

## **TITLE 5 — UTILITIES**

### **SECTION 1.0 UTILITIES: GENERAL PROVISIONS**

#### **1.1 PURPOSE**

The purpose of this Ordinance is to promote public health, safety and general welfare through the orderly extension, design and construction of public and private utility systems.

#### **1.2 CONFLICTING ORDINANCES**

The provisions of this Ordinance shall be deemed as additional requirements to minimum standards required by other ordinances of the County. In the case of conflicting requirements, the most restrictive shall apply.

#### **1.3 COMPLIANCE WITH OTHER ORDINANCES**

In addition to the requirements of this Ordinance, compliance with the requirements set forth in other applicable ordinances with respect to submission and approval of Primary and Secondary Subdivision Plats, Improvement Plans, Building and Zoning Permits, construction inspections, appeals and similar matters and compliance with applicable State of Indiana statutes and regulations shall be required.

#### **1.4 DISCLAIMER OF LIABILITY**

The degree of protection required by this Ordinance is considered reasonable for regulatory purposes and is based on historical records, engineering and scientific methods of study. Larger storms may occur or storm water runoff depths may be increased by man-made or natural causes. This Ordinance does not imply that land uses permitted will be free from storm water damage. This Ordinance shall not create liability on the part of the County or any officer or employee thereof for any damage that may result from reliance on this Ordinance or on any administrative decision lawfully made thereunder.

#### **1.5 CORRECTIVE ACTION**

Nothing herein contained shall prevent the County from taking such other lawful action as may be necessary to prevent or remedy any violation. All costs connected therewith shall accrue to the person or persons responsible.

#### **1.6 REPEALER**

All previous versions of Title 5 ordinances, or parts thereof, in conflict with the provision of this ordinance are repealed.

**1.7 WHEN EFFECTIVE**

This Ordinance shall become effective after its final passage, approval and publication as required by law.

**1.8 EXEMPT PROJECTS**

Any residential (major or minor), commercial or industrial Subdivision or construction project thereon that has had its Utility Plan approved by the Board prior to the effective date of this Ordinance shall be exempt from all of the requirements of this Ordinance.

**SECTION 2.0 UTILITIES: DEFINITIONS**

For the purpose of these Regulations, certain abbreviations, terms and words shall be used, interpreted and defined as set forth in this section. Unless the context clearly indicates to the contrary, words used in the masculine shall include the feminine, words used in the present tense shall include the future tense and words used in the plural shall include the singular.

Abandonment/ Abandoned	When a WECS has not produced more than a de minimis quantity of energy for one year or more and the WECS Owner/Operator has not submitted a plan for reactivation to the Henry County Planning Commission
Act	The Communications Act of 1934, as it has been amended from time to time, including the Telecommunications Act of 1996, including future amendments to the Communications Act of 1934.
Alternative Tower Structures	Man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of Antennas, Communications Facilities or Towers. (See also Stealth Facility.)
Antenna	Any exterior apparatus designed for telephonic, radio television communications through sending and/or receiving of electromagnetic waves.
Antenna Height	The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If

the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the Antenna height.

Antenna Support Structure

Any pole, telescoping mast, tower, tripod or any other structure that supports a device used in the transmitting and/or receiving of electromagnetic waves.

Applicant

A person who applies for a wireless facility/tower or a WECS siting. An Applicant can be the Owner of the property or someone who is representing the Owner, such as a builder, developer, optional purchaser, consultant, lessee or architect with the Owner's consent.

Business Days

Monday through Friday.

Cellular Telecommunications

A commercial Low Power Mobile Radio Service licensed by the Federal Telecommunications Communications Commission (FCC) to providers in a specific geographical area in which the radio frequency spectrum is divided into discrete channels that are assigned in groups to geographic cells within a service area and that are capable of being reused in different cells within the service area.

Cellular Telecommunications Facility

The equipment and structures involved in receiving telecommunication or radio signals from mobile radio communications sources and transmitting those signals to a central switching computer that connects the mobile unit with the land-based telephone lines.

Co-location

Locating wireless communication equipment from more than one (1) provider on a single site.

Communications Facility

A land use facility supporting Antennas and/or microwave dishes that send and/or receive radio frequency signals. Communications Facilities include structures or Towers, supporting equipment and accessory buildings.

Communications Tower

A guyed, monopole or self-supporting Tower, constructed as a free-standing structure or in association with a building, other permanent structure or equipment, containing one (1) or more Antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone or similar forms of electronic communication.

Communications

A wired Communication Transmission System, open video

Transmission System or Communications System	system or Wireless Communications Transmission System regulated by these Regulations.
Commission Approved Use	A special use or conditional use that is permitted in a Zoning District only after a majority vote of the Henry County Planning Commission as described in this Code and the Planning Commission's Rules of Procedure.
Comprehensive Plan	The Comprehensive Plan of Henry County, as amended and revised.
County	Henry County, Indiana.
FAA	The Federal Aviation Administration.
FCC	The Federal Communications Commission.
Financial Assurance/ Commitment	The sources of private or public funds or combinations thereof that have been identified which will be sufficient to finance public facilities or private development necessary to support development and that there is reasonable assurance that such funds will be put to that end in a timely manner. Examples include a surety bond, cash escrow, irrevocable letter of credit or combinations thereof.
Frequency	The number of cycles completed each second by a sound wave; measured in hertz (Hz).
Governing Authority	The County Commissioners of Henry County, Indiana.
Grade	The lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the structure and the property line or, when the property line is more than five (5) feet from the structure, between the structure and a line five (5) feet from the structure.
Guyed Tower	A Communication Tower that is supported, in whole or in part, by guy wires and ground anchors.
Lattice Tower	A guyed or self-supporting three- or four-sided, open, steel frame structure used to support telecommunications equipment.
License	The rights and obligations extended by the County to an operator to own, construct, maintain and operate its system

within the boundaries of the County for the sole purpose of providing services to persons or areas outside the County.

MHz	Megahertz, or one million (1,000,000) Hz.
MW	Mega Watt, or one million (1,000,000) Watts.
Meteorological Tower	A Tower that provides a platform for instrumentation to evaluate meteorological conditions. For the purpose of this ordinance, a Meteorological Tower is a temporary structure that is intended to be on any one site for a period of five (5) years or less.
Microwave	Electromagnetic radiation with frequencies higher than one thousand (1,000) MHz; highly directional signal used to transmit radio frequencies from point to point at a relatively low power level.
Monopole Tower	A Communications Tower consisting of a single pole, constructed without guy wires and ground anchors.
Non-Participating Property Owner	A property owner of record who does not have a recorded lease with the WECS Owner or has not signed a recorded agreement waiving rights described in this Ordinance.
Operator	The Operator means the entity responsible for the day-to-day operation and maintenance of the unit, including any third-party subcontractors.
Owner	The Owner of the title to real property or the contract purchaser of real property of record, as shown on the latest assessment records in the County Assessor's Office. Owner also includes a deed holder or contract purchaser whose name does not appear in the latest assessment records, but who presents to Zoning Administrator a copy of a deed or contract of sale showing date, book and page of recording.
Participating Property Owner	A property owner of record who has a recorded lease with the WECS Owner or has signed a recorded agreement waiving the rights described in this Ordinance.
Pre-Existing Tower	Any Tower or Antenna for which a permit has been issued

or Antenna	prior to the effective date of these Regulations, and that is exempt from the requirements of these Regulations so long as the Tower or Antenna is not modified or changed.
Primary Building/ Structure	The building or structure in which the primary use of the lot or premises is located or conducted. With respect to residential uses, the primary structure or building shall be the main dwelling.
Professional Engineer	An individual who is licensed as a professional engineer by the State of Indiana.
Public Property	Any real property, easement, air-space or other interest in real estate, including a road, street, or trafficway, owned by or controlled by the County or any other government unit.
Public School	An educational institution chartered by local or state government, open to attendance by children of the general public, conducting classes at least 180 days per year in compliance with State Department of Education standards.
Roof and/or Building	A low power mobile radio service telecommunications facility Mount Facility on which antennas are mounted to an existing structure the roof (including rooftop appurtenances) or building face.
Scenic View	A view that may be framed, side angle or panoramic and may include natural and/or man-made structures and activities. A scenic view may be from a stationary viewpoint or be seen as one travels along a roadway, waterway or path. A view may be to a far away object, such as a mountain, or of a nearby object.
Self-Support Tower	A Communications Tower that is constructed without guy wires and ground anchors.
Spectrum	Relating to any transmission or reception of electromagnetic waves.
Stealth Facility	Any Communication Facility or Tower that is designed to blend into the surrounding environment. Examples of stealth facilities may include architecturally screened roof-mounted Antennas, building-mounted Antennas painted to match the existing structure, Antennas integrated into architectural elements and Antennas designed to look like light poles. (See also Alternative Tower Structure.)

