

Chapter PSC 128

WIND ENERGY SYSTEMS

Subchapter I General

Subchapter II Developer Requirements

Subchapter III Political Subdivision Procedure

Subchapter IV Commission Procedure

Subchapter I

General

PSC 128.01 Definitions. In this chapter:

(1) "Commission" means the public service commission.

(2) "Developer" means a person involved in acquiring the necessary rights, permits and approvals, and otherwise planning for the construction and operation of a wind energy system, regardless of whether the person will own or operate the wind energy system. "Developer" includes, prior to completion of construction of a wind energy system, an owner or operator.

[Check who (developer, owner or operator) is responsible for, or subject to, all requirements in following substantive provisions.]

(3) "Decommissioning" means removal of all of the following:

(a) The above ground portion of a wind energy system, including the wind turbine and related facilities.

- 1 (b) All below ground facilities, except for concrete structures and underground collector circuit
2 facilities four feet or more below grade.
- 3 (4) “DNR” means the Wisconsin department of natural resources.
- 4 (5) “Large wind energy system” means a wind energy system with an installed nameplate
5 capacity of greater than or equal to _____.
- 6 (6) “Maximum blade tip height” means the nominal hub height plus the nominal blade length, as
7 listed in the wind turbine specifications provided by the wind turbine manufacturer.
- 8 (7) “Nameplate capacity” means
- 9 (8) “Nonparticipating property” means real property for which there is no agreement between the
10 landowner and a developer that permits the construction of any part of a wind energy system on
11 the property.
- 12 (9) “Nonparticipating residence” means an occupied permanent residence located on a
13 nonparticipating property.
- 14 (10) “Occupied building” means a school, hospital, church, or public library.
- 15 (11) “Owner or operator” means a person involved in the operation or maintenance of a wind
16 energy system, or with a direct or indirect ownership interest in a wind energy system, or both.
- 17 (12) “Participating property” means any of the following:
- 18 (a) Real property which is subject to an agreement between the landowner and the developer for
19 the construction of any portion of a wind energy system on the property.
- 20 (b) Real property that is the subject of an agreement that includes all of the following:
- 21 1. Provides for the payment of monetary compensation to the landowner from the developer
22 notwithstanding that no part of a wind energy system may be constructed on the property.

1 2. Specifies in writing that the landowner's acceptance of payment establishes the landowner's
2 property as a participating property.

3 **(13)** "Political subdivision" has the meaning given in s. 66.0401 (1e) (c), Stats.

4 **(14)** "Regulation" includes any ordinance or resolution adopted by the governing body of a
5 political subdivision relating to a wind energy system or any contract or agreement entered into
6 by a political subdivision and a developer relating to a wind energy system.

7 *[Use of this term, or a similar term, needs to be made consistent in the draft. Currently,*
8 *terms like ordinance, resolution, or agreement may appear in the draft.]*

9 **(15)** "Shadow flicker" means a pattern of changes in light intensity resulting from the shadow of
10 rotating wind turbine blades being cast on a residence or occupied building.

11 **(16)** "Small wind energy system" means a wind energy system that has an installed nameplate
12 capacity of less than _____.

13 **(17)** "Turbine host property" means real property which is subject to an agreement between a
14 landowner and a developer for the construction of one or more wind turbines.

15 **(18)** "Wind easement" means ...[to be added].

16 **(19)** "Wind energy system" has the meaning given in s. 66.0403 (1) (m), Stats.

17 **(20)** "Wind lease" means ...[to be added]

18

19 **PSC 128.02 Applicability. (1)** (a) This chapter applies to all wind energy systems, except as
20 noted in this section and in s. 196.491 (3) (dg), Stats.

21 (b) This chapter does not apply to any of the following:

22 1. A wind energy system for which a certificate of public convenience and necessity application
23 has been filed with the commission before the effective date of this chapter...[LRB inserts date].

1 2. A wind energy system for which construction began before the effective date of this chapter
2 ...[LRB inserts date].

3 3. A wind energy system placed in operation before the effective date of this chapter ... [LRB
4 inserts date].

5 4. A wind energy system approved by a political subdivision before the effective date of this
6 chapter ... [LRB inserts date].

7 5. A wind energy system proposed by a developer in an application filed before the effective date
8 of the chapter ... [LRB inserts date] with a political subdivision that has an established procedure
9 for review of applications for wind energy systems.

10 (c) If a developer intends to submit an application for the installation or use of a wind turbine
11 with a maximum blade tip height exceeding 450 feet or for a wind energy system proposed to be
12 located in a waterway or wetland, the developer shall file a petition with the commission for the
13 commission to promulgate rules for the use and installation of such wind energy systems.

14 (2) Nothing in this chapter shall preclude the commission from giving individual consideration to
15 exceptional or unusual situations and applying requirements to individual wind energy systems
16 that may be lesser, greater, or different from those provided in this chapter.

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Subchapter II

19

Developer Requirements

20

21 **PSC 128.10 Development of a wind energy system; Notice requirements. (1) GENERAL**

22 NOTIFICATION REQUIREMENTS. (a) At least [nnn] days before a developer files an

23 application to construct a large wind energy system or before the planned start of construction of

1 a large wind energy system, whichever is earlier, and at least [nnn] days before a developer files
2 an application to construct a small wind energy system or before the planned start of construction
3 of a small wind energy system, whichever is earlier, a developer shall provide notice of the
4 planned wind energy system to landowners within [x mile(s)] of the planned wind energy system
5 and to all political subdivisions within which the wind energy system may be located. For a
6 large wind energy system, a developer shall file a copy of the notice with the commission.

7 (b) The developer shall include all of the following in the notice under par. (a):

- 8 1. A description of the wind energy system.
- 9 2. A description of the planned location of the wind energy system.
- 10 3. Contact information for the developer.
- 11 4. A list of all potential permits or approvals the developer anticipates may be necessary for
12 construction of the wind energy system.
- 13 5. Whether the developer is requesting a joint application review process under s. PSC 128.30(7)
14 and the names of any other political subdivision that may participate in the joint review process.

15 **(2) DNR NOTIFICATION.** (a) At least [nn] days before a developer files an application to
16 construct a wind energy system or before the planned start of construction of a wind energy
17 system, whichever is earlier, the developer shall notify the DNR of the proposed wind energy
18 system. A developer shall consult with the DNR and incorporate into wind turbine siting
19 decisions required permitting considerations for wetlands, waterways, and threatened or
20 endangered resources.

