m. 11-2-20</p> <p align="center">ZONING</p>
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Application is hereby made to amend Section **350-21, 26, 42 and 43** of the text of the McLean County Code as attached.

(Please attach amendment in exact language proposed.)

Section 350-21. Amendments

Section 350-26. Definitions

Section 350-42. Use Table

Section 350-43. Use Standards

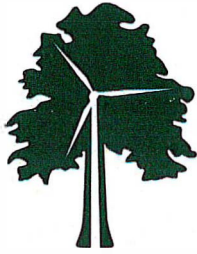
Text Amendment

Chapter 350 of the McLean County Code

The McLean County Zoning Ordinance

(Additions are indicated by text and stricken material by ~~text~~)

OO(2)(p)[1][e], Financial assurance, secured by the WECS (Wind Energy Conversion System) owner or wind project operator, for the purpose of adequately performing decommissioning. The applicant shall set up an escrow account or an irrevocable letter of credit as a decommissioning fund in the amount of at least \$35,000 per WECS tower beginning 12 years after the start of the commercial operations, shall remove the project infrastructure, restore the leased premises to its original condition, and remove the foundation pedestal to 40 inches below grade following the project's useful life according to the decommissioning plan as submitted with this application;



TWIN GROVES
WIND FARM®

Twin Groves Wind Farm
Operations & Maintenance Office
13682 N 2900 East Road
Ellsworth, IN 61737

317.636.0866 phone
309.724.8216 fax

Wind farms owned by High Trail Wind Farm, LLC & Old Trail Wind



renewables

August 26, 2020

VIA CMRRR AND ELECTRONIC MAIL

Mr. Philip Dick
Director
McLean County Department of Building and Zoning
115 East Washington Street, Room M102
Bloomington, IL 61702-2400

**RE: Establishment of Decommissioning Fund under McLean County Case Number SU-05-09
Request for Special Use Permit**

Dear Phil,

McLean County (the "County") issued a Special Use Permit to High Trail Wind Farm, LLC ("Twin Groves I") and Old Trail Wind Farm ("Twin Groves II", and collectively with Twin Groves I, the "Projects") under Case No. SU-05-09 (the "SUP"). As outlined in Section 3 of the Findings of Fact and Recommendation of the McLean County Zoning Board of Appeals for the SUP, the Projects are required to establish a decommissioning fund beginning twelve years after commercial operations began, in accordance with land lease agreements between the Projects and the land owners. The land lease agreements allow the Projects to select the form of decommissioning security. As you are aware, the Projects have been working to identify feasible decommissioning security mechanisms to meet the SUP and lease obligations.

Based on our inquiries with multiple United States based banks, we believe an escrow account as decommissioning security (similar to the requirements set out in § 350-43 OO.(p)[1][e] of the McLean County Zoning Ordinance) is not the best option for us or for the landowners, due to the burdensome "Know Your Customer" (KYC) process, additional transactional costs, and limited additional security it offers. The Projects intend to issue a Letter of Credit, to ensure compliance with land lease decommissioning requirements. The Letter of Credit provides the same protection as an Escrow Account in case the Projects were to default on their decommissioning obligation at the end of project life.

We appreciate the consideration of McLean County in postponing the hearing until remote testimony and questions are available, or travel can be conducted without increasing COVID19 transmission risk for Zoning Board members, EDPR staff, or hearing attendees.

For any questions, please contact Dustin Priemer at 713-428-6757 or dustin.priemer@edpr.com.

Sincerely,

High Trail Wind Farm, LLC
Old Trail Wind Farm, LLC

DocuSigned by:



1AA8B44331BC410...

Brian Hayes

Executive Vice President, Asset Operations

TRB

From: Dennis iPad dwinfarm@maxwire.net
Subject: Tonight's ZBA agenda item - Case ZA-20-01
Date: Mar 3, 2020 at 12:29:36 PM
To: Philip.Dick@mcleancountyil.gov, admin@mcleancountyil.gov
Cc: Darrell.Mitchell@mcleancountyil.gov

On tonight's agenda is an item under Case ZA-20-01...

#5) To amend Section 350-43, OO(2)(p)(e), Use Standards, to allow an irrevocable letter of credit, in addition to an escrow account, as adequate financial assurance in a decommissioning fund for a Wind Energy Conversion System. This is a recommendation to the County Board.