Substation	The apparatus that connects the electrical collection system of the WECS(s) and increases the voltage for connection with the utility's transmission lines.
Switching Station	Shall be an apparatus/structure in the system similar to a substation but not necessarily increasing voltage into the grid.
System	The communications transmission system operated by a service provider in the County.
Telecommunications	The transmission between or among points specified by the user of information of the user's choosing without change in the form or content of the information as sent and received.
Temporary Wireless Communication Facility/Tower	Any tower, pole, antenna, etc., designed for use while a permanent Wireless Communications Facility or Tower is under construction or for special event or conference where a majority of people attending are wireless users.
Tower	Any structure that is designed and constructed primarily for the purpose of supporting one (1) or more Antennas, including self-supporting Lattice Towers, Guyed Towers or Monopole Towers. The term includes radio and television transmission Towers, Microwave Towers, common-carrier Towers, Cellular Telecommunications Towers, Alternative Tower Structures and the like.
Transportation Plan	Means the plan submitted by Applicant together with its Improvement Location Permit Application, detailing Applicant's proposed use of Henry County roads during construction or decommissioning of the WECS Project.
WECS	Wind Energy Conversion System.
WECS Owner	The entity or entities with an equity interest in the WECS(s), including their respective successors and assigns. WECS Owner does not mean (i) the property owner from whom land is leased for locating the WECS (unless property owner has an equity interest in the WECS); or (ii) any person holding a security interest in the WECS(s) solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the WECS(s) within one year of such event.
WECS Project	The collection of WECS and Substations as specified in the siting approval application pursuant to this Ordinance.

WECS Tower The support structure to which the nacelle and rotor are attached, free standing or guyed structure that supports a wind turbine generator.

WECS Tower Height The distance from the rotor blade at its highest point to the surface of the ground existing after construction.

Wind Energy Conversion Systems (WECS) All necessary devices that together convert wind energy into electricity and deliver that electricity to a utility's transmission lines, including but not limited to the rotor, nacelle, generator, WECS Tower, electrical components, WECS foundation, transformer, and electrical cabling from the WECS Tower to the Substations, switching stations, communications facilities, and other required facilities and equipment, as related to a WECS project.

Commercial WECS is defined as a Wind Energy Collection System constructed on the property of another by a company or corporation or other entity, whose general intent is to capture wind energy and place it on the electrical grid for resale.

Non-Commercial WECS is defined as a Wind Energy Collection System that is generally smaller than a commercial WECS and the primary purpose is to collect wind energy for purpose of supplying energy to the owners, such as a business, school, or factory. Height shall not exceed two hundred (200) feet.

Micro-WECS is defined as a small Wind Energy Collection System whose general purpose is to provide energy to a residential or small business user such as a farmer or homeowners. Height shall not exceed sixty (60) feet.

Wireless Communication Any Communications Facilities or Towers, poles, Antennas or other structures intended for use in connection with transmission or reception of radio or television signals or any other Spectrum-based transmission/ reception.

Whip Antenna An Antenna that transmits signals in a three hundred sixty (360) degree pattern. Whip Antennas are typically cylindrical in shape, are less than six (6) inches in diameter and measure up to eighteen (18) inches in height. Also called omnidirectional, stick or pipe Antennas.

View Corridor A View Corridor is a three-dimensional area extending out from a viewpoint. The width of the View Corridor depends on the focus



of the view. The focus of the view may be a single object, such as a mountain, that would result in a narrow corridor, or a group of objects, such as a downtown skyline, that would result in a wide corridor. Panoramic views have very wide corridors and may include a three hundred sixty (360) degree perspective. Although the View Corridor extends from the viewpoint to the focus of the view, the mapped portion of the corridor extends from the viewpoint and is based on the area where base zone heights shall be limited in order to protect the view.

### **SECTION 3.0 UTILITIES: UTILITY POLICY**

All utility lines, including, but not limited to, gas, sewer, electric power, telephone and cable television, shall be located underground throughout the Subdivision. Wherever existing lines are located above ground, except on public roads and rights-of-way, they shall be removed and placed underground. All utility lines and other Communications Facilities and Towers existing and proposed throughout the Subdivision shall be shown on the Primary Plat. Underground service connections to the trafficway property line of each platted lot shall be installed at the Subdivider's expense. At the discretion of the Planning Commission, the requirement for service connections to each lot may be waived in the case of adjoining lots that are to be retained in single ownership and that are to be developed for the same primary purpose.

### **SECTION 4.0 UTILITIES: ELECTRICAL SERVICE**

#### **4.1 LOCAL SERVICE PROVIDER**

Specifications for the design, construction and installation of electrical service systems are governed by the local service providers to which the Development will connect.

#### **4.2 FUEL CELLS**

Specifications for the design, construction and installation of fuel cell systems are governed by the local service providers that will service the Development.

### **SECTION 5.0 UTILITIES: NATURAL GAS SERVICE**

#### **5.1 NATURAL GAS SERVICE**

Specifications for the design, construction and installation of natural gas service systems are governed by the local service providers to which the Development will connect.

## **5.2 LP GAS SERVICE**

Specifications for the design, construction and installation of LP gas service systems are governed by the local service providers that will service the Development.

## **SECTION 6.0 UTILITIES: CABLE TELEVISION SERVICE**

Specifications for the design, construction and installation of cable television service systems are governed by the local service providers to which the Development will connect.

## **SECTION 7.0 UTILITIES: TELEPHONE SERVICE**

Specifications for the design, construction and installation of telephone service systems are governed by the local service providers to which the Development will connect.

## **SECTION 8.0 UTILITIES: TELECOMMUNICATIONS FACILITIES/TOWERS**

### **8.1 GENERAL PROVISIONS**

#### **A. Title**

This Section of this Title shall also be known, cited and referred to as the Wireless Telecommunications Facility/Tower Regulations of Henry County (hereinafter, "these Regulations").

#### **B. Purposes**

In order to protect the public health, safety and general welfare of the community, while accommodating the communications needs of residents and businesses, these Regulations are necessary in order to:

1. Facilitate the provision of Wireless Communication services to the residents and businesses of the County;
2. Minimize adverse visual effects of Communications Facilities and Towers through careful design and siting standards;
3. Encourage the location of Communications Facilities and Towers in non-residential areas through performance standards and incentives;

4. Avoid potential damage to adjacent properties from Communications Facility and Tower failure through structural standards and setback requirements; and
5. Provide mechanisms for the mitigation of Communications Facility and Tower proliferation through sharing requirements for all new Applicants and those existing Communications Facilities and Towers that are physically capable of sharing.

C. Authority

The Planning Commission of Henry County (hereinafter "Planning Commission") is vested with the authority to review, approve, conditionally approve or disapprove applications for Wireless Communications Facilities and Towers, including sketches, Primary and Secondary Plats.

D. Jurisdiction

1. These Regulations apply to all Wireless Communications Facilities and Towers, as defined in Section 2 above, located within the County Jurisdictional Area (See Title 1, Section 2.2.)
2. No Wireless Communications Facility or Tower may be constructed without an approved and signed Site Plan from the Planning Commission.

E. Enactment

In order that Wireless Communications Facilities and Towers may be constructed in accordance with these purposes and policies, these Regulations are hereby adopted and made effective as of the date of their approval by the County Commissioners. All applications for Wireless Communications Facility and Tower sitings pending on the effective date of these Regulations or thereafter filed shall be reviewed under these Regulations.

F. Interpretation, Conflict and Separability

1. Interpretation

In their interpretation and application, the provisions of these Regulations shall be held to be the minimum requirements for the protection of public health, safety and general welfare. These Regulations shall be construed broadly to promote the purposes for which they are adopted.

2. Conflict

These Regulations are not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law, except as provided in these Regulations. Where any provision of these Regulations imposes restrictions different from any other ordinance, rule or regulation, statute or other provision of law, the provision that is more restrictive or imposes higher standards shall control.