21 **(3) HISTORICAL SOCIETY NOTIFICATION.** At least [nn] days before a developer files an
22 application to construct a wind energy system or before the planned start of construction of a
23 wind energy system, whichever is earlier, the developer shall notify the Wisconsin Historical

1 Society of the proposed wind energy system. A developer shall consult with and follow the
2 recommendations of the Wisconsin Historical Society to minimize impacts on archeological and
3 other historic resources.

4 **(4) TRANSPORTATION NOTIFICATIONS.** (a) At least **[nn]** days before a developer files an
5 application to construct a wind energy system or before the planned start of construction of a
6 wind energy system, whichever is earlier, the developer shall notify the Wisconsin Department
7 of Transportation of the proposed wind energy system and shall also notify the highway
8 department of any political subdivision within which the wind energy system may be located.

9 (b) For a large wind energy system, a developer shall prepare a transportation plan, in
10 consultation with the Department of Transportation and affected political subdivisions, that takes
11 traffic patterns and road weight limits into account and provides for repair of road damage
12 related to construction and operation of the wind energy system at the developer, owner or
13 operator's expense.

14 **(5) EMERGENCY SERVICE NOTIFICATIONS.** (a) At least **[nn]** days before a developer files
15 an application to construct a wind energy system or before the planned start of construction of a
16 wind energy system, whichever is earlier, the developer shall notify first responders and air
17 ambulance services serving any political subdivision within which the wind energy system may
18 be located of the proposed wind energy system.

19 (b) For a large wind energy system, the developer shall consult and coordinate with local first
20 responders and air ambulance services regarding the development of an emergency evacuation
21 plan, including the locations of alternate landing zones for emergency services aircraft. The plan
22 shall include provisions for public inspection of the plan, as appropriate. The developer shall file
23 the final plan with the political subdivision, using confidential filing procedures if necessary.

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PSC 128.11 Encumbrances on real property. (1) WIND EASMENT OR WIND LEASE. (a)

A property owner may grant another person a wind easement or wind lease in the same manner and with the same effect as a conveyance of an interest in real property. A wind easement or wind lease shall be in writing and shall be filed with the register of deeds for the county in which the property is located.

[The wind lease and wind easement language needs work. If two separate types of documents, and possibly three as the wind easement may apply to two different situations, they need to be clearly described and differentiated. Later provisions in the rule should be reviewed to ensure they apply to the correct type of document.]

(b) A wind easement or wind lease may not be signed by the property owner until at least **[nn]** business days after the property owner receives the first proposed wind easement or wind lease.

(2) WIND EASMENT OR WIND LEASE REQUIREMENTS. A wind easement or wind lease shall include provisions to do all of the following:

(a) Require the developer, owner and operator of the wind energy system to comply with all federal, state and local laws and regulations associated with the wind energy system.

(b) Permit the property owner to terminate the wind easement or wind lease if the portion of the wind energy system located on the property has not operated for a period of at least **[nnnn]** days unless the property owner receives the normal minimum payments that would have occurred if the wind energy system had been operating during that time. In this paragraph, “normal minimum payments” means the minimum payments as provided in the wind easement or wind lease, or if not provided for in the wind easement or wind lease, payments at least equal to the

1 periodic payments received by the property owner in the last calendar year that the wind energy
2 system was in full operation.

3 (c) Specify the circumstances under which the developer, owner or operator of the wind energy
4 system may withhold payments from the property owner.

5 **(3) WIND EASMENT OR WIND LEASE PROHIBITIONS.** A wind easement or wind lease
6 may not include provisions that do any of the following:

7 (a) Require the parties to maintain the confidentiality of any terms of a proposed wind lease or
8 wind easement except that the parties may include a confidentiality agreement regarding the
9 compensation terms contained in the final signed wind easement or wind lease.

10 (b) Make the property owner liable for any property tax associated with the wind energy system
11 or other equipment related to the production of electricity by the wind energy system.

12 (c) Make the property owner liable for any violation of federal, state or local laws and
13 regulations by the developer, owner or operator of the wind energy system.

14 (d) Make the property owner liable for any damages caused by the wind energy system or the
15 operation of the wind energy system, including liability or damage to the property owner or to
16 third parties.

17

18 **PSC 128.12 Developer Considerations. (1) EXISTING PROPERTY USES.** (a) A developer
19 shall make reasonable efforts to ascertain the existing land uses of and commercial enterprises
20 located on nonparticipating properties within **[nnnn feet or x mile(s)]** of a proposed wind
21 turbine site.

22

- 1 **PSC 128.13 Siting criteria.** (1) LOCATION AND HEIGHT REQUIREMENTS. (a) A
- 2 developer shall design and construct a wind energy system using the wind turbine setbacks
- 3 shown in Table 1.

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Table 1	
Setback Description	Setback Distance
Occupied Buildings	n feet or x times the maximum blade tip height
Participating Residences	n feet or x times the maximum blade tip height
Nonparticipating Residences	n feet or x times the maximum blade tip height
Participating Property Lines	None
Nonparticipating Property Lines	x times the maximum blade tip height
Public Road Right-of-Way	x times the maximum blade tip height
Cemetery Property Line	n feet
Wetlands; Ordinary High Water Mark of Lakes and Waterways	n feet
Overhead Communication and Electric Transmission or Distribution Lines - Not including utility service lines to individual houses or outbuildings	x times the maximum blade tip height
Overhead Utility Service Lines - Lines to individual houses or outbuildings	None

1 (b) Wind turbine setback distances shall be measured as a straight line from the vertical
2 centerline of the wind turbine tower to the nearest point on the permanent foundation of a
3 building or residence or to the nearest point on the property line or feature, as applicable.

4 (c) A developer shall work with a political subdivision to site wind turbines to minimize
5 individual hardships.

6 (d) The owner of a participating residence, occupied building or nonparticipating residence may
7 waive the wind turbine setbacks in Table 1 for those structures, except that the setback shall not
8 be less than [x] times the maximum blade tip height.

9 **(2) POLITICAL SUBDIVISION CRITERIA.** (a) A political subdivision may not establish
10 location or height requirements different than those in this chapter.

11 (b) For a wind energy system with a maximum blade tip height less than 100 feet, a political
12 subdivision may establish wind turbine setback requirements from occupied buildings and
13 participating and nonparticipating residences that are less restrictive than those in Table 1, except
14 that the setback from an occupied building, participating residence or nonparticipating residence
15 may not be less than [x] times the maximum blade tip height.