First, I'd like to remind you that the Agriculture Impact Mitigation Agreement (AIMA) created by the Illinois Department of Agriculture (IDOA) and required for any land impacted by a wind energy facility, has a specific section "21. Deconstruction of Commercial Wind Energy Facilities and Financial Assurance", which is more restrictive than the current McLean County ordinance section 350-43 (p) in question. The AIMA clearly states on page 1, "A. All Construction or Deconstruction activities may be subject to County or other local requirements. However, the specifications outlined in this AIMA shall be the minimum standards (emphasis added) applied to all Construction or Deconstruction activities."

The changing of this Ordinance section 350-43(p) with regards Decommissioning is inappropriate, unless the change is to specifically refer to the AIMA which controls these provisions.

For instance, the AIMA Section 21(D) requires the Wind facility provide the County with Financial Assurance to cover ten (10) percent of the estimated costs of Deconstruction on or before the first anniversary of the Commercial Operation Date, fifty (50) percent on or before the sixth anniversary, and one hundred (100) percent on or before the eleventh anniversary.

The AIMA Section 21(B)(3) requires wind turbine foundations be removed to a depth of 5 feet (i.e.: 60 inches below grade).

Again, changing the provisions of this section 350-43(p) of the McLean County ordinance as currently being recommended is inappropriate. Any changes to this section should align the language with that of the AIMA or require more stringent provisions than the AIMA currently requires. The current McLean County ordinance language referring to the decommissioning fund beginning 12 years after the start of operations, and only requiring removing the foundation pedestal to 40 inches below grade are confusing and inaccurate. If a change is to be recommended, it should be fully considered and incorporate all needed revisions.

Obj. Ex. 1

ZA-20-01

Further, with regard to allowing an irrevocable letter of credit instead of requiring an escrow account be established, I will point out three things:

1) According to the AIMA, McLean County is the primary beneficiary of this financial assurance. The landowners are secondary beneficiaries only, and would have rights only in the event the County declines to take any action for Deconstruction. It seems inaction by the County would be highly unlikely.

2) Establishing an escrow account, with McLean County listed as primary benefactor, would result in the most secure / least risky form of financial assurance for the County. Letting the escrow funds grow at compounded interest for 30 or more years, would help offset potential increasing costs of Decommissioning.

3) If McLean County felt an Irrevocable Letter of Credit was the best choice to provide financial assurance to the County and its Landowners, the County should require the Guarantor Bank be a reputable / well known United States Bank, that the Letter of Credit include standard / known legal language and that the Letter of Credit not be sold or re-negotiated with any International Bank or other entity which would require different requirements and/or regulations than originally required.

Finally, Mr. Dick, I am requesting permission to speak at tonight's Zoning Board of Appeals meeting regarding the information included in this email. Thank you.

Amy Winterland
22825 N 3075 East Rd
Colfax, IL 61728
[309-825-6861](tel:309-825-6861)

Wind Farm	Approved	County Ordinance/Special Use Permit	AIMA
Twin Groves (aka High Trail/Old Trail) Case #SU-05-09	9/20/2009	SUP Standard #3: The applicant will set up an <u>escrow account in the amount of \$25,000 per wind turbine beginning twelve years after the start of commercial operation.</u>	N/A
White Oak Case # SU-06-19	3/20/2007	SUP Standard #3: The applicant will set up an <u>escrow account in the amount of \$25,000 per wind turbine beginning twelve years after the start of commercial operation.</u>	N/A

State Legislation Require Agricultural Impact Mitigation Agreement (AIMA) for Wind Energy effective July 24, 2015

County Ordinance amended as of November 15, 2016:

350-43 OO.(2) (p) Decommissioning Plan 1 [e]

Financial assurance, secured by the WECS owner or wind project operator, for the purpose of adequately performing decommissioning. The applicant shall set up an escrow account as a decommissioning fund in the amount of at least \$35,000 per WECS tower beginning 12 years after the start of commercial operations, shall remove the project infrastructure, restore the leased premises to its original condition, and remove the foundation pedestal to 40 inches below grade following the project's useful life according to the decommissioning plan as submitted with this application; and