### 3. Severability

If any part or provision of these Regulations or the application of these Regulations to any service provider or circumstances is adjudged invalid by any court of competent jurisdiction, the judgment shall be confirmed in its operations only to the part, provision or application that is judged to be invalid.

### G. Amendments

For the purpose of protecting the public health, safety and general welfare, the Planning Commission may from time to time propose amendments to these Regulations that shall be approved or disapproved by the County Commissioners at a public meeting following public notice. Realizing that communication technologies are evolving and changing quickly, future innovations may reduce the impacts of individual Communications Facilities and Towers and render portions of these Regulations obsolete. Therefore, periodic review and revision of these Regulations will be necessary.

### H. Public Purpose

Regulation of the siting of Wireless Communications Facilities and Towers is an exercise of valid police power delegated by the State of Indiana and as stipulated in the Federal Telecommunications Act of 1996. The Applicant, Owner and Operator have the duty of compliance with reasonable conditions laid down by the Planning Commission.

### I. Enforcement, Violations and Penalties

1. The enforcement of these Regulations shall be the responsibility of the Zoning Administrator.
2. Any person who violates these Regulations shall be subject to a fine in an amount of two thousand five hundred dollars (\$2,500) per violation. Each day the violation exists constitutes a separate violation pursuant to the provisions of the statutes of the State of Indiana.

## **8.2 WIRELESS COMMUNICATION FACILITY/TOWER APPLICATION PROCEDURE AND APPROVAL PROCESS**

A. General Procedure

The submission of Applications for Wireless Communications Facilities and Towers shall follow the same procedure as detailed in the County's Zoning Ordinance for permitted uses and Commission Approved Uses, as the circumstances require.

B. Additional Procedures

In addition to the information required elsewhere in the County's Zoning Ordinance for permitted uses and Commission Approved Uses, development applications for Wireless Communications Facilities and Towers shall include the following supplemental information:

1. A report from a qualified and licensed Professional Engineer that:
  - (a) Describes the Communications Facility/Tower height and design, including a cross section and elevation;
  - (b) Documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between Antennas;
  - (c) Describes the Communications Facility's and Tower's capacity, including the number and type of Antennas it can accommodate;
  - (d) Documents what steps the Applicant will take to avoid interference with established public safety Telecommunications;
  - (e) Includes an engineer's stamp and registration number; and
  - (f) Includes other information necessary to evaluate the request.
2. For all commercial Wireless Communications Facilities and Towers, a letter of intent committing the Owner and its successors to allow the shared use of the Communications Facility/Tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.
3. Before the issuance of a Building Permit, the following supplemental information shall be submitted to the Zoning Administrator:
  - (a) A copy of the FAA's response to the submitted "Notice of Proposed Construction or Alteration" (FAA Form 7460-1);
  - (b) Proof of compliance with applicable FCC regulations;

- (c) A report from a qualified and licensed Professional Engineer that demonstrates the Communications Facility's and Tower's compliance with the County's structural and electrical standards; and
- (d) A copy of any purchase agreement or lease for the land upon which the Communications Facility/Tower is to be located, which document shall contain language in accordance with Section 8.1 of these Regulations.

#### 4. Site Plan Requirements

In addition to the Site Plan requirements found elsewhere in the County's Zoning Ordinance, Site Plans for Wireless Communications Facilities and Towers shall include the following supplemental information:

- (a) Location and approximate size and height of all buildings and structures within five hundred (500) feet adjacent to the proposed Wireless Communications Facility/Tower;
- (b) Site Plan of entire Development, indicating all improvements, including landscaping and screening, at a scale of one (1) inch equals fifty (50) feet; and
- (c) Elevations showing all facades, indicating exterior materials and color of the Communications Facilities and Towers on the proposed site.

#### 5. General Approval Standards

Generally, approval of a Wireless Communications Facility/Tower can be achieved if the following items are met:

- (a) The location of the proposed Communications Facility/Tower is compatible with the County's Master Plan and Zoning Ordinance;
- (b) All efforts to co-locate on an existing Communications Facility or Tower have been made and have not been successful or legally/physically possible;
- (c) The submitted Site Plan complies with the performance standards set forth in these Regulations;
- (d) The proposed Communications Facility/Tower will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district or major View Corridor;

- (e) The lowest six (6) feet of the Communications Facility/Tower will be visually screened by trees, large shrubs, solid walls, solid fences and/or nearby buildings;
- (f) The height and mass of the Communications Facility/Tower does not exceed that which is essential for its intended use and public safety;
- (g) The Owner of the Wireless Communications Facility/Tower has agreed to permit other persons/cellular providers to attach cellular Antennas or other communications apparatuses that do not interfere with the primary purpose of the Communications Facility/Tower;
- (h) There exists no other existing Communications Facility/Tower that can reasonably serve the needs of the Owner of the proposed new Communications Facility/Tower;
- (i) The proposed Communications Facility/Tower is not constructed in such a manner as to result in needless height, mass and guy-wire supports;
- (j) The color of the proposed Communications Facility/Tower will be of a light tone or color (except where required otherwise by the FAA) as to minimize the visual impact and the Communications Facility/Tower will have a security fence around the Communications Facility/Tower base or the lot where the Communications Facility/Tower is located; and
- (k) The Communications Facility/Tower is in compliance with all other applicable local, state and federal regulations.

## 6. Additional Considerations

The Planning Commission, in reviewing the Commission Approved Use application, shall give consideration to the particular needs and circumstances of each application and shall examine the following items as they relate to the proposed conditional use:

- (a) Topography;
- (b) Zoning on site;
- (c) Surrounding zoning and land use;
- (d) Streets, curbs, gutters and sidewalks;
- (e) Access to public trafficways;
- (f) Driveway and curb cut locations in relation to other sites;

- (g) General vehicular and pedestrian traffic;
- (h) Parking location and arrangement;
- (i) Number of parking spaces needed for the particular special use;
- (j) Internal site circulation;
- (k) Building height, bulk and setback;
- (l) Front, side and rear yard setbacks;
- (m) Site coverage by building(s), parking area(s) and other structures;
- (n) Trash and material storage;
- (o) Alleys, service areas and loading bays;
- (p) Special and general easements for public or private use;
- (q) Landscaping and tree masses;
- (r) Necessary screening and buffering;
- (s) Necessary fencing;
- (t) Necessary exterior lighting;
- (u) On-site and off-site, surface and subsurface storm and water drainage;
- (v) On-site and off-site utilities;
- (w) Dedication of trafficways and rights-of-way;
- (x) Proposed signage (subject to regulations established by the Sign Ordinance); and
- (y) Protective restrictions and/or covenants.

### **8.3 GENERAL WIRELESS COMMUNICATIONS FACILITY/TOWER PERFORMANCE STANDARDS**

#### **A. Co-location Requirements**



All commercial Wireless Communications Facility/Tower erected, constructed or located within the County shall comply with the following requirements:

1. A proposal for a new commercial wireless Communications Facility/Tower shall not be approved unless the Planning Commission finds that the telecommunications equipment planned for the proposed Communications Facility/Tower cannot be accommodated on an existing or approved Communications Facility/Tower or building within a one (1) mile search radius, one-half (.5) mile search radius for Communications Facilities/Towers less than one hundred twenty (120) feet in height, one-quarter (.25) mile search radius for Communications Facilities/Towers less than eighty (80) feet in height), of the proposed Communications Facility/Tower due to one (1) or more of the following reasons:
  - (a) The planned equipment would exceed the structural capacity of the existing or approved Communications Facility/Tower or building, as documented by a qualified and licensed Professional Engineer, and the existing or approved Communications Facility/Tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost;
  - (b) The planned equipment would cause interference materially impacting the usability of the other existing or planned equipment at the Communications Facility/Tower or building, as documented by a qualified and licensed Professional Engineer, and the interference cannot be prevented at a reasonable cost;
  - (c) Existing or approved Communications Facilities/Towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably, as documented by a qualified and licensed Professional Engineer; or
  - (d) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved Communications Facility/Tower or building.

It is the Applicant's responsibility to adequately show due diligence in seeking to co-locate. The Applicant shall submit documented refusals of attempts to co-locate on Communications Facility/Tower within the search area.
2. Any proposed commercial wireless Communications Facility/Tower shall be designed, structurally, electrically and in all respects, to accommodate both the Applicant's Antennas and comparable Antennas for at least two additional users if the Communications Facility/Tower is more than one hundred (100) feet in height or for at least one (1) additional user if the Communications

Facility/Tower is more than sixty (60) feet in height. Communications Facilities/Towers shall be designed to allow for future rearrangement of Antennas upon the Communications Facility/Tower and to accept Antennas mounted at varying heights.