16 (c) A political subdivision may not set height or location limitations for a wind turbine near a
17 public use airport or heliport that are more restrictive than existing airport and airport approach
18 protection limitations under ss. 114.135 and 114.136, Stats. If no limitations have been
19 established under ss. 114.135 or 114.136, Stats., the political subdivision may adopt wind turbine
20 height or location limitations that are based on, but not more restrictive than, the federal aviation
21 administration obstruction standards in CFR title 14, part 77.

1 (d) A political subdivision may not set height or location limitations for wind turbines near a
2 private medical facility heliport used for air ambulance service that are more restrictive than
3 federal aviation administration obstruction standards that apply to public use heliports.

4 (e) A political subdivision [**may / may not**] set height or location limitations for a wind turbine
5 near a private use airport.

6 (f) A political subdivision may not establish long-term land use planning requirements or
7 practices that preclude the construction of a wind turbine or a wind energy system within the
8 political subdivision's jurisdiction.

9 **(3) LINE-OF-SIGHT COMMUNICATION TECHNOLOGIES STANDARD.** The developer,
10 owner or operator may not construct wind energy system facilities within the path of line-of-
11 sight communication technologies. A political subdivision may require a developer to provide
12 information showing that wind turbines and other wind energy system facilities will not be
13 placed within the path of line-of-sight technologies.

14
15 **PSC 128.14 Noise Criteria. (1) PLANNING.** A developer shall consider the noise standards in
16 this section in wind turbine siting decisions.

17 **(2) NOISE STANDARD.** (a) Compliance with noise limits shall be measured or otherwise
18 evaluated at the outside wall of the nonparticipating residence or occupied building. If sound
19 level measurements are used to evaluate compliance, those measurements shall be made at the
20 outside wall nearest to the closest wind turbine, or at an alternate wall as specified by the
21 resident. The developer may take additional measurements to evaluate compliance in addition to
22 those specified by this section.

1 (b) A developer shall operate the wind energy system in a manner that does not exceed [nn] dBA
2 at any nonparticipating residence or occupied building existing on the date of approval of the
3 wind energy system by the political subdivision.

4 **(3) MITIGATION.** (a) Upon complaint by an affected nonparticipating resident or occupied
5 building owner, the developer, owner or operator shall test for compliance with the noise limits.
6 If the noise limit is exceeded at a nonparticipating residence or hospital during nighttime hours,
7 the noise limit for those areas related to the complaint shall be reduced to [nn] dBA during
8 nighttime hours and the developer, owner or operator shall ensure the seasonally-reduced
9 nighttime noise limit is met. For purposes of this paragraph, nighttime hours are the hours
10 between 10:00 p.m. to 6:00 a.m. daily, from April 1 to September 30.

11 (b) Methods available for the developer, owner or operator to comply with noise limits shall
12 include operational curtailment of a wind turbine.

13 (c) A developer shall provide notification of the requirements of this section to potentially-
14 affected owners of nonparticipating residences and occupied buildings before the initial
15 operation of the wind energy system.

16 (d) In the event audible noise due to wind energy system operations contains a steady pure tone,
17 such as a whine, whistle, screech, or hum, the developer, owner or operator shall promptly take
18 corrective action to eliminate the cause of the steady pure tone. Operational curtailment of a
19 wind turbine during nighttime hours may be used to comply with this paragraph until the cause
20 of the steady pure tone can be permanently eliminated. This paragraph does not apply to
21 rhythmic sound that may be generated by the rotation of wind turbine blades.

22 (e) The commission shall establish a noise measurement protocol, which shall contain minimum
23 requirements for pre- and post-construction noise studies. The commission may revise the noise

1 measurement protocol as necessary. The commission shall make the noise measurement
2 protocol available to the public on the commission's website.

3 (f) A developer shall evaluate compliance with the noise limits as part of pre- and post-
4 construction noise studies. A developer shall conduct a noise study as described in the most
5 current version of the noise measurement protocol.

6 (g) An affected resident may relieve the developer of the requirement to meet any of the noise
7 requirements in this section by written contract with the developer. Unless otherwise provided in
8 a contract signed by an affected resident who is the owner of the affected real property, a waiver
9 by an affected resident is not an encumbrance on the resident's real property and does not run
10 with the land.

11
12 **PSC 128.15 Shadow flicker.** (1) PLANNING. A developer shall consider shadow flicker in
13 wind turbine siting decisions. A developer shall plan the proposed wind energy system in a
14 manner that avoids causing shadow flicker at an occupied building or participating or
15 nonparticipating residence to the extent reasonably practicable. A developer shall use shadow
16 flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by
17 the wind energy system.

18 (2) STANDARD. The developer shall design a wind energy system so that computer modeling
19 indicates that no nonparticipating residence would experience more than **[nn]** hours annually of
20 shadow flicker.

21 (3) MITIGATION. (a) A developer, owner and operator shall work with a landowner to mitigate
22 the effects of shadow flicker. The developer shall provide shadow flicker mitigation for a
23 residence experiencing **[nn]** hours per year or more of shadow flicker. The developer shall

1 model shadow flicker and a residence is eligible for mitigation if computer modeling shows that
2 shadow flicker exceeds [nn] hours per year at the residence. The property owner of the
3 residence is not required to document the actual hours per year of shadow flicker if modeling
4 indicates the residence is eligible for mitigation. A residence that exceeds [nn] hours per year of
5 shadow flicker based on records kept by the resident shall also be eligible for mitigation.

6 (b) A developer, owner or operator may provide shadow flicker mitigation for residences
7 experiencing less than [nn] hours per year of shadow flicker.

8 (c) The requirement under par. (a) to mitigate shadow flicker at an eligible residence is triggered
9 when the developer, owner or operator receives a complaint regarding shadow flicker. If shadow
10 flicker mitigation is required, the developer, owner or operator shall allow the resident to choose
11 a preferred reasonable mitigation technique, including installation of blinds or plantings at the
12 developer, owner or operator's expense.

13 (d) A developer shall provide notification to potentially-affected residents of the provisions of
14 this section before initial operation of the wind energy system.

15 (e) An affected resident may by written contract waive the developer, owner or operator's
16 requirement to provide shadow flicker mitigation. A waiver by an affected resident is not an
17 encumbrance on the resident's real property and does not run with the land.