Wind Farm	Approved	County Ordinance/Special Use Permit	AIMA
Bright Stalk Case #SU-18-02	3/20/2008	SUP Condition #7: (similar language is also listed under Standard #3) <u>Adequate financial assurance acceptable to the County shall be submitted with the County according to the application and the Decommissioning Plan submitted with the Agricultural Impact Mitigation Agreement (AIMA) with the Illinois Department of Agriculture. This assurance requires 10% of the estimated deconstruction cost on or before the first year, 50% on or before the sixth year and 100% on or before the 11th year. The applicant shall re-evaluate the estimate costs of deconstruction after the tenth anniversary and every five years thereafter. Based on such re-evaluation, the County shall require changes in the level of financial assurance.</u>	Yes
Lexington Chenoa Wind Farm (aka Blooming Grove) Case #SU-17-11	2/20/2018	SUP Standard #3: The application includes a decommissioning plan and decommissioning obligation cost evaluation. <u>The cost estimate per turbine is \$52,809. The applicant will post adequate security with the County to ensure compliance with the decommissioning plan.</u> SUP Stipulation #7: <u>Financial assurance acceptable to the County shall be provided to the County according to the decommissioning plan submitted with the application. Beginning 12 years after the start of commercial operation, the WECS owner shall provide financial assurance to the County for removal costs of at least \$52,809 per turbine or \$5,280,950 for total decommissioning costs.</u>	Yes

*Use actual
Supporters (x)*

ZA-20-01

Wind Farm	AIMA Signed	Financial Assurance Definition	Decommissioning Language (paraphrased)
Bright Stalk	2/7/2018	A reclamation bond or other commercially available financial assurance that is acceptable to the County, <u>with the County as primary beneficiary and the Landowners as secondary beneficiaries</u>	AIMA Section 21 B-D B. Commercial Wind Energy Facility Owner shall, at its expense, complete Deconstruction within eighteen (18) months after the end of the Useful Life C. Commercial Wind Energy Facility Owner shall file with the County, a Deconstruction Plan during permit process & again at year 10 of commercial operation D. The Commercial Wind Energy Facility Owner shall provide the County with Financial Assurance to cover the estimated costs of Deconstruction <ol style="list-style-type: none"> 1. 10% of estimated decommissioning costs on or before the first anniversary of commercial operation 2. 50% of estimated decommissioning costs on or before the sixth anniversary of commercial operation 3. 100% of estimated decommissioning costs on or before the eleventh anniversary of commercial operation
Lexington Chenoa Wind Farm (aka Blooming Grove)	12/21/2017	A reclamation bond or other commercially available financial assurance that is acceptable to the County, <u>with the County as beneficiary.</u>	



A wind farm owned by Lexington Chenoa Wind Farm LLC, Lexington Chenoa Wind Farm II LLC, and Lexington Chenoa Wind Farm III LLC

Bright Stalk Wind Farm
3001 ½ Gill Street, Unit A
Bloomington, IL 61704

February 10, 2020

VIA CMRRR AND ELECTRONIC MAIL

Mr. Philip Dick
Director
McLean County Department of Building & Zoning
115 East Washington
Bloomington, Illinois 61702

RE: Establishment of Decommissioning Fund for WECS under The McLean County Zoning Ordinance

Dear Mr. Dick,

McLean County Ordinance Chapter 350 (the "Ordinance") requires a Wind Energy Conversion System project (a "Project") to provide financial assurance for the costs of decommissioning as further described in Section 350-43(OO)(p)(1)(e). Specifically, a Project is required to establish an escrow account beginning twelve years after commercial operations began. Lexington Chenoa Wind Farm LLC ("Bright Stalk"), as an operator of wind farms in McLean County has been working to identify feasible financial security mechanisms to meet the financial assurance obligations. This letter outlines a proposed structure for consideration by the County.

Two types of financial security have been evaluated as options to fulfill the decommissioning fund obligation: (i) a cash escrow account and (ii) a standby letter of credit. A cash escrow is a cash account managed by a third party on behalf of two other parties engaged in a transaction. If the issuing party defaults on its obligation the beneficiary party can access the cash account pursuant to agreed upon terms. A standby letter of credit is a letter from a bank guaranteeing that payment will be made by the issuer to the beneficiary(ies) upon demand in accordance with the terms of the letter of credit. In the event that the issuer is unable to make a payment, the bank will be required to cover the full or remaining amount.