B. Communications Facility/Tower and Antenna Design Requirements

Proposed and modified Communications Facility/Tower and Antennas shall meet the following design requirements:

1. Communications Facility/Tower and Antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the FFA.
2. Commercial Communications Facility/Tower shall be of a monopole design unless the Planning Commission determines that an alternative design would better blend into the surrounding environment.

C. Communications Facility/Tower Height

The maximum Communications Facility/Tower height permitted in the County is to be calculated by applying the following:

1. If the Communications Facility/Tower is designed to accommodate only one (1) service provider, the maximum height shall be one hundred twenty (120) feet from grade.
2. If the Communications Facility/Tower is designed to accommodate two (2) service providers, the maximum height shall be one hundred sixty (160) feet from grade.
3. If the Communications Facility/Tower is designed to accommodate more than two (2) service providers, the maximum height shall be one hundred ninety-nine (199) feet from grade.

D. Accessory Utility Buildings

All utility buildings and structures accessory to a Communications Facility/Tower shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements. Ground mounted equipment shall be completely screened from view by suitable landscaping and/or vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

E. Communications Facility/Tower Lighting

Communications Facilities/Towers shall not be illuminated by artificial means and display strobe lights unless such lighting is specifically required by the FAA or other federal or state authority for a particular Communications Facility/Tower.

F. Antennas Mounted on Structures, Roofs, Walls and Existing Facilities/Towers

The placement of wireless telecommunications Antennas on roofs, walls and existing Communications Facilities/Towers may be approved by the Zoning Administrator, provided the Antennas meet the requirements of these Regulations, after submission of:

1. A final Site and Building Plan as specified by Title 1, Section 14.8 of this Code; and
2. A report prepared by a qualified and licensed Professional Engineer indicating the existing structure or Communications Facility's/Tower's suitability to accept the Antenna and the proposed method of affixing the Antenna to the structure. Complete details of all fixtures and couplings and the precise point of attachment shall be indicated.

G. Temporary Wireless Communications Facilities

Any Communications Facility/Tower designed for temporary use as defined in Title 5, Section 2.0 is subject to the following:

1. Use of a Temporary Wireless Communications Facility/Tower is allowed only if the Owner has received a Temporary User Permit from the Planning Commission.
2. Temporary Wireless Communications Facilities/Towers are permitted for use of no longer than thirty (30) days for use while constructing permanent Communications Facility/Tower and no longer than five (5) days for use during a special event.
3. Temporary Wireless Communications Facilities/Towers are subject to all applicable portions of these Regulations, excluding Sections 8.3 C (2) and C (3).

H. Interference with Public Safety Telecommunications

Neither new nor existing telecommunications service shall interfere with public safety telecommunications. All applications for new service shall be accompanied by an intermodulation study that provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of a new service or changes in existing

service, telecommunications providers shall notify the Zoning Administrator at least ten (10) calendar days in advance of such changes to allow the County to monitor interference levels during the testing process.

I. Abandoned or Unused Communications Facilities/Towers or Portions of Facilities/Towers

Abandoned or unused facilities/towers or portions of facilities/towers shall be removed as follows:

1. The Owner of a wireless Communications Facility/Tower shall file annually with the Zoning Administrator a declaration as to continuing operation of every Communications Facility/Tower installed subject to these Regulations. Failure to do so shall be determined to mean that the Communications Facility/Tower is no longer in use and considered abandoned, thus subject to the following:
2. All abandoned or unused Communications Facility/Tower and associated facilities shall be removed within one hundred eighty (180) days of the cessation of operations at the site unless a time extension is approved by the Zoning Administrator. A copy of the relevant portions of a signed lease that requires the Applicant to remove the Communications Facility/Tower and associated facilities upon cessation of operations at the site shall be submitted at the time of Application. In the event that a Communications Facility/Tower is not removed within one hundred eighty (180) days of the cessation of operations at a site, the Communications Facility/Tower and associated facilities may be removed by the County and the costs of removal assessed against the property.
3. Unused portions of Communications Facilities/Towers above a manufactured connection shall be removed within one hundred eighty (180) days of the time of Antenna relocation. The replacement of portions of a Communications Facility/Tower previously removed requires the issuance of a new wireless Communications Facility/Tower permit.

J. Signs and Advertising

The use of any portion of a Communications Facility/Tower for signs other than warning or equipment information signs is prohibited.

**8.4 ZONING SPECIFIC WIRELESS COMMUNICATION FACILITY/TOWER PERFORMANCE STANDARDS**

A. Wireless Communications Facility/Tower Siting Standards: Zoning

Commercial wireless Communications Facilities/Towers are allowed only as a Commission Approved Use, requiring the approval of a Commission Approved Use Permit in all of the Zoning Districts.

B. Non-Commercial Wireless Communications Facility/Tower Standards: Zoning

1. Communications Facility/Tower supporting amateur radio antennas and conforming to all applicable provisions of these Regulations shall be allowed only in the rear yard of residentially zoned parcels.
2. In accordance with the FCC's preemptive ruling PRB 1, Communications Facility/Tower erected for the primary purpose of supporting amateur radio antennas may exceed thirty (30) feet in height, provided that a determination is made by the Zoning Administrator that the proposed Communications Facility/Tower height is technically necessary to successfully engage in amateur radio communications.

**8.5 METEOROLOGICAL TOWERS**

An Improvement Location Permit, authorizing the construction of a Meteorological Tower, may be issued by County Zoning Administrator, subject to the following standards and conditions:

- A. A Meteorological Tower is a temporary structure that is intended to be on any one site for a period of five (5) years or less.
  1. One (1) renewal for a two (2) year period may be granted by the Zoning Administrator if the applicant is found to be in compliance with all other County Code.
  2. Subsequent time extensions must be granted by the Board of Zoning Appeals.
  3. If no renewals are sought or granted after the expiration of the Tower's time limit the tower will be deemed abandoned and the Owner or Operator will have 180 days to remove the Tower once they have received an order from the County Zoning Administrator.
  4. If the Tower is not removed within the 180 days, the County or its agent may enter the property and remove the Tower. The County may sell the salvage to defray the cost of removal. Any additional cost for removal will be levied against the property owner.
- B. No Meteorological Tower shall be greater than four hundred (400) feet tall.
- C. No Meteorological Tower shall be nearer than 1.1 times the height of the Tower to the nearest property line or right of way. No guy wire anchors

shall be allowed within any required road right of way setback and must have visible and reflective objects, such as flags, plastic sleeves, reflectors, or tape placed on the anchor points of guy wires and along the innermost guy wires up to eight (8) feet above the ground. In addition, visible fencing shall be installed around anchor points of guy wires.

- D. All Meteorological Towers shall comply with all applicable FAA regulations.
- E. The Planning Commission must grant the Applicant a Commission Approved Use authorizing the construction of the Meteorological Tower, prior to the issuance of an Improvement Location Permit.
- F. A final Site and Building Plan as specified by Title 1, Section 14.8 of this Code must accompany any application for an Improvement Location Permit on a proposed Meteorological Tower. Also, a copy of any purchase agreement and/or lease for the land upon which the Tower is to be located must accompany the application.

## **SECTION 9.0 ZONING: WIND ENERGY CONVERSION SYSTEMS**

### **9.1 PURPOSE.**

These Zoning regulations are adopted for the following purposes:

1. To assure that any development and production of wind-generated electricity in Henry County is safe and effective;
2. To facilitate economic opportunities for Henry County and its residents;
3. To provide a regulatory scheme for the construction and operation of Wind Energy Conversion Systems in Henry County, subject to reasonable restrictions, in order to preserve the public health, safety, and general welfare.

### **9.2 INTENT**

It is the intent of the Wind Energy Conversion Systems (WECS) siting regulations to provide a regulatory scheme for the construction and operation of WECS in the County; subject to reasonable restrictions. The goal of these regulations is to preserve the health, safety, and general welfare of the public. This ordinance describes the minimum requirements for constructing and maintaining WECS in Henry County.

### **9.3 APPLICABILITY**

This Ordinance governs the siting of WECS and Substations that generate and transport electricity. This Ordinance applies to all townships.

### **9.4 PROHIBITION**

No Applicant, person or entity shall construct, operate, or locate within Henry County a Wind Energy Conversion System (WECS) without having fully complied with the provisions of this Ordinance.