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19 **PSC 128.16 Signal interference. (1) PLANNING.** A developer shall consider radio, television
20 and cellular telephone signal interference in wind turbine siting decisions and shall plan the
21 proposed wind energy system in a manner that avoids causing such interference to the extent
22 practicable. A political subdivision may establish standards regarding radio, television, cellular

1 telephone interference by ordinance or by agreement with a developer, owner or operator on a
2 case by case basis.

3 **(2) RADIO AND TELEVISION INTERFERENCE MITIGATION.** Before implementing
4 remedial measures, the developer, owner or operator shall consult with affected residents
5 regarding the resident's preferred reasonable mitigation solution for radio and television
6 interference problems. A developer, owner or operator shall mitigate interference by making a
7 resident's preferred reasonable mitigation solution permanent.

8 **(3) CELLULAR TELEPHONE INTERFERENCE MITIGATION.** The developer shall work
9 with affected cellular providers to provide adequate coverage in the affected area. Acceptable
10 mitigation techniques for lost or weakened cellular telephone communications shall include
11 installing an additional micro cell, cell, or base station facility to fill in the affected area. The
12 micro cell, cell, or base station may be installed on a structure within the wind energy system.

13
14 **PSC 128.17 Stray voltage.** **(1)** A developer shall work with the local electric distribution
15 companies to test for stray voltage at all dairy operations within [x mile(s)] of any wind energy
16 system facility, before construction and again after construction of the wind energy system is
17 completed. A developer, owner or operator shall work with the electric distribution utilities and
18 farm owners to rectify any stray voltage problems arising from the construction and operation of
19 the wind energy system. Before any testing, the developer, owner or operator shall work with
20 commission staff to determine the manner in which stray voltage measurements will be
21 conducted and on which properties. A developer shall provide to commission staff the results of
22 stray voltage testing.

23

1 **PSC 128.18 Construction and operation. (1) PHYSICAL CHARACTERISTICS. (a)**

2 A developer, owner or operator may not display advertising material or signage other than
3 warnings, equipment information, or indicia of ownership on a wind turbine. A developer,
4 owner or operator may not attach any flag, decorative sign, streamers, pennants, ribbons,
5 spinners, fluttering, or revolving devices to a wind turbine. A developer, owner or operator may
6 attach a safety feature or wind monitoring device to a wind turbine.

7 (b) A developer, owner or operator shall ensure that a wind turbine has a neutral finish.

8 (c) A developer, owner or operator shall install lighting that complies with standards established
9 by the federal aviation administration.

10 (d) A developer, owner or operator of a wind turbine shall ensure that the wind turbine is not
11 climbable except by authorized personnel.

12 (e) For a wind turbine mounted on a climbable lattice tower, the developer, owner or operator
13 shall ensure that access to the tower base is restricted by a fence not less than eight feet in height.
14 The owner or operator shall ensure that the gate of the fence is locked whenever authorized
15 personnel are not present.

16 (f) An owner or operator of a wind energy system shall ensure that all access doors to the wind
17 turbines and electrical equipment are locked when authorized personnel are not present.

18 (g) A developer, owner or operator of a wind energy system shall place appropriate warning
19 signage on or at the base of each wind turbine.

20 (h) An owner or operator of a wind energy system shall post and maintain up-to-date signs
21 containing a twenty-four hour emergency contact telephone number, information identifying the
22 owner or operator, and sufficient information to identify the location of the wind energy system
23 and the location of each identified wind turbine within the wind energy system. An owner or

1 operator shall post these signs at every intersection of a wind energy system access road with a
2 public road.

3 **(2) ELECTRICAL STANDARDS.** (a) A developer, owner or operator shall construct, maintain,
4 and operate collector circuit facilities in a manner that complies with the national electrical safety
5 code and Wis. Admin. Code ch. PSC 114 and shall construct, maintain, and operate all wind
6 energy system facilities in a manner that complies with the national electrical code.

7 (b) A developer shall construct collector circuit facilities underground to the extent practicable.

8 (c) A developer, owner or operator shall establish an inspection schedule for all overhead
9 collector circuits to ensure that third-party facilities such as cable television and
10 telecommunications cables are not attached to and bonded to overhead collector circuit
11 grounding. The inspection schedule shall provide for visual inspection of the overhead facilities
12 at least once monthly. If third-party facilities are found attached to the overhead collector
13 facilities, developer shall ensure that the third-party facilities are promptly removed.

14 **(3) CONSTRUCTION, OPERATION, AND MAINTENANCE STANDARDS.** (a) A developer,
15 owner or operator shall construct, operate, repair, maintain and replace wind energy system
16 facilities as needed to keep the wind energy system in good repair and operating condition.

17 (b) Except for the area occupied by the wind energy system and related facilities, including
18 permanent access roads, a developer shall restore the topography, soils and vegetation of the
19 project area to original condition after construction is complete.

20 (c) A developer, owner or operator of a wind energy system shall carry general liability
21 insurance relating to claims for property damage or bodily injury arising from the construction or
22 operation of the wind energy system and shall include turbine host property owners as additional
23 insured persons on the policy.

1 **(4) EMERGENCY PROCEDURES.** (a) In this subsection, “emergency” means a condition or
2 situation at the wind energy system that presents a significant threat of physical danger to human
3 life or a significant threat to property.

4 (b) An owner or operator shall notify a political subdivision within **[nn]** hours of an emergency.

5 (c) An owner or operator shall establish and maintain liaison with appropriate fire, police, and
6 other public officials to do all of the following:

7 1. Learn the responsibility and resources of each government organization that would respond to
8 a wind energy system emergency.

9 2. Acquaint the fire, police and other public officials with the owner and operator’s abilities to
10 respond to a wind energy system emergency and provide annual training for such officials
11 regarding responding to a wind energy system emergency.

12 3. Identify the types of wind energy system emergencies of which the developer notifies fire,
13 police, and other public officials.

14 4. Plan how the owner or operator and fire, police, and other public officials can engage in
15 mutual assistance to minimize hazards to life or property.

16 (d) An owner or operator of a large wind energy system shall establish written procedures that
17 provide for shutting down the wind energy system or a portion of the system, as appropriate, in
18 the event of an emergency. The procedures shall provide for all of the following:

19 1. Establishing and maintaining adequate means of communication with appropriate fire, police,
20 and other public officials.