Escrow Account Findings.

Initial conversations with major United States banks have presented several challenges in establishing a cash escrow to meet this obligation for the following reasons:

- The banks are reluctant or unwilling to create and manage an escrow account with so many beneficiaries. An escrow with more than 70 beneficiaries is impractical and creates a great deal of compliance risk for the banks.

- Each landowner would be required to become a customer of the bank. To become a customer, each landowner would be required to submit proof of identity and other personal and business information to the bank acting as the escrow agent due to “Know Your Customer” rules. The customer information would have to be kept up to date throughout the 30-year life of the account.
- The bank may or may not accept each landowner as a customer. If the bank rejects a landowner as a customer, they would not have access to the escrow account. There is also no guarantee that all landowners will be willing to submit the required information and become customers of the bank managing the escrow account.
- Each time a property within a Project is sold, inherited, transferred, or experiences some other change in ownership structure, the new landowner(s) would have to become a customer of the bank. This puts an additional burden on the landowners, the Project, and the bank, and there is again the risk that a new landowner would not be accepted as a customer by the bank.

A letter of credit eliminates many of these concerns. The landowners would have no obligations until and if they need to make a claim on the letter of credit. At that time, the requirements to make a claim under a letter of credit are similar to the requirements to make a claim under an escrow agreement.

Based on our evaluation, Bright Stalk believes that a letter of credit is the best form of financial security to meet the decommissioning fund obligation under the Ordinance. Typical lease agreements allow for various forms of security, including letters of credit. Therefore, the landowners have already approved of this form of financial security. Bright Stalk requests that the Ordinance be amended to specifically authorize a Project to utilize a standby letter of credit, in a form acceptable to the County, to meet the decommissioning fund obligations described in the Ordinance.

For any questions, please contact Dustin Priemer at 713-428-6757 or dustin.priemer@edpr.com.

Sincerely,

High Trail Wind Farm, LLC
Old Trail Wind Farm, LLC



Brian Hayes
Executive Vice President, Asset Operations



A wind farm owned by Lexington Chenoa Wind Farm LLC, Lexington Chenoa Wind Farm II LLC, and Lexington Chenoa Wind Farm III LLC

Bright Stalk Wind Farm
3001 ½ Gill Street, Unit A
Bloomington, IL 61704

February 10, 2020

VIA CMRRR AND ELECTRONIC MAIL

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Director
McLean County Department of Building & Zoning
115 East Washington
Bloomington, Illinois 61702

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Based on our evaluation, Bright Stalk believes that a letter of credit is the best form of financial security to meet the decommissioning fund obligation under the Ordinance. Typical lease agreements allow for various forms of security, including letters of credit. Therefore, the landowners have already approved of this form of financial security. Bright Stalk requests that the Ordinance be amended to specifically authorize a Project to utilize a standby letter of credit, in a form acceptable to the County, to meet the decommissioning fund obligations described in the Ordinance.

For any questions, please contact Dustin Priemer at 713-428-6757 or dustin.priemer@edpr.com.

Sincerely,

High Trail Wind Farm, LLC
Old Trail Wind Farm, LLC



Brian Hayes
Executive Vice President, Asset Operations



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Operations & Maintenance Office
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February 10, 2020

VIA CMRRR AND ELECTRONIC MAIL

Mr. Philip Dick
Director
McLean County Department of Building & Zoning
115 East Washington
Bloomington, Illinois 61702

**RE: Establishment of Decommissioning Fund under McLean County Case Number SU-05-09
Request for Special Use Permit**

Dear Mr. Dick,

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Escrow Account Findings.

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Based on our evaluation, the Projects believe that a letter of credit is the best form of financial security to meet the decommissioning fund obligation under the SUP and the lease agreements. The Projects' lease agreements allow for various forms of security, including letters of credit. Therefore, the landowners have already approved of this form of financial security. The Projects request that the SUP be amended to specifically authorize the Projects to utilize a standby letter of credit, in a form acceptable to the County, to meet the decommissioning fund obligations described in the SUP.

For any questions, please contact Dustin Priemer at 713-428-6757 or dustin.priemer@edpr.com.

Sincerely,

High Trail Wind Farm, LLC
Old Trail Wind Farm, LLC



Brian Hayes
Executive Vice President, Asset Operations