### **9.5 CONFLICT WITH OTHER REGULATIONS**

Nothing in this Ordinance is intended to preempt other applicable state and federal laws or regulations, including compliance with all Federal Aviation Administration rules and regulations and shall comply with the notification requirements of the FAA. Nor are they intended to interfere with, abrogate, or annul any other ordinance, rule, regulation, statute, or provision of law. The provision that is more restrictive or that imposes higher standards shall govern.

### **9.6 APPLICATION REQUIREMENTS**

Prior to construction of a WECS, the Applicant shall obtain approval for the following: (1) a Commission Approved Use to provide for WECS use from the Henry County Planning Commission (also referred to as "HCPC"); (2) a variance from the Henry County Board of Zoning Appeals for any variances anticipated for the WECS project as described below; and (3) an Improvement Location Permit from the Henry County Planning Commission, issued by the Zoning Administrator acting on its behalf, as described below and in the Henry County Development Code, Section 14.6.

#### **A. The Application for WECS Commission Approved Use**

1. The application shall be filed with the HCPC and include the following items:

- (a) A WECS Project summary, including, to the extent available: a general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer, type of WECS; the number of WECS Towers, the name plate generating capacity of each WECS; the maximum height of the WECS Towers and maximum diameter of the WECS rotors and blades; the general location of the WECS Project; and a description of the Applicant, Owner, and Operator, including their respective business structures.

- (b) The names, addresses, and phone numbers of the Applicant, Owner and Operator, and the names and addresses of all anticipated Participating Property Owners and property owners adjacent to the location of all WECS equipment, facilities, turbines, towers, electric cables, substations, staging areas, vehicles or any ancillary equipment and items contributing to the WECS Project.
- (c) A topographic map of the WECS Project site and the surrounding area which shall encompass an area at least a mile radius from the proposed WECS Project site with contours of not more than five foot intervals.
- (d) A site plan, at an appropriate scale, showing (maximum sheet of 36 inches by 24 inches and individual tower site not greater than 1-inch equals 20 feet): the proposed location of the Wind Energy Conversion System (including planned locations of each WECS Tower, guyed lines and anchor bases; WECS access roads; substations; electrical cabling; staging areas and ancillary equipment). In addition, the site plan shall show: Primary Building/Structure within one half mile of any WECS Tower; property lines, including identification of adjoining properties; setback lines; public roads; County regulated drains, open ditches, or tiles; location of all above-ground utility lines within a distance of two (2) times the WECS Tower Height of any WECS Tower; natural gas or oil pipelines; railways; recognized historic or heritage sites as noted by the Division of Historic Preservation and Archaeology of the Indiana Department of Natural Resources; and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines. This site plan must also be distributed to the Office of Emergency Management, all fire departments and local law enforcement agencies serving any part of the site, to the County Sheriff, and the FAA.
- (e) A site plan showing the location of all existing and proposed underground utility lines in the proposed WECS Project area.
- (f) A site plan showing the locations of hospitals, nursing homes, and recreation areas including, but not limited to, trails, golf courses, State and County parks, protected lands, schools, and campgrounds in the proposed WECS Project area.
- (g) An agreement to provide training to all emergency services agencies, including but not limited to, Office of Emergency Management, law enforcement, EMS and fire departments within Henry County and surrounding counties, to provide annual refresher courses during the operational life of the WECS Project, and to address any and all safety issues pertaining to the construction and operation of the WECS.



- (h) An evacuation zone and safety plan developed in conjunction with local emergency services agencies.
  - (i) A projected sound emissions study and map from 8Hz to 8kHz for the WECS Project area performed by a certified sound engineer employing peer-reviewed methods.
- 2. In determining whether to approve the application for a WECS Commission Approved Use, the HCPC shall determine whether the application satisfies each of criteria set forth in this Ordinance for Commission Approved Use, for the siting and operation of WECS, and other conditions and criteria for the approval of a Commission Approved Use set forth in the Henry County Code, and shall provide written findings thereof.
- 3. A Commission Approved Use granted by the HCPC for a WECS Project shall be valid for a period of one (1) year, after which time the approval shall terminate and be of no further force or effect if construction of the approved WECS has not commenced. Thereafter, an extension of up to two (2) years may be granted by the HCPC, provided that the Applicant files an extension request with the HCPC prior to expiration of the Commission Approved Use and shows verifiable progress made on the WECS Project.
- 4. The Applicant shall set up an Escrow Account at the time of the Commission Approved Use Application. This Escrow Account will be held at a financial institution approved by the County, solely in the name of the County, to be managed by the County Treasurer (or designee not affiliated with the Applicant/Owner/Operator). The Applicant will make an initial deposit of \$75,000. The Commission Approved Use Application will not be processed until proof of deposit has been provided by the Applicant. A Commission Approved Use Application will not be heard by the HCPC until all costs incurred by the County, as of the date of the scheduled hearing, have been reimbursed by the Applicant. Funds deposited in the Escrow Account may not be used by the Applicant to pay any applicable Application Fees or charges for obtaining an Improvement Location Permit. The Escrow Account shall be administered subject to the following conditions:
  - (a) Funds may be used for administration of the Application for a Commission Approved Use or Improvement Location Permit, including without limitation, to obtain engineering, outside expert health and wildlife evaluations, economic impact, environmental impact, or other professional services to aid in the review of any submitted WECS application, or at any time during the life of the WECS when information is needed, subject to the approval of the Henry County Commissioners. The funds may also be used for investigating complaints, and legal fees, including reasonable attorney fees incurred by the County, if the County is a party to any litigation arising out of, or relating to, the WECS Project.

- (b) The Escrow Account will be funded during the life of the WECS from application through completed decommissioning by the Applicant/Owner/Operator. The Applicant/Owner/Operator will replenish all Escrow funds used by the County within 14 days of being sent written notification and explanation of any withdrawal by the County. Failure to maintain the Escrow Account at \$75,000 (within 30 days of being sent notice) will result in revocation, or denial of renewal, of the Commission Approved Use or Improvement Location Permit. Once the Applicant/Owner/Operator has satisfactorily complied with the decommissioning conditions as specified in any Decommissioning Plan, it will send the County written notification. The County shall have 180 days after receipt of notification to verify that all decommissioning conditions have been satisfied. If there is non-compliance with the Decommissioning Plan and any agreement between the County and the Applicant/Owner/Operator, the County will notify the Applicant/Owner/Operator. If all decommissioning conditions and obligations have been satisfied, the County will release any funds remaining in the Escrow Account, less related expenses incurred by the County, along with a statement detailing all expenses incurred.
- (c) If the Commission Approved Use Application is denied, all Escrow Account funds will be returned to the Applicant, less expenses incurred by the County. The funds will be returned, along with a statement detailing the expenses incurred within 90 days after the Application is denied and legal proceedings, if any, related to the Commission Approved Use Application are concluded, or within ninety (90) days after receipt of a written request by the Applicant to withdrawal the application. All fees paid at the time of Application or in connection with a request to obtain an Improvement Location Permit, shall not be refunded.

B. Applications for Contiguous Projects

Contiguous WECS Projects (adjoining properties, single Owner) may submit a single application and be reviewed under the same proceedings, including notices, hearing(s), reviews and denials, or approvals.

C. The Application for Improvement Location Permit

- 1. The Applicant shall apply to the Zoning Administrator for an Improvement Location Permit. In addition to the information required on the Improvement Location Permit Application, and subject to the additional requirements stated in this section and this Code, the Applicant shall provide the following information to the Zoning

Administrator prior to the issuance of an Improvement Location Permit:

- (a) Location of all above-ground and all buried utility lines within a radius equal to two (2) times the height of the proposed WECS.
- (b) Location of all underground utility lines associated with the WECS Project.
- (c) Dimensional representation of the structural components of the Tower construction including the base and footings.
- (d) Schematic of electrical systems associated with the WECS including all existing and proposed electrical connections.
- (e) Manufacturer's specifications and installation and operation instructions or specific WECS design information, including manufacturer's safety requirements, life expectancy, and warranty.
- (f) Certification by a registered Professional Engineer that the Tower designs are sufficient to withstand wind load requirements for structure as defined by International Code Council.
- (g) All turbines shall be new equipment commercially available.
- (h) Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted to the HCPC.
- (i) No appurtenances other than those associated with the WECS shall be connected to any Tower except with express, written approval of the HCPC.
- (j) A Transportation Plan providing the information required by this Ordinance, including, but not limited to, showing how vehicles would access the site and describing the impacts of the proposed WECS Project on the local and regional road system during construction and operation.
- (k) A re-vegetation plan for restoring areas temporarily disturbed during construction shall be submitted to the HCPC for approval.
- (l) A fire protection plan for construction and operation of the WECS Project.