21 2. Advising affected political subdivisions of a wind energy system emergency.

22 3. Prompt and effective response to a notice of any of the following types of emergencies:

23 a. Mechanical failure of wind turbine facilities.

- 1 b. Fire associated with a wind turbine or associated facilities.
- 2 c. Emergency situations requiring the evacuation of a person or persons from the wind energy
- 3 system.
- 4 d. Natural disaster.
- 5 e. Police actions, such as a request or order by police or fire officials to interrupt operation of any
- 6 wind energy system facility due to an emergency.

7 4. Actions directed toward protecting people first and then property.

8 5. Making safe any actual or potential hazard to people or property.

9 6. Notifying appropriate fire, police, and other public officials of wind energy system
10 emergencies and coordinating with them both planned and actual responses during an
11 emergency.

12 (e) An owner or operator of a large wind energy system shall do all of the following:

13 1. Furnish its supervisors and employees who are responsible for emergency action a copy of the
14 latest edition of the emergency procedures established under par. (c) to ensure compliance with
15 those procedures.

16 2. Train the appropriate operating personnel to ensure that they are knowledgeable of the
17 emergency procedures and verify that the training is effective.

18 3. As soon as possible after the end of an emergency, the developer, owner, or operator shall
19 review employee activities to determine whether the procedures were effectively followed in
20 each emergency.

21 **(5) COMPLAINT PROCESS.** (a) Before construction of a wind energy system begins, a
22 developer shall provide written notice of the process for making complaints and obtaining
23 mitigation measures to all residents and landowners within [**x mile(s)**] of the wind energy

1 system. A developer shall include a contact person and telephone number for complaints or
2 concerns during construction, operation, maintenance and decommissioning. The developer,
3 owner or operator shall keep the contact person and telephone number up-to-date and on file
4 with the political subdivision. A developer shall provide a copy of the notice to the political
5 subdivision.

6 (b) A developer, owner or operator shall maintain a log of all complaints received regarding the
7 wind energy system. The log shall include the name and address of the complainant, the nature
8 of the complaint, and the steps taken to resolve the complaint. A developer, owner or operator
9 shall make copies of this complaint log available, at no cost, to any monitoring committee under
10 s. PSC 128.36 that is established by a political subdivision in which the wind energy system is
11 located.

12
13 **PSC 128.19 Decommissioning. (1) REQUIREMENT TO DECOMMISSION.** (a) Except as
14 provided in par. (e), the owner or operator of a wind energy system shall decommission and
15 remove a wind energy system when the system is at the end of its useful life.

16 (b) A developer shall include in an application to construct a wind energy system a
17 decommissioning and site restoration plan that provides reasonable assurances that the
18 developer, owner or operator will be able to comply with this section.

19 (c) A wind energy system is presumed to be at the end of its useful life if the wind energy system
20 generates no electricity for a continuous [n] month period. This presumption may be rebutted by
21 the owner or operator by submitting to the political subdivision a plan outlining the steps and
22 schedule for returning the wind energy system to service within [n] months after the date the
23 wind energy system is presumed to be at the end of its useful life. Upon application by the

1 owner or operator, a political subdivision shall grant an extension of the time period for returning
2 the wind energy system to service for an additional [n] month period if the owner or operator
3 demonstrates an ongoing good faith effort to return the wind energy system to service. A wind
4 energy system that generates no electricity for a continuous [n] month period is irrebuttably
5 presumed to be at the end of its useful life.

6 (d) When decommissioning is required, the owner or operator shall begin decommissioning
7 within [n] months after the wind energy system has reached the end of its useful life. The owner
8 or operator shall complete decommissioning and removal of the wind energy system within [n]
9 months after the wind energy system has reached the end of its useful life.

10 (e) A political subdivision may grant a temporary deferral of the requirement to decommission
11 and remove a wind energy system if it is likely the wind energy system will operate again in the
12 future and if any of the following apply:

13 1. The wind energy system is part of a prototype or other demonstration project being used for
14 research or development purposes.

15 2. The wind energy system is being used for educational purposes.

16 **(2) DECOMMISSIONING REVIEW.** A political subdivision may establish a decommissioning
17 review process to determine when a wind energy system has reached the end of its useful life.

18 **(3) FINANCIAL RESPONSIBILITY.** A developer, owner or operator of a wind energy system
19 with a maximum blade tip height of 100 feet or greater shall provide information to the political
20 subdivision that demonstrates proof of the owner's financial ability to comply with requirements
21 regarding decommissioning in sub. (1).

22 **(4) SITE RESTORATION.** If a wind energy system was constructed on land owned by a person
23 other than the owner or operator of the wind energy system, the owner or operator of the wind

1 energy system shall ensure that the property is restored so that the topography, soils, and
2 vegetation are consistent with or similar to that of immediately adjacent properties at the time of
3 decommissioning. This subsection does not apply to a wind energy system constructed on a
4 brownfield, as defined in s. 560.13 (1) (a), Stats.

5 **(5) DECOMMISSIONING COMPLETION.** (a) An owner shall file a notice of decommissioning
6 completion with the political subdivision when a wind energy system approved by the political
7 subdivision has been decommissioned and removed.

8 (b) Within [n] months of receiving a notice of decommissioning, a political subdivision shall
9 determine whether the wind energy system has satisfied the requirements of subs. (1)(a) and (4).

10
11 **Subchapter III**

12 **Political Subdivision Procedure**

13
14 **PSC 128.30 Application and notice requirements. (1) CONTENTS OF AN APPLICATION.**

15 If approval by a political subdivision is required for a proposed wind energy system or expansion
16 of an existing wind energy system, a developer seeking the political subdivision's approval shall
17 complete and file with the political subdivision an application that includes all of the following:

- 18 (a) Wind energy system description and maps.
19 (b) Technical description of wind turbines and wind turbine sites.
20 (c) Construction process and timeline.
21 (d) Impact on local infrastructure.
22 (e) Information regarding noise.
23 (f) Information regarding shadow flicker.

