

## Opposition to WECS Proposal

### **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All ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed.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.

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	Man-made trees, clock towers, bell steeples, light poles and similar Structures, alternative-design mounting structures that camouflage or conceal the presence of antennas or facilities/towers. (See also Stealth Facility.)
Antenna	Any exterior apparatus designed for telephonic, radio or 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	Any pole telescoping mast, tower, tripod or any other structure that supports Structure, or 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.
Cellular Telecommunications	A commercial Low Power Mobile Radio Service licensed by the Federal 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 facilities/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.

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Communications Transmission System or Communications System	A wired communication transmission system, open video system or wireless communications transmission system regulated by these Regulations.
Commission Approved Use (CAU)	Uses that are permitted in any Zoning District only after a majority vote of the Planning Commission as provided in the Planning Commission's Rules of Procedure.
Comprehensive or Master Plan	The current adopted Comprehensive/Master Plan of Henry County.
County	Henry County, Indiana, USA.
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.
Improvement Location Permit	A document issued under Title 1, Section 14 of the Henry County Development Code, indicating that the proposed use, erection, construction, alteration, repair, improvement, or decommission of any building or structure or use of the land complies with the sections of the WECS ordinance.
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.
Mgz	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) Mgz; highly directional signal used to transmit radio frequencies from point to point at a relatively low power level.
Monopole Tower	A communication tower consisting of a single pole, constructed without guyed wires and ground anchors.
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.
Pre-Existing Tower or Antenna	Any tower or antenna for which a permit has been issued 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 or 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.
<i>Principal Structures</i>	<i>Definition needed</i>
Professional Engineer	A qualified individual who is licensed as a professional engineer by the State of Indiana.
Projected Sound Emissions Study	A study predicting the sound pressure levels that will be produced by a WECS Project. This study shall include a brief summary of the study methodology and a sound contour map in five (5) decibel increments displayed as an overlay on an aerial photograph of the project area to a minimum of 30 decibels and from 0.5 Hz to 8K Hz. The study shall be done at the maximum turbine sound level as provided by the manufacturer.
Public Property	Any real property, easement, air-space or other interest in real estate, including a road, street, or traffic-way, owned by or controlled by the County or any other government unit.
Roof and/or Building	A low-power mobile radio service telecommunications facility on which Mount Facility antennas are mounted to an existing structure on 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 communication tower that is constructed without guy wires and ground anchors.

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Setback	For a WECS tower, the Setback shall be measured from a point at ground level which is directly below the tip of the turbine blade at its closest point to the property line.
Spectrum	Relating to any transmission or reception of electromagnetic waves.
Stealth Facility	Any communication facility/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	<del>Means:</del> 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 facility/tower is under construction or for a 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 telephone towers, alternative tower structures and the like.
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. 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	<del>Means:</del> The collection of WECS and Substations as specified in the siting approval application pursuant to this Ordinance.
WECS Tower	<del>Means:</del> 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	<del>Means:</del> The distance from the rotor blade at its highest point to the surface of the ground existing <del>after</del> <del>prior to</del> construction.
Wind Energy Conversion Systems (WECS)	<del>Means:</del> 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

An all-encompassing definition; any facilities/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 or reception.

Whip Antenna

An antenna that transmits signals in a three-hundred-sixty (360) degree pattern. Whip antennas are typically cylindrical in shape, ~~and~~ 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 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 assist in the reduction of carbon-based emissions; the dependence of petroleum and coal-based energy systems; and~~ (Editorial Note: this is the purview of the Federal DOE, not Henry County Indiana, and should not be included)
3. To provide a regulatory scheme for the construction and operation of Wind Energy Facilities in Henry County, subject to reasonable restrictions, in order to preserve the public health, safety, ~~and~~ general welfare, ~~and to support the goals, objectives and policies of the Henry County Comprehensive Plan.~~

**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 these regulations will preserve the health, safety, and general welfare of the public, **and to support the goals, objectives and policies of the Henry County Comprehensive Plan. This ordinance describes the minimum requirements for establishing WECS in Henry County. No term of this ordinance shall be construed as to grant an easement of any kind on the properties of non-participating land owners.**