- (m) An agreement to provide training to all emergency services agencies, including but not limited to, Office of Emergency Management, law enforcement, EMS and fire departments within Henry County and surrounding Counties, to provide annual refresher courses during the operational life of the WECS Project, and to address any and all safety issues pertaining to the construction and operation of the WECS.
- (n) An evacuation zone and safety plan developed in conjunction with local emergency services agencies.
- (o) A drainage plan for construction and operation must be developed and approved by the Henry County Drainage Board. No WECS Tower shall be placed within 200 feet of an existing county-regulated drainage ditch or waterway.
- (p) An erosion control plan must be developed in consultation with the Henry County Soil and Water Conservation District and approved by the HCPC.
- (q) Maximum height of any WECS Tower shall be no more than 500 feet from the tip of the rotor blade to at its highest point to the ground. Blade clearance shall be at least 25 feet from the ground.
- (r) If, at any time during construction, operation, or maintenance of the WECS, the Applicant wishes to modify the approved Improvement Location Plan, the Applicant shall submit to the Henry County Planning Commission an Amended Location Improvement Plan for review, denial, or approval.
- (s) Any other item reasonably requested by the HCPC.

## **9.7 SETBACK REQUIREMENTS**

### **A. COMMERCIAL**

1. No WECS or Meteorological Tower shall be constructed within any setback, dedicated public easement, or dedicated public right-of-way, without the prior written authorization from the Henry County Commissioners and the holder of any easement.
2. The location of any WECS or Meteorological Tower may not be closer than 1.5 times the sum of the WECS Tower Height from any property boundary line, dedicated roadway, railroad right-of-way, or overhead electrical transmission or distribution lines.

3. The location of any WECS Tower may not be closer than the greater of:  
(a) 1,500 feet; or (b) three (3) times the WECS Tower Height, from a Primary Building/Structure, measured from the center of the WECS Tower foundation at the base of the WECS Tower to the nearest edge of the Primary Building/Structure.
4. The location of any WECS Tower may not be closer than five (5) times the WECS Tower Height from the limits of an incorporated municipality, or the property boundary line of a Public School, hospital, or nursing home. Distance shall be measured from the center of the foundation at the base of the WECS to the closest municipal boundary line or property boundary line.
5. The setback requirements set forth in this Section 9.7 (A) applicable to a particular WECS Tower may, with the written consent of each abutting Participating Property Owner, Non-Participating Property Owner, incorporated municipality, Public School, hospital or nursing home be reduced to a distance of no less than 1.1 times the WECS Tower Height or 550 feet from a municipal boundary, property boundary line or Primary Structure. A written consent shall be effective until decommissioning of the particular WECS Tower(s) for which the consent applies, shall include the legal description of the affected property with a cross reference to the current deed of record, shall bind the consenting property owner's heirs, assigns, and successors, and shall be recorded in the office of the Henry County Recorder.
6. For purpose of this Section 9.7, distances shall be measured from the center of the foundation at the base of a Tower.

#### B. NON-COMMERCIAL

1. No WECS shall be constructed within any setback, dedicated public easement, or dedicated public right-of-way without prior written authorization from the Henry County Commissioners and the holder of any easement.
2. The location of any WECS may not be closer than 1.5 times the Tower Height from any property boundary lines, dedicated roadway, railroad right-of-way, or overhead electrical transmission or distribution lines.

### 9.8 SAFETY DESIGN AND INSTALLATION STANDARDS

- A. Equipment Type
  1. Turbines

All commercial turbines shall be constructed of new, commercially available equipment.

2. Meteorological Towers

Meteorological Towers may be guyed.

B. Design Safety Certification

All WECS shall conform to applicable industry standards, as well as all local, state, and federal regulations. An Applicant shall submit certificate(s) of design compliance that wind turbine manufacturers have obtained from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energie, or an equivalent third party.

C. Controls and Brakes

1. Braking System

All WECS shall be equipped with a redundant braking system. This includes both aerodynamic over speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Stall regulation shall not be considered a sufficient braking system for over speed protection.

2. Operation Mode

All mechanical brakes shall be operated in a fail-safe mode.

D. Electrical Components

1. Standards

All electrical components of all WECS shall conform to applicable local, state, and national codes, and any relevant national and international standards.

2. Collection Cables

All electrical collection cables between each WECS shall be located underground unless they are located on public or utility rights-of-way or with prior County approval.

3. Transmission Lines

All transmission lines that are buried shall be trenched at a depth consistent with or greater than local utility and telecommunication underground lines standards or as negotiated with the land owner or the land owner's designee until the same reach the property line or a substation adjacent to the property line.

E. Color and Finish

In addition to all applicable FAA requirements, the following shall also apply:

1. Wind Turbines and Towers

All wind turbines and towers that are part of WECS shall be white, grey, or another non-obtrusive color.

2. Blades

All blades shall be white, grey, or another non-obtrusive color.

3. Finishes

Finishes shall be matte or non-reflective. Blades shall be finished with repellant coatings to minimize ice build-up if such product is commercially available prior to construction.

4. Advertising

No advertising or signage shall be allowed on a WECS Tower, except for manufacturer's name on the nacelle.

F. Warnings

1. Towers, Transformers, and Substations

A sign or signs shall be posted on the Tower, transformer, and substation warning of high voltage. Signs with emergency contact information shall also be posted on the turbine or at another suitable point.

2. Guy Wires and Anchor Points

For all Guyed Towers, visible and reflective objects, such as flags, plastic sleeves, reflectors, or tape shall be placed on the anchor points of guy wires and along the innermost guy wires up to eight (8) feet above

the ground. In addition, visible fencing shall be installed around anchor points of guy wires.

3. Meteorological Towers

See Section 8.5 of this Ordinance.

G. Climb Prevention

1. All WECS Tower designs shall include features to deter climbing or be protected by anti-climbing devices such as:
  - a. Fences with locking portals at least six (6) feet in height;
  - b. Anti-Climbing devices fifteen (15) feet vertically from the base of the WECS Tower; or
  - c. Locked WECS Tower doors.

H. Blade Clearance

The minimum distance between the ground and any protruding blades utilized on all WECS shall be twenty five (25) feet, as measured at the lowest point of the arc of the blades. The minimum distance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel.

I. Lighting

1. Intensity and Frequency

All lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations.

2. Strobe Lights

Red strobe lights shall be required for night-time illumination. Red pulsating incandescent lights shall not be utilized.

3. Shielding

Except with respect to lighting required by the FAA, all lighting shall be shielded so that no glare extends substantially beyond the boundaries of any WECS.



J. Materials Handling, Storage, and Disposal

1. Solid Waste

All solid wastes, whether generated from supplies, equipment, parts, packaging, operation, or maintenance of the WECS, including old parts and equipment related to the construction, operation and/or maintenance of any WECS shall be removed from the site promptly and disposed of in accordance with all applicable federal, state, and local laws.

2. Hazardous Materials

All hazardous materials or waste related to the construction, operation, and/or maintenance of any WECS shall be handled, stored, transported, and disposed of in accordance with all applicable local, state, and federal laws.

**9.9 OTHER APPLICABLE STANDARDS**

A. Guyed Wire Anchors

No guy wire anchors shall be allowed within any road right-of-way except overhead transmission lines with approval of the Henry County Commissioners or the appropriate permitting authority.

B. Sewer and Water

All WECS shall comply with the existing septic and well regulations as required by the Henry County Health Department and the State of Indiana Department of Public Health.

C. Shadow Flicker

Applicant shall limit modeled shadow to no more than 30 hours per year at a residential dwelling of Non-Participating Property Owners using standard scientific engineering model assumptions.