- 1 (g) Effects on farm lands within [**x mile(s)**] of the wind energy system.
- 2 (h) Effects on air traffic
- 3 (i) Effects on line-of-sight communications.
- 4 (j) Except as provided in sub. (4), information required under s. PSC 128.40.
- 5 (k) Any other information necessary to understand the proposed wind energy system.
- 6 (m) Information related to the wind energy system requested by the political subdivision.
- 7 **(2) ACCURACY OF INFORMATION.** The developer shall ensure that information contained in
- 8 an application is accurate and internally consistent.
- 9 **(3) SMALL WIND TURBINE APPLICATIONS.** For a wind energy system with a maximum
- 10 blade tip height of less than 100 feet, a developer is not required to file the information required
- 11 under sub. (1)(j).
- 12 **(4) DUPLICATE COPIES.** A developer shall file with the political subdivision two original
- 13 copies of an application. Each copy shall include all worksheets, maps, and other attachments
- 14 included in the application. A political subdivision may permit a developer to file an application
- 15 electronically.
- 16 **(5) NOTICE TO PROPERTY OWNERS.** (a) On the same day a developer files an application
- 17 for a wind energy system, the developer shall mail or deliver written notice of the filing of the
- 18 application to property owners and residents located within [**x mile(s)**] of the proposed wind
- 19 energy system. The notification shall include all of the following:
- 20 1. A brief description of the proposed wind energy system location.
- 21 2. The size of the proposed wind energy system.
- 22 3. The proposed timeline for construction of the wind energy system.
- 23 4. Locations where the application is available for public review.

1 5. Developer contact information.

2 (b) After a political subdivision receives an application for a wind energy system, the notice
3 required to be published by the political subdivision under s. 66.0401 (4) (a) 1., Stats., shall
4 include the method and time period for the submission of public comments to the political
5 subdivision and the approximate schedule for review of the application by the political
6 subdivision.

7 **(6) PUBLIC PARTICIPATION.** (a) A political subdivision shall make an application for a wind
8 energy system available for public review at the local library and at the political subdivision
9 business office or some other publicly-accessible location. A political subdivision may also
10 provide public access to the application electronically.

11 (b) A political subdivision shall establish a process for accepting and considering written public
12 comments on an application for a wind energy system.

13 (c) Except as provided in this paragraph, a political subdivision shall hold at least one public
14 meeting to obtain comments on and to inform the public about an application. A political
15 subdivision is not required to hold a public comment meeting on an application to construct a
16 wind energy system that has a maximum blade tip height of up to 100 feet and that is to be
17 located entirely on land owned by the developer.

18 **(7) JOINT APPLICATION REVIEW PROCESS.** (a) If the wind energy system is proposed to
19 be located in the jurisdiction of more than one political subdivision, the political subdivisions
20 involved may conduct a joint application review process on their own motion or upon request. If
21 a developer requests a joint application review, the developer shall include the request in its
22 notice of intent to file an application with the political subdivision under s. PSC 128.10(1). If the
23 developer requests a joint application review process, the political subdivisions involved shall

1 consider this request within **[nn]** days of receipt of the developer’s notice of intent to file an
2 application.

3 (b) If political subdivisions elect to conduct a joint application review process, the process shall
4 be consistent with this chapter and the political subdivisions shall establish the process within
5 **[nn]** days of the date the political subdivisions receive the developer’s notice of intent to file an
6 application. A political subdivision may follow the review process of another political
7 subdivision for purposes of conducting a joint application review process concurrently with the
8 other political subdivision. If a joint application review process is adopted, the developer shall
9 file the application with all of the political subdivisions participating in the joint review process.
10

11 **PSC 128.31 Application completeness. (1) INCOMPLETE APPLICATIONS.** A political
12 subdivision shall determine whether an application is complete. The political subdivision shall
13 notify the developer in writing of the completeness determination no later than 45 days after the
14 day the application is filed. An application is considered filed the day the developer notifies the
15 political subdivision in writing that all the application materials have been filed. If a political
16 subdivision determines that the application is incomplete, the notice shall state the reasons for
17 the determination. A developer may file a supplement to an application that the political
18 subdivision has determined to be incomplete. There is no limit to the number of times that the
19 developer may re-file an application. For incomplete applications, the developer shall provide
20 additional information as specified in the notice. Subsequent 45-day completeness review
21 periods shall begin the day after the political subdivision receives responses to all items
22 identified in the notice. If a political subdivision does not make a completeness determination
23 within the applicable review period, the application is considered to be complete.

1 (2) REQUESTS FOR ADDITIONAL INFORMATION. A political subdivision may request
2 additional information after determining that an application is complete. A developer shall
3 provide additional information in response to all reasonable requests. A developer shall respond
4 to all inquiries made subsequent to a determination of completeness in a timely, complete, and
5 accurate manner.

6
7 **PSC 128.32 Political subdivision review of a wind energy system. (1) APPROVAL BY**

8 POLITICAL SUBDIVISION. (a) Except as provided in par. (b), a political subdivision may
9 require a developer to obtain approval from the political subdivision before constructing any of
10 the following:

- 11 1. A wind energy system.
- 12 2. An expansion of an existing or previously-approved wind energy system.

13 (b) A political subdivision may not require a developer to obtain approval from the political
14 subdivision under this chapter for any of the following:

- 15 1. A wind energy system placed in operation before the effective date of this chapter ... [LRB
16 inserts date].
- 17 2. A wind energy system for which construction began before the effective date of this chapter
18 ...[LRB inserts date].
- 19 3. A wind energy system approved by the political subdivision before the effective date of this
20 chapter ... [LRB inserts date].
- 21 4. A wind energy system proposed by a developer in an application filed before the effective date
22 of the chapter ... [LRB inserts date] with a political subdivision that has an established procedure
23 for review of applications for wind energy systems.

1 (2) STANDARD FOR APPROVAL. A political subdivision shall approve an application for a
2 wind energy system if **[standards for approval or for denial need to be added]**.

3 (3) WRITTEN DECISION. (a) A political subdivision shall issue a written decision to grant or
4 deny an application for a wind energy system. The written decision shall include findings of fact
5 supported by evidence in the record. An approval may be subject to the conditions in s. PSC
6 128.33(1).

7 (b) 1. A political subdivision shall provide its written decision to the developer and to the
8 commission. If a political subdivision approves an application for a wind energy system, the
9 political subdivision shall provide the developer with a duplicate original of the approved
10 application.

11 2. The developer shall file the duplicate original of a decision approving an application with the
12 register of deeds for the county in which the wind energy system is located.

13 (4) EFFECT OF OWNERSHIP CHANGE ON APPROVAL. Approval by a political subdivision
14 of a wind energy system remains in effect despite changes in ownership or operation of the wind
15 energy system. A political subdivision may require a developer, owner or operator to provide
16 timely notice of any change in the ownership or operation of the wind energy system.