**9.3 APPLICABILITY**

This Ordinance governs the siting of WECS and Substations that generate **and transport** electricity. This Ordinance applies to all Henry County townships. **Permits and Commission Approved Uses issued under this ordinance shall require a public hearing.**

**9.4 PROHIBITION**

No applicant 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, **or** 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.) an application for a Commission Approved Use (CAU) to provide for WECS use from the Henry County Planning Commission (HCPC). (2.) Request a variance from the Henry County Board of Zoning Appeals (BZA) for any variances anticipated for the WECS project as described below, and (3.) An Improvement Location Permit from the Henry County Planning Commission as described below and in the Henry County Development Code, Section 14.6, **page 103.**

A. The Application for WECS Commission Approved Use (CAU)

1. The application shall be filed with the HCPC and include the following items:
  - (a) A WECS Project summary, including, to the extent available: (1.) a general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer(s), type(s) of WECS(s), number of WECS(s), and name plate generating capacity of each WECS; the maximum height of the WECS tower(s) and maximum diameter of the WECS(s) rotor(s) **and blades**; the general location of the project; and (2.) a description of the Applicant, Owner, and Operator, including their respective business structures.
  - (b) The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s) **with hosting WECS on their properties, if known, including WECS equipment, facilities, turbines, towers, electric cables, substations, staging areas, vehicles or any ancillary equipment and items contributing to the project.**
  - (c) A topographic map of the project site and the surrounding area which shall

encompass an area at least a ~~quarter~~ half-mile radius from the proposed 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 facility (~~including~~ planned locations of each WECS Tower, guy lines and anchor bases ~~(if any)~~; WECS access roads; substations; electrical cabling; **staging areas** and ancillary equipment). In addition, the site plan shall show: Principal Structures **(Editorial Note: define Principal Structures)** within ~~one-quarter~~ one mile of any WECS; property lines, including identification of adjoining properties; setback lines; public roads; **County-regulated drains, open ditches, or tiles; aquifers**, location of all above-ground **and buried** 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 Emergency Management Agency, any Fire Departments and local law enforcement agencies serving any part of the site, to the County Sheriff, and the FAA.**
- (e) Location of all existing **and proposed** underground utility lines **in the proposed WECS project area.**
- (f) Location of all State and County parks, protected lands, schools, licensed daycare facilities, hospitals, nursing homes, and recreation areas including, but not limited to, trails, golf courses, and campgrounds.
- (g) Location of migratory routes for birds and bats, public and private airstrips and airports, and FAA, Department of Defense and Emergency Evacuation or Medical air routes.
- (h) A Projected Sound Emissions Study over a range of .5 Hz to 8K Hz for the proposed WECS, authored by a world-recognized or accepted peer professional not recommended or provided by a wind company.
- (i) Proposed interconnection plans with the electrical grid, indicating if there are sufficient structures to carry the proposed generated power to grid.
- (j) Blade failure throw distance, officially verified by the industrial wind turbine manufacturer, shall be clearly listed and shown on the site plan.
- (k) The distance from a proposed WECS to the closest property line shall be calculated and shown on the site plan. (Editorial Note: All distances from WECS need to be a measurement to a property line rather than a structure's foundation to preclude adverse zoning and to protect Henry County from potential litigation.)
- (l) The sound decibel rating at the closest property line shall be calculated and listed on each site plan. Low frequency sound shall be measured on a C scale and infrasound on a G scale. (Editorial Note: All distances from WECS need to be a measurement to a property line rather than a structure's foundation to preclude adverse zoning and to protect Henry County from potential litigation.)