D. Noise and Vibration

At no point along the exterior of a Primary Building/Structure may the sound pressure (dBA) attributable to a WECS exceed 43 dBA. Measurement devices used shall be capable of measuring octave bands from 8Hz to 8KHz. The Henry County Zoning Administrator may conduct sound level testing at times and places he or she may determine in his or her reasonable judgment and discretion. The cost of sound level testing shall be paid from funds held in the

Escrow Account. The Henry County Zoning Administrator may conduct testing in response to a complaint from a property Owner that alleges noise is generated from a WECS that exceeds the levels permitted by this Code; provided however, that testing from a particular property in response to a complaint shall be conducted no more than two (2) times during any twelve (12) month period, unless the testing reveals sound levels in excess of that permitted by this Code, in which case the Zoning Administrator may conduct additionally testing as reasonably necessary to determine that the sound levels do not exceed the levels permitted by this Code. If a WECS is found to exceed the permitted sound limits, a WECS Operator shall bring the WECS into compliance no later than forty eight (48) hours after receiving notice of a violation, or shall discontinue operation of the the WECS until such time as it is in compliance with all provisions of this Code. Alternatively, if a WECS Operator and property Owner reach written agreement on a remediation plan that allows for the operation of the WECS before completion of remediation, the WECS Operator may continue to operate the WECS while remediation is occurring, but must immediately discontinue operation if it does not comply with the remediation agreement. The obligations on a WECS Operator imposed by this section shall be in addition to any penalty imposed by this Code for a violation of its provisions and any other remedy of Henry County, at law or in equity.

E. Utility Interconnection

The WECS, if interconnected to a utility system, shall meet the requirements for interconnection and operate as prescribed by the applicable regulations of the electrical utility, as amended from time to time.

F. Signage

1. In addition to complying with Sign standards contained in this Code, the following signage regulations and standards shall also apply to WECS. In the event that one of the following regulations or standards conflicts with another sign regulation or standard prescribed by the Henry County Development Code, the most restrictive regulation or standard shall apply.

a. Surface area

No sign shall exceed sixteen (16) square feet in surface area.

b. Height

No sign shall exceed eight (8) feet in height.

c. Manufacturers or owner's company name and/or logo.

The manufacturers or owner's company name and/or logo may be placed upon the compartment containing the electrical equipment.

d. Development Signs

No more than two (2) ground/monument identification signs relating to the development shall be located on any portion of the WECS Project site.

e. Other signs and logos

No other advertising signs or logos shall be erected, placed, or painted on any WECS, including but not limited to, off-premise advertising signs (billboards) or free-standing pole signs.

f. Feeder Lines

With the exception of minimum setback distances, feeder lines installed as part of any WECS shall not be considered an essential service and all communications and feeder lines installed as part of any WECS shall be buried underground.

g. Other Appurtenances

No appurtenances other than those associated with the WECS shall be connected to any WECS Tower except with express, written approval of the HCPC.

## 9.10 USE OF ROADS/SERVICES

A. Public Roads and Services

The County, pursuant to Indiana law, controls the roads and certain rights-of-way within the unincorporated areas of the County and may place reasonable restrictions on the use of roads and rights-of-way for the public's health, safety and welfare, including but not limited to, control of vehicle weight and the placement of other structures in the right-of-way. All vehicles over five (5) gross tons vehicle weight shall use only roads approved by the County for the WECS Project.

B. Roads

1. Any proposed routes that will be used for construction workers, maintenance workers, staging, construction, and maintenance, and decommissioning purposes shall be identified In the Transportation

Plan, which is to be submitted for approval by Applicant at the time of application for the Improvement Location Permit. Prior to the issuance of an Improvement Location Permit, the County Commissioners, and the Henry County Engineer (or a licensed public engineer retained by Henry County for the purpose of evaluating the Transportation Plan) (“Engineer”) must approve the Transportation Plan. The Engineer shall conduct a preconstruction baseline survey to determine existing road conditions for assessing and recording potential future damage. The Applicant shall identify all public roads and service roads that will be used for construction, maintenance, staging and decommissioning of the WECS, and all vehicles over five (5) gross tons in weight that will be utilized in construction of the WECS.

2. The Transportation Plan is to be used for, and shall describe at a minimum, traffic control, construction, and maintenance of specific roads and drainage infrastructure by a WECS Operator, including plans for temporary road closures and traffic re-routing, plans for the repairs and reconstruction of all damage to roads, bridges, signage, vehicles, drainage structures, and other public improvements caused by the WECS construction, operation, and maintenance. The Transportation Plan shall also detail penalties that will be imposed for non-compliance with its terms and shall describe the bond to be provided, as required by Section 9.10 (B) (3), and the conditions upon which a claim may be made on the bond. .
  3. All damage to roads and right of way resulting from the construction, installation, and removal of the WECS Project equipment or improvements shall be repaired to the satisfaction of the Engineer, or such county inspector retained by Henry County. The Engineer or inspector shall require remediation and repair of all damage to roads and rights of way upon completion of, or during, construction. In addition, a corporate surety bond, payable to the Henry County Commissioners, in an amount to be fixed by the Engineer and with terms reasonably satisfactory to the Henry County Commissioners, shall be maintained at all times to ensure that future repairs are completed to the satisfaction of the County. The cost of the the bond shall be paid by the Applicant/Owner/Operator.
  - d. Newly constructed WECS access roads shall not impede the flow of water and must be approved by the Henry County Drainage Board, prior to construction of a new access road.
- C. Dust and Debris Control

Reasonable dust and debris control measures will be implemented as required by the County during construction of WECS. A storm water run off fence shall be required on all construction sites during construction and installation.

D. Sewer and Water

The WECS Project shall at all times comply with applicable septic and well regulations.

E. Drainage Repair

All waterways, drainage ditches, field tiles, or any other similar infrastructure damaged by the construction, decommissioning or maintenance of the WECS, shall be repaired to their original condition, to the reasonable satisfaction of the Henry County Drainage Board, and in a manner that will not impede the natural flow of water. All repairs must be completed, at the cost of the WECS Owner or Operator, as soon as reasonably possible and in no event later than sixty (60) days after receiving written notice of damage.

## 9.11 OPERATION AND MAINTENANCE

A. Physical Modifications

Any physical modifications to any WECS that alters the mechanical load, mechanical load path, or major electrical components or blade lengths shall require re-certification. Like-kind replacements shall not require re-certification. Therefore, prior to making any physical modification, the Owner or Operator shall confer with the Zoning Administrator to determine whether the physical modification requires re-certification.

B. Inspections

Routine inspections, at a fee to be determined from time to time by the Henry County Planning Commission and paid by the Owner or Operator, may be made by Henry County Planning Commission no more than twice annually to certify the safety and maintenance of the WECS and any accessory structures.

C. Interference

1. No WECS shall be constructed in a manner that interferes with any county, state, or federally owned and operated microwave transmissions. The Applicant/Owner/Operator shall minimize, and if necessary, mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The Applicant/Owner/Operator shall perform an electronic reception/transmission audit, including microwave beam path, of the

WECS Project area prior to construction, in at least 5 locations determined by the Engineer, representing variations in altitude and terrain. This audit shall serve as the baseline for assessing remediation needs after construction.

2. Notify existing communication tower owners.

The Applicant shall notify, in writing, all existing communication tower owners within two (2) miles of the proposed WECS upon application to the County for an Improvement Location Permit.

3. Mitigating interference following a complaint.

If, after construction of the WECS, the Owner or Operator receives a written complaint related to interference with electromagnetic communications, such as radio, local broadcast residential television, telecommunication, communication or microwave transmissions, navigational, weather forecasting facilities, internet, or broadband signals, the Owner or Operator shall mitigate said interference.

4. Failure to remedy a complaint

If the interference is not remedied within thirty (30) days, the WECS shall remain inactive until the interference is remedied or the WECS is removed.

5. Declaration of Public Nuisance

Any WECS structure, or portion thereof, declared to be unsafe by the Henry County Building Commissioner, by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage or abandonment, is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures set forth in this Code.

- E. Operation and Maintenance Summaries and Reports

The Owner or Operator shall submit, on an annual basis, a certified summary of the operation and maintenance reports to the HCPC. In addition, the applicant shall also make available, within a reasonable period of time, operation and maintenance reports requested by the Henry County Zoning Administrator or the HCPC.