17 (5) FEES. (a) A political subdivision may charge a reasonable application fee or require a
18 developer to reimburse the political subdivision for reasonable expenses relating to the review of
19 an application for a wind energy system.

20 (b) A political subdivision's fee or reimbursement requirement shall be based on the actual cost
21 of the review of the wind energy system application, and may include the cost of services
22 necessary to review an application that are provided by outside engineers, attorneys, planners,
23 environmental specialists, or other consultants or experts. The political subdivision may set

1 standardized application fees based on the size and complexity of a proposed wind energy
2 system.

3 (c) A political subdivision may only charge a fee or require reimbursement if the political
4 subdivision gives written notice to developer of its intent to do so within **[nn]** days of the date
5 the political subdivision receives a notice under s. PSC 128.10(1) and identifies the amount of
6 the fee and the relevant reimbursement requirements.

7 (d) A political subdivision may not charge a developer, owner or operator an annual fee or other
8 fees to operate or maintain a wind energy system.

9 **(6) CONFLICTS OF INTEREST.** A political subdivision shall disclose conflicts of interest.

10 *[This provision needs to be fleshed out. What is a conflict of interest? Who has the*
11 *conflict? What is a person with a conflict required to do? To who is a conflict*
12 *disclosed? When? How? Can a conflict be waived?]*

13
14 **PSC 128.33 Political subdivision provisions. (1) PERMITTED PROVISIONS.** A political
15 subdivision may include any of the following as an ordinance provision or as a condition for
16 approval of an application to construct a wind energy system:

17 (a) Require a developer to provide information in an application describing how the developer
18 has incorporated into the wind energy system design DNR recommendations regarding natural
19 resources not subject to specific DNR permits, such as unique or high quality natural areas.

20 (b) Require a developer, owner or operator to cooperate with any state-wide or regional study of
21 the effects of wind energy systems on bat or migratory bird populations.

22 (c) For a large wind energy system, may require a developer to include in a transportation plan
23 the proposed type and period of use of local roads, a proposed process for mitigation of any

1 damage to local roads related to construction and operation of the large wind energy system, and
2 provision for a pre- and post-construction review by the political subdivision.

3 (d) For a large wind energy system, may require a developer to offer agreements that include
4 annual monetary compensation to the owner of a nonparticipating residence if the residence is
5 within [**x mile(s)**] of a planned wind turbine site. If a political subdivision requires a developer
6 to offer such an agreement, the amount of annual monetary compensation shall be calculated by
7 multiplying the number of installed wind turbines in the wind energy system located within [**x**
8 **mile(s)**] of each nonparticipating residence by a per-wind turbine compensatory amount, with
9 annual payments escalating annually. The total annual payment to any owner of a
10 nonparticipating residence may not exceed the amount paid by the developer, owner or operator
11 to any owner of a turbine host property receiving payment under a wind lease for one wind
12 turbine. An agreement offered under this paragraph shall specify in writing whether the
13 landowner's acceptance of payment establishes the landowner's property as a participating
14 property.

15 (e) For a large wind energy system, may require a developer, owner or operator to provide the
16 political subdivision with a list of the tax parcel numbers of tracts of residential real property less
17 than [**n**] acres in size located within [**x mile(s)**] of a wind turbine in the wind energy system at
18 the time the wind energy system is constructed. The political subdivision may use this list to
19 track the sale prices of residential real property of less than [**n**] acres in size within [**x mile(s)**] of
20 a wind turbine in the wind energy system.

21 (f) Specify provisions regarding blasting to protect against groundwater contamination, including
22 notification requirements, timing limitations, plan requirements, and whether blasting may occur
23 within the political subdivision.

1 (g) May establish a procedure for assessing when wind energy system facilities are not
2 maintained in good repair and operating condition. The procedure may include timelines,
3 provide for payment of fees for conducting an assessment, and provide for notification to the
4 public.

5 (h) May require the developer, owner or operator of a large wind energy system to file an annual
6 report with the political subdivision documenting the operation and maintenance of the wind
7 energy system during the previous calendar year.

8 (i) Establish reasonable requirements for the manner in which a developer, owner or operator of
9 a wind energy system with a maximum blade tip height of 100 feet or greater may demonstrate
10 proof of financial responsibility to ensure the availability of funds sufficient to keep the wind
11 energy system in good repair and operating condition and to comply with decommissioning
12 requirements.

13 (j) Require a developer, owner or operator to provide compensation to farm operators on
14 nonparticipating properties within [**x mile(s)**] of a wind turbine site if the farm operator
15 demonstrates that the farm operator had a history of aerial spraying practices before the wind
16 energy system was proposed and that the farm operator has a reduction in crop production or
17 increased application costs as a result of the wind energy system's effect on aerial spraying
18 practices.

19 *[Some of these provisions may be better only as ordinance/regulation provisions and*
20 *some as approval conditions, rather than for both.]*

21 **(2) PROHIBITED PROVISIONS.** A political subdivision may not include any of the following
22 as an ordinance provision or as a condition for approval of an application to construct a wind
23 energy system:

- 1 (a) Require a developer, owner or operator to conduct a study of property value impacts.
- 2 (b) Except as provided in sub. (1)(d), require a developer, owner or operator to provide monetary
3 compensation to landowners relating to property values.
- 4 (c) Impose a penalty on a developer, owner or operator of a wind energy system if the owner
5 satisfies the requirements of this chapter to keep the wind energy system in good operating
6 condition and the requirements regarding decommissioning.
- 7 (d) Restrict wind turbine sites based on impacts to aerial spraying on participating properties.
- 8 (e) Establish structure lighting requirements for a wind energy system that conflict with
9 standards established by the federal aviation administration.

10

11 **128.34 Record of decision. (1) RECORDKEEPING.** A political subdivision shall keep a
12 complete written record of its decision-making related to an application for a wind energy
13 system. If a political subdivision denies an application, the political subdivision shall keep the
14 record for at least seven years following the year in which it issues the decision. If a political
15 subdivision approves an application, the political subdivision shall keep the record for at least
16 seven years after the year in which the wind energy system is decommissioned.

17 **(2) RECORD CONTENTS.** The record of a decision shall include all of the following:

- 18 (a) The approved application and all subsequent additions or amendments to the application.
- 19 (b) A copy of all notices issued under _____ [specify cross-references]
- 20 (c) A copy of any notice or correspondence that the political subdivision issues related to the
21 application.
- 22 (d) A record of any public hearing related to the application. The record may be an electronic
23 recording, a transcript prepared from an electronic recording, or a transcript prepared by a court

1 reporter or stenographer. The record shall include any documents or evidence submitted by
2 hearing participants. *[Question: What if only minutes are kept of a public hearing?]*

3 (e) Copies of any correspondence or evidentiary material that the political subdivision considered
4 in relation to the application, including copies of all written public comments filed under s. PSC
5 128.30(6)(b).

6 (f) Minutes of any board or committee meetings held to consider or act on the application.

7 (g) A copy of the written decision under s. PSC 128.32(3)(a).

8 (h) Other materials that the political subdivision prepared to document its decision-making
9 process.

10 (i) A copy of any local ordinance cited in or applicable to the decision.

11 **(3) POST-CONSTRUCTION FILING REQUIREMENT.** Within **[nn]** days of the date a wind
12 energy system commences operation, the developer, owner or operator shall file with the
13 political subdivision and the commission an as-built description of the wind energy system, an
14 accurate map of the wind energy system showing the location of each wind turbine, and current
15 information regarding the developer, owner and operator of the wind energy system.

16
17 **PSC 128.35 Modifications to an approved wind energy system. (1) MATERIAL CHANGE.**

18 (a) A developer may not make a material change in the approved design, location or construction
19 of a wind energy system without the prior written approval of the political subdivision that
20 authorized the wind energy system.

21 (b) A developer shall submit an application for a material change to an approved wind energy
22 system to the political subdivision that authorized the wind energy system.

1 (2) REVIEW LIMITED. A political subdivision that receives an application for a material
2 change to a wind energy system may not reopen the merits of the earlier approval but shall
3 consider only those issues relevant to the proposed change.
4

5 **PSC 128.36 Monitoring and mitigation. (1) MONITORING COMMITTEE.** A political
6 subdivision may establish a committee to monitor complaints and to monitor compliance by the
7 developer, owner or operator with any conditions to the approved wind energy system or with
8 any local agreements. If a monitoring committee is established, the political subdivision shall
9 include on the monitoring committee a member who is a local employee of a developer, owner
10 or operator of a wind energy system and at least one nonparticipating landowner.

11 (2) DUTIES. A monitoring committee may do any of the following:

12 (a) Maintain a record of all complaints brought to the monitoring committee.

13 (b) Require the developer, owner or operator to investigate, at the developer, owner or operator's
14 expense, any complaint forwarded by the committee.

15 (c) Recommend a reasonable resolution to a complaint based upon the committee's findings.
16

17 **128.35 Computation of time.** [This is a placeholder for description of how to count days in
18 timeline of political subdivision's review, if necessary.]
19

20 **Subchapter IV**

21
22 **Commission Procedure**
23

1 **PSC 128.40 Detailed application requirements.** The commission shall establish detailed
2 application filing requirements for political subdivision review of a wind energy system, which
3 shall contain a detailed description of the information required to satisfy the filing requirements
4 for applications under s. PSC 128.30(1)(j). The commission may revise these requirements as
5 necessary. The commission shall make the filing requirements available to the public on the
6 commission's website.

7
8 **PSC 128.41 Commission review. (1) APPEALS TO THE COMMISSION.** An appeal under s.
9 66.0401(5)(b). Stats., shall be treated as a petition to open a docket under s. PSC 2.07.

10 *[This provision may be revised to establish a quicker process.]*

11 **(2) PETITIONER FILING REQUIREMENTS.** An aggrieved person under s. 66.0401(5)(a),
12 Stats., may file a petition with the commission. The petition shall be submitted to the
13 commission in writing or filed using the commission's electronic filing system and shall contain
14 all of the following:

- 15 (a) The petitioner's name, address, and telephone number.
16 (b) The name, address, and telephone number of the political subdivision that is the subject of the
17 petition.
18 (c) A description of the wind energy system that is the subject of the petition.
19 (d) A description of the petitioner's relationship to the wind energy system.
20 (e) The information specified in s. PSC 2.07 (2).

21 **(3) POLITICAL SUBDIVISION FILING REQUIREMENTS.** (a) A political subdivision shall
22 file a certified copy of the information under s. 66.0401(5)(c) Stats., using the commission's
23 electronic regulatory filing system.

1 (b) The commission may require the political subdivision to file up to 25 paper copies of the
2 record upon which it based its decision.

3 (c) The commission may require the political subdivision to file additional information.

4 **(4) SERVICE AND NOTICE.** (a) A developer, owner or operator submitting a petition under
5 sub. (2)(intro.) shall serve a copy of the petition on the political subdivision and on any other
6 person specified in s. PSC 2.07 (3).

7 (b) Any person other than a developer, owner or operator submitting a petition under sub.
8 (2)(intro.) shall serve a copy of the petition on the developer, owner or operator, the political
9 subdivision, and any other person specified in s. PSC 2.07 (3).

10 (c) A political subdivision that is subject to a petition under sub. (2)(a) shall make a copy of the
11 petition available for public inspection and, in the manner in which it is required to publish
12 notice of a public meeting, publish notice of that availability.

13 **(5) COMMISSION HEARING DESCRETIONARY.** The commission may review a petition
14 under this section with or without a hearing.

15 **(6) STANDARD OF REVIEW.** [To be added.]

16 **(7) REMAND TO POLITICAL SUBDIVISION.** (a) If the commission remands any issue to the
17 political subdivision, the political subdivision's review on remand shall be completed no later
18 than **[nn]** days after the day on which the commission issues its decision.

19 (b) Under this paragraph, a political subdivision may extend the **[nn]**-day period if the political
20 subdivision authorizes the extension in writing. Any combination of the following extensions
21 may be granted, except that the total amount of time for all extensions granted may not exceed
22 **[nn]** days:

- 1 1. An extension of up to **[nn]** days if the political subdivision needs additional information to
- 2 determine issues on remand.
- 3 2. An extension of up to **[nn]** days if a developer makes a material modification to the
- 4 application after remand.
- 5 3. An extension of up to **[nn]** days for other good cause.

6 *[We may need to distinguish between completeness determination remands and other*
7 *types of remands and set the time limits accordingly.]*

8
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10 Drafts\Council Draft Rules\Council Draft Rule version 1.0.doc

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