- (m) Manufacturer's recommended evacuation zones for fire safety shall be listed and shown on each site plan.
- 2. In determining whether to approve the application for WECS Commission Approved Use (CAU), the HCPC shall determine whether the application satisfies each of the criteria set forth in this Ordinance for Commission Approved Use (CAU), and ~~make provide written findings-of-record thereof.~~
- 3. The applicant shall set up an Escrow Account at the time of the CAU 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 wind energy company or signing lessees). The Applicant will make an initial deposit of \$50,000. The CAU application will not be processed until proof of deposit has been provided by the Applicant. A CAU Permit Application determination will not be made until all costs incurred by the County, to date, have been reimbursed by the Applicant. This account is separate from the Application Fee.
  - (a) Funds from this Escrow Account may be used for amount required for administration, 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. These funds may also be used for handling complaints, and legal fees, which includes reasonable attorney fees for the County if the County is compelled to enter into litigation opposing the Applicant.
  - (b) This 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 any Escrow funds used by the County within 14 days of being sent written notification and explanation of said withdrawals. Failure to maintain the Escrow Account at \$50,000 (within 30 days of being sent notice) shall be cause for revocation or denial of renewal of the CAU or Improvement Location Permit. Once the Owner has satisfactorily complied with the decommissioning conditions as specified in Appendix D, Decommissioning Agreement, they will send the County written notification. The County then has 180 days to verify to their satisfaction that all decommissioning conditions have been met. If there is non-compliance, the County will so notify the Applicant/Owner/Operator and the process starts over. Upon satisfactory completion, the County will return all Escrow Account funds to the Owner, less related expenses incurred by the County, along with an explanatory statement outlining expenditures.
  - (c) If the CAU Application is denied, all Escrow Account funds will be returned to the Applicant, less related expenses incurred by the County. The money will be returned, along with a statement as to these costs, within 90 days of the Application being formally denied, or receipt of a letter of withdrawal. Permit fees are non-refundable.
- 4. The Commission Approved Use (CAU) granted by the HCPC for a WECS Project shall be valid for a period of one (1) year, after which approval shall terminate and be of no further force or effect if construction in earnest of the approved WECS has not commenced. Thereafter, any additional extension, up to one (1) year, shall be at the HCPC's discretion if the Applicant presents its request for said extension to the HCPC and shows verifiable progress made on the WECS Project. ~~The Applicant shall be granted one (1) extension up to one (1) year from the date of the HCPC~~

~~approval if the Applicant presents its request for an extension to the HCPC which shows the progress made on the WECS Project. Thereafter, an additional extension shall be at the HCPC's discretion.~~

B. Applications for Contiguous Projects

Contiguous projects (adjoining properties, single owner) may submit a single application and be reviewed under proceedings, including notices, hearing(s), ~~and~~ reviews and ~~as appropriate, denials~~ or approvals.

C. The Application for Improvement Location Permit

1. The Applicant shall apply to the ~~Zoning Administrator~~ HCPC for an Improvement Location Permit, ~~as described in the Henry County Development Code, Title 1, Section 14.6, page 103.~~ In addition to the information required on the Improvement Location Permit Application, the Applicant shall provide the following information to ~~the Zoning Administrator~~ HCPC prior to the issuance of an Improvement Location Permit:
  - (a) Location of all above-ground ~~and buried~~ utility lines within a radius equal to two (2) times the height of the proposed WECS.
  - (b) Location of all ~~existing and proposed~~ underground utility lines associated with the WECS site.
  - (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)
  - (f) Manufacturer's specifications and installation and operation instructions or specific WECS design information. ~~Include manufacturer's safety requirements, life expectancy, and warranty information.~~
  - (g) Certification by a registered professional engineer that the tower designs ~~is~~ ~~are~~ sufficient to withstand wind load requirements for structure as defined by International Code Council.
  - (h) All turbines shall be new equipment, commercially available. ~~Used, experimental, or proto-type equipment still in testing shall be approved by the HCPC as per the normal Commission Approved Use (CAU) process.~~
  - (i) Necessary recorded access easements and necessary recorded utility easements ~~which are in compliance with Appendix A Installation of Utilities for WECS in a County Right of Way, Installation of Utilities for WECS in a Regulated Drain Easement, Access and Entries to County Highways for WECS.~~
  - (j) No appurtenances other than those associated with the wind turbine operations shall be connected to any wind tower except with express, written permission by the HCPC.
  - (k) A transportation plan showing how vehicles would access the site and describing the impacts of the proposed energy project on the local and regional road system during construction and operation.
  - (l) A re-vegetation plan for restoring areas temporarily disturbed during construction (Section 5.0, Title 7).- ~~(Editorial Note, there is nothing~~

about re-vegetation in Section 5 Title 7. Title 7 ordinance must be updated with effective standards before including reference here.)

- (m) A fire protection plan for construction and operation of the facility. Local fire departments shall be appropriately trained to respond to WECS incidents. Expenses may be paid from Escrow Account.
  - (n) Any other item reasonably requested by the HCPC.
  - (o) A drainage plan for construction and operation must be developed and approved by the Henry County Drainage Board. No WECS shall be placed within 100 feet of an existing county-regulated drainage ditch or waterway, or over an aquifer. Also, a Professional Engineer shall certify, as part of the Improvement Location Permit application, that the foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.
  - (p) An erosion control plan must be developed in consultation with the Henry County Soil and Water Conservation District (Section 5.0, Title 7).
  - (q) Maximum height of any WECS shall be no more than 400 feet. Blade clearance shall be at least 25 feet.
  - (r) All transmission lines from WECS to the substation shall be underground, complying with standard utility cable burial depths.
  - (s) The WECS will not adversely affect the quality or quantity of ground or surface waters. Water quality may be monitored periodically or in the event of any complaints, and by a professional NOT recommended or provided by a wind company.
  - (t) Turbines shall be sited such that shadow flicker will not fall on any structure, intersection, or non-participating landowner property.
2. 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, and denial or approval.

## 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 prior written authorization from the county HCPC and owner of any utility easement. if applicable.
- ~~3. Installation of any WECS or meteorological tower may not be nearer than 1.1 times the height of the WECS tower height to any property lines, dedicated roadway, railroad right-of-way, or overhead electrical transmission or distribution lines. Distance shall be measured from the center of the foundation at the base of the tower. New structures built adjacent to wind power facilities shall maintain these same minimum setbacks. Participating landowners within the area comprising the WECS may waive property line setbacks with written approval from all landowners sharing such property line.~~
- ~~4. Except as provided herein the setback distance for any WECS shall be, at a minimum, 1,500 feet or more from any residential zoning district or 1,000 feet or more from any business zoning district. The setback distance will be followed~~

~~except in specific instances allowed by the BZA.~~

- ~~5. The setback distance for the WECS will be, at a minimum, 1,500 feet from any platted community under the zoning jurisdiction of a separate municipality. Distance shall be measured from the center of the foundation at the base of the WECS to the closest Corporate Limit boundary line.~~
2. Except as provided herein, installation of any WECS may not be nearer than four (4) times the height of the WECS to any dedicated roadway, railroad right-of-way or overhead electrical transmission or distribution lines. (Editorial Note, this is to minimize or remove hazard from blade or ice throw.) The minimum setback distance for all turbines, substations, maintenance structures, storage yards, staging areas and other buildings that are a direct functional part of the WECS shall be not less than 2,640 feet or 6.5 times the height of the WECS, whichever is greater, from any non-participating landowner or public property line except Rights-of-Way, specified above. Distance shall be measured at the time of application for Improvement Location Permit from a point directly beneath the tip of the turbine blade at its closest point to the property line. (Editorial Note: All distances from WECS need to be a measurement to a property line rather than a structure's foundation to preclude adverse zoning and to protect Henry County from potential litigation.)
3. A non-participating landowner may waive the applicable wind turbine setback distance from his/her respective property line; however, the WECS shall maintain a minimum setback distance of 1.1 times the height of the WECS. A waiver by an affected non-participating landowner or owner of a public building is an encumbrance on the real property, and said waiver will be attached to the land until the wind energy system is decommissioned. Said waiver shall be recorded in the office of the Henry County Recorder. Said waiver shall include the legal description of the property with a cross reference to the current deed's document number, and shall include verbiage to bind the grantees, their heirs, assigns, and successors in interest to the terms of the waiver.
4. To allow for future growth and expansion, there will be a 2 mile buffer zone around all incorporated cities and towns, and a 1 mile buffer zone around unincorporated towns or business districts not part of an incorporated city or town. Zones will be measured from the Corporate Limit Boundary Line.
5. To protect wildlife, especially birds and bats, and the integrity of natural open spaces, setbacks from state and county parks shall be 2 miles. Setbacks for protected lands, historical or archaeological sites, and golf courses and campgrounds shall be 1.5 miles. Setbacks will be measured from the WECS to property lines.
6. Setbacks from schools, licensed daycare facilities, hospitals and nursing homes shall be 1.5 miles, measured from the WECS to the property lines.
7. Because the FAA does not consider turbulence factors for any aviation operations at this time, the setback for the New Castle Henry County Municipal Airport shall be 2 miles. Because the FAA does not provide obstruction protection standards for private use airstrips and airports, the setback for private use airstrips and airports in Henry County shall be 1.5 miles, measuring from the WECS to the property lines.

## B. NON-COMMERCIAL

1. No WECS or meteorological tower shall be constructed **within** any setback, dedicated public easement, or dedicated public right-of-way without prior written authorization from the county and owner of any utility easement, if applicable.

2. Installation of any WECS or meteorological tower may not be nearer than 1.1 times the height of the WECS tower height to any property lines, dedicated roadway, railroad right-of-way, or overhead electrical transmission or distribution lines. Distance shall be measured from ~~the center~~ **the external perimeter** of the foundation at the base of the tower. New structures built adjacent to wind power facilities shall maintain these same minimum setbacks.
3. Except as provided herein, the setback distance from any principal building for any WECS shall be, at a minimum, either: Tower height + blade length + ten (10) feet; or Tower height + blade length \* 1.5; whichever number is the greater. New structures built adjacent to wind power facilities shall maintain these same minimum setbacks.

## 9.8 SAFETY DESIGN AND INSTALLATION STANDARDS

### A. Equipment Type

#### Turbines

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

~~1. 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. 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.

### C. 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.~~ All neutral grounding connectors from the WECS shall be insulated from the earth and shall be sized to accommodate at least twice the peak load of the highest phase conductor, to absolutely prevent transient ground currents. Ground connector shall be so arranged that under normal circumstances, there will be no objectionable flow of current over the grounding connector.

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 it he same reach the property line or a substation adjacent to the property line.~~ Under no circumstances shall any WECS be connected directly to the grid. To avoid health issues for those living in the proximity to wind turbines, inverters need to be properly filtered at each wind turbine to eliminate electrical pollution.

D. 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. ~~Blades may be black in order to facilitate deicing.~~

3. Finishes

Finishes shall be matte or non-reflective. ~~Blades shall be finished with repellent coatings to minimize ice build-up.~~

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

~~Exceptions~~

~~Exception may be made for meteorological towers, where concerns exist relative to aerial spray applicators.~~

E. Warnings

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, ~~tower number and location/EMS address~~ shall also be posted on the turbine and at the entrance to the access road, or at another suitable point.

~~1. 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.~~

~~2. Meteorological Towers~~

~~All meteorological towers shall meet all FAA regulations as applicable.~~

F. 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; or
  - (b) Anti-Climbing devices fifteen (15) feet vertically from the base of the WECS tower; or
  - (c) Locked WECS Tower doors.

~~G. Blade Clearance (Editorial Note, Covered in Sect. 9.6, C, 1 (p)).~~

~~1. The minimum distance between the ground and any protruding blades utilized on all WECS shall be fifteen (15) 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.~~

H. 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. ~~to reduce harm to migrating birds.~~ Red pulsating incandescent lights are expressly prohibited. Lighting, when available, shall be "On Demand" utilizing the Obstacle Collision Avoidance System (OCAS) or equivalent.

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.

I. Materials Handling, Storage, and Disposal

1. Solid Wastes

All solid wastes whether generated from supplies, equipment, parts, packaging, operation, or maintenance of the facility, including old parts, equipment ~~or materials~~ 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 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 guyed wire anchors shall be allowed within any required road right-of-way setback.~~

B. Sewer and Water

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

~~C. Noise and Vibration~~

~~At no point beyond the property line of any WECS may the within 200 feet of a primary residence may the sound pressure vibration levels from a wind turbine exceed the levels in Title 1, Zoning, Section 9.4, Table 14 Industrial Vibration Limits following sound levels. Sound levels shall be measured with an octave band analyzer or sound level meter and associated filter manufactured in compliance with standards prescribed by the American National Standards Institute (ANSI). This standard shall supersede any noise standard(s) set forth in any other Henry County Ordinance. Vibrations should not cause any adverse effects to structures, whether above or underground, nor to water quality. (Editorial Note: Any vibration standards used should protect water quality. Technical consultation would be needed.)~~

D. Noise

The intent is to preserve the quiet rural environment of Henry County and to provide protection from excessive sound pressure levels that cause adverse impacts to public health, welfare, and well-being. Sound pressure levels produced by any WECS shall not exceed 33 dBA anywhere, at any time, on a non-participating landowner's property. There shall be no measurable increase in low frequency noise and infrasound.

<del>Octave Bands for Henry County in Hertz (Hz), per ANSI</del>	<del>Maximum Permitted Sound Level (in decibels) (Measured 200 feet from edge of any Primary Structure)</del>
<del>63</del>	<del>75</del>
<del>125</del>	<del>70</del>
<del>250</del>	<del>65</del>
<del>500</del>	<del>59</del>
<del>1000</del>	<del>53</del>
<del>2000</del>	<del>48</del>
<del>4000</del>	<del>44</del>
<del>8000</del>	<del>41</del>

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, the following signage regulations



and standards shall also apply. 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.

(Editorial note. For consistency, lettering was changed from a period that follows to parentheses.)

(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) Manufacturer's or owner's company name and/or logo.

The manufacturer's 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 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.

G. Feeder Lines

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

H. Other Appurtenances

No appurtenances other than those associated with the wind turbine operations shall be connected to any wind tower except with express, written permission by the HCPC.

I. Real Property Value Protection Plan

To assure that non-participating landowners are protected from negative impacts to their real property value, every non-participating property owner whose property line is within 2 miles of a WECS as measured from a point directly beneath the tip of the turbine blade at its closest point to the property line shall be included in the Real Property Value Protection Plan Agreement.. This Agreement is Appendix B. (Editorial Note, the purpose is to protect property values from the impact of WECS within a 2 mile radius.)

9.10 USE OF ROADS/SERVICES

A. Identify All Such Public Roads and Services

1. Roads

- (a) Any proposed routes that will be used for construction workers, maintenance workers, staging, construction, and maintenance, and decommissioning purposes shall be identified. If the route includes a public road, it must be

approved by the Henry County Engineer/Highway Department. The Engineer shall conduct a preconstruction baseline survey to determine existing road conditions for assessing **and recording** potential future damage.

- (b) Any road damage caused by the construction of the WECS project equipment, the installation of same, or the removal of same, shall be repaired to the satisfaction of the Henry County Engineer. The Engineer must choose to require either remediation of road repair upon completion of the project or is authorized to collect fees for oversized load permits. Further, a corporate surety bond made out to the Henry County Commissioners in an amount to be fixed by the Engineer shall be required by the Engineer to **ensure** the County that future repairs are completed to the satisfaction of the unit of local government. The cost of bonding is to be paid by the applicant.
- (c) Newly-constructed WECS access roads may not impede the flow of water and shall be approved by the Henry County Drainage Board.
- (d) **Note: It is recommended that all road technical specifications (to be determined) be included in this ordinance as well as in the Road Use Agreement.**

2. Dust and Debris Control

Reasonable dust and debris control measures will be required by the County during construction of WECS. For instance, a storm water run-off fence shall be required on all construction sites during construction and installation. **All complaints shall be remedied with 24 hours.**

3. Sewer and Water

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

4. Drainage Repair

All damages to waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction, **or** maintenance, **or decommissioning** of the WECS, must be completely repaired to near original condition, and so as not to impede the natural flow of water. All repairs must be completed within sixty (60) days **of occurrence or notice being sent**, and must be approved by the Henry County Drainage Board.

5. **Specific conditions of the Road Use Agreement, including maps of all roads to be used, are in Appendix C and must be signed and included with the Improvement Location Permit application.**

## 9.11 OPERATION AND MAINTENANCE

A. Physical Modifications

In general, any physical modifications to any WECS that alters the mechanical load, mechanical load path, 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 Planning Commission to determine whether the physical modification requires re-certification.

B. Inspections

Inspections at a fee paid from the Owner's Escrow Account and to be determined from time to time by the Henry County Planning Commission may be made by Henry County Planning Commission no more than ~~once~~ twice annually to certify the safety and maintenance of the WECS and any accessory structures.

C. Interface

No WECS shall be constructed so as to interfere with any county, state, or federally-owned and operated microwave transmissions. The applicant, owner, and/or operator shall ~~eliminate minimize~~ and, if necessary, ~~mitigate remediate~~ interference ~~caused by any WECS~~ with electromagnetic communications, such as radio, telephone, microwaves, or television, ~~navigational, weather forecasting facilities, internet, or broadband signals caused by any WECS~~. In addition, the applicant, owner, and/or operator shall:

1. ~~Notification of~~ existing communication tower owners and operators.

The applicant shall notify all existing communication tower owners within two (2) miles of the proposed WECS upon application to the county for permits.

2. ~~Mitigating Remediate~~ 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 ~~take reasonable steps to mitigate remediate~~ said interference.

3. 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. Remedies may include relocation or removal.

4. Declaration of Public Nuisance

Any WECS, ~~structure, or portion~~ thereof declared to be unsafe by the Henry County Planning Commission 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 Chapter~~ according to the ~~Decommissioning Agreement, Appendix D~~.

5. Operation and Maintenance Summaries and Reports

The owner or operator shall submit, on an annual basis, a summary of the operation and maintenance reports to the ~~HCPC County~~. In addition, the applicant shall also make available operation and maintenance reports as the ~~HCPC County~~ reasonably requests.

6. Access to the Site and Facility

The Henry County Planning Commission, along with licensed third-party professionals retained by the County for the specific purpose of conducting inspections of the WECS, shall have the right, at any reasonable time and ~~without sufficient~~ prior notice, to accompany the owner or operator, or his/her agent, onto

the premises where a WECS has been constructed to inspect all parts of said WECS installation and to require that repairs or alterations be made. The owner or operator of a WECS may retain a licensed third-party professional engineer familiar with WECS systems to prepare and submit to the Henry County Planning Commission a written report which suggests alternate methods for addressing the concerns, or provides evidence that said repairs or alterations are unnecessary; **report to be submitted** within thirty (30) days after receiving notice from the Henry County Planning Commission that repairs or alterations are being requested, or within a reasonably-longer period of time mutually acceptable to both parties. The Henry County Planning Commission will consider any such written report and determine whether the repairs or alterations should be made as originally requested or as suggested 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 third party professional engineer, as to the repairs or alterations which are being required, the decision of the Planning Commission shall be final.

## 9.12 DECOMMISSIONING PLAN

Prior to receiving an Improvement Location Permit, or siting approval under this Ordinance, the **County HCPC** and 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 to ensure that the WECS is properly decommissioned. A decommissioning plan shall include, at a minimum, language to the following:

### A. Assurance

Written assurances will be provided that the facilities will be properly decommissioned upon the project life or in the event that the facility is abandoned. **Decommissioning of each turbine/tower shall take place within six (6) months of cease of operation.**

### B. Cost Estimates

The applicant/**owner/operator** shall provide a contractor cost estimate for demolition and removal of the WECS facility. The cost estimates 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. **These estimates shall be reviewed and