- F. Access to the Site and Facility

The Henry County Planning Commission, its agents, along with persons retained by the County for the specific purpose of conducting inspections of the WECS, shall have the right, at any reasonable time and with reasonable prior notice, to accompany the Owner or Operator or its agent to inspect all parts of the WECS installation and to require that repairs or alterations be made to any WECS structure or equipment that does not comply with the provisions of this Code. The Owner or Operator of a WECS may retain a professional engineer, familiar with WECS, to prepare and submit to the Henry County Planning Commission, a written report detailing alternate methods for making the required repairs or alterations or providing evidence that the required repairs or alterations are unnecessary. The written report shall be submitted no later than thirty (30) days after receipt of notice from the Henry County Planning Commission or its agents that repairs or alterations are required, or within such longer period of time as may be granted by the HCPC. The Henry County Planning Commission will consider any written report and determine whether the repairs or alterations should be made as originally required or as proposed in the written report. In the event of a dispute between the Henry County Planning Commission and the Owner or Operator, or the Owner or Operator's Professional Engineer as to the required repairs or alterations, the decision of the Planning Commission shall be final and binding.

## **9.12 DECOMMISSIONING PLAN**

Prior to receiving an Improvement Location Permit, or siting approval under this Ordinance, the Applicant shall submit a decommissioning plan approved by the County Commissioners. The Applicant/Owner/Operator shall formulate a Decommissioning Plan outlining the anticipated means and cost of removing a WECS and site restoration at the end of their serviceable life or upon becoming a discontinued or abandoned use. A Decommissioning Plan shall include, at a minimum, the following:

A. Assurance

Written assurance that the WECS will be properly decommissioned upon the project life or in the event that the WECS is abandoned.

B. Cost Estimates

The Applicant/Owner/Operator shall provide a cost estimate for demolition and removal of the WECS. The cost estimate shall be made by a competent party such as a Professional Engineer, a contractor capable of decommissioning, or a person with suitable expertise or experience with decommissioning WECS.

C. Financial Assurance

The Applicant/Owner/Operator will provide financial assurance, in an amount no less than the demolition and removal cost estimate, through a performance

bond for the cost of decommissioning each WECS Tower constructed under the permit, governed by a Decommissioning Agreement to be entered into between Applicant/Owner/Operator and the County. In addition to the Escrow Account required by paragraph 9.6 (A)(4) above, prior to requesting an Improvement Location Permit, the Applicant shall establish an escrow account for the purpose of paying for the annual premium and fees associated with maintaining the performance bond. The Applicant/Owner/Operator shall, during the term of the Decommissioning Agreement, maintain sufficient funds in said escrow account to pay for such premiums and fees. The performance bond may have an initial term followed by consecutive renewals, provided that the sum of the bond may be adjusted for increases or decreases in the cost of demolition and removal, as determined by the Henry County Engineer (or an engineer retained by Henry County), in his or her reasonable discretion. Any remaining funds in the escrow account required by this paragraph, after decommissioning all WECS Towers to the satisfaction of the HCPC, will be released to the Applicant/Owner/Operator.

D. Discontinuation and Abandonment

1. Discontinuation

All WECS shall be considered Abandoned after one (1) year without energy production, unless a plan is developed and submitted to the Henry County Planning Commission outlining the steps and schedule for returning the WECS to service and any required permit fees are paid prior to the WECS remaining inactive for a period of one (1) year.

2. Abandonment by the Owner or Operator

In the event of Abandonment, the Owner or Operator must provide an affidavit to the Henry County Planning Commission attesting that the WECS will be decommissioned and removed within ninety (90) days. If decommissioning and removal has not been completed within said ninety (90) day period, the County Commissioners shall encumber the financial assurance instruments or funds deposited as assurance by the WECS Owner or Operator in accordance with the Decommissioning Agreement, and any other provision of this Code, and proceed with the decommissioning and removal of the WECS. Henry County shall retain any salvage value of the WECS until the full cost of removal and remediation is recovered from the WECS Owner or Operator or from the financial assurance provided to ensure decommissioning and removal is completed.

3. Updated Transportation Plan.



The Transportation Plan shall be updated or restated as appropriate for decommissioning purposes, and reapproved by the County Commissioners, prior to commencing decommissioning activities.

4. Removal

All physical improvements or features, constructed in connection with the WECS Project, located above ground or within four (4) feet below ground level, shall be removed within ninety (90) days after Abandonment of the WECS. In addition, no later than ninety (90) days after Abandonment, the WECS Project area shall be restored to the same condition as immediately prior to construction, or as near as practicable to the condition of the site immediately prior to construction.

5. Written Notices

Prior to implementation of the existing procedures for the resolution of any default by the Applicant/Owner/Operator, the appropriate County body shall first provide written notice to the Applicant/Owner/Operator, setting forth the alleged default. Such written notice shall provide the Applicant/Owner/Operator a reasonable time period, not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default, provided however, that nothing herein shall be deemed to restrict the County's ability to immediately perform any act permitted by law to abate a condition that presents an immediate danger to public health or safety.

6. Unresolved Defaults

If the County determines that the Owner or Operator cannot resolve the alleged default within the good faith negotiation period, the County may pursue all remedies at law or in equity as a result of the default.

7. Costs Incurred by the County

If the County removes a WECS Tower and appurtenant facilities, it may sell the salvage materials to defray the costs of removal and the costs of repair of any infrastructure damaged as a result of the removal and restoration of the WECS Project area as described above. Upon approval of a WECS Improvement Location Permit, the Applicant/Owner/Operator grants a license to the County to enter any location where improvements are constructed to remove a Tower and appurtenant facilities. The Decommissioning Plan and Agreement shall also contain a provision granting the County a license consistent with this paragraph.

### **9.13 LIABILITY INSURANCE**

The Applicant/Owner/Operator of any WECS shall at all times following the issuance of an Improvement Location Permit, maintain a general liability insurance policy covering bodily injury and property damage with limits of at least two million dollars (\$2,000,000) per person, five million dollars (\$5,000,000) per occurrence, and a deductible of no more than five thousand dollars (\$5,000) per claim. Henry County shall be named as an additional insured on all policies maintained pursuant to this paragraph. Certificates evidencing coverage, which shall at a minimum contain the name and address of the insurer, the limits of liability and the expiration date of the policy shall be provided to the Henry County Zoning Administrator. All policies shall contain a provision that any additional insured shall receive no less than thirty (30) days prior written notice before the policy is cancelled.

### **9.14 CHANGE OF OWNER/OPERATOR**

At least 90 days prior to any change of ownership of the WECS, the HCPC and the Henry County Commissioners shall be notified in writing of the intent to change ownership. All provisions of this Code, including any agreements entered into pursuant to his Code or relating to the WECS, shall be binding on all purchasers and successors to the original WECS Owner.

### **9.15 COMPLAINTS**

The WECS Owner/Operator shall establish and maintain a 24-hour telephone number to manage incoming emergency complaints, a monitored email address for the submission of non emergency complaints, and a physical address for the submission of written complaints. The WECS Owner/Operator shall respond to the complainant within five (5) business days after receiving a complaint, with a copy thereof to the Henry County Zoning Administrator. The WECS Owner/Operator shall propose a response or course of action to the complainant within ten (10) business days, with copy thereof to the Henry County Zoning Administrator, unless the Zoning Administrator reasonably determines that an immediate danger to public health or safety exists as a result of a violation of a provision of this Code. If the Zoning Administrator determines that an immediate danger to public health or safety exists as a result of a violation of this Code, he or she may issue a Cease and Desist order to the WECS Owner/Operator. The Cease and Desist order shall prohibit the operation of a WECS that fails to comply with the provisions of this Code until the conditions causing danger are remedied and the WECS complies with all provisions of this Code.

### **9.16 PENALTIES**

After the issuance of an Improvement Location Permit, any WECS Owner or Operator that fails to comply with any provision of this Code shall be fined in an amount of \$2,500.00 for the first violation of this Code and an amount of \$ 7,500.00 for each

subsequent violation of this Code. Each day a violation occurs shall be deemed a subsequent offense. The Owner and Operator of a WECS, if different entities, shall be jointly and severally liable for all fines assessed pursuant to this Code. All remedies of the County provided by this Code, by any agreement entered into with any Applicant/Owner/Operator, at law or in equity, shall be cumulative.

### **9.17 INDEMNIFICATION**

The application for a WECS Commission Approved Use shall contain an indemnification agreement. The agreement shall require the Applicant and its successors and assigns, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, liabilities or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which arise out of, or are caused by, the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of the WECS, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the sole negligence or intentional misconduct of the County or its employees. With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the County.

### **9.18 SEVERABILITY**

If any provision of this Code is determined by a court of competent jurisdiction to be invalid or is rendered invalid by subsequent legislative enactment, such provision shall be severed and the rest and remainder of this Code shall, to the fullest extent permitted by law, remain in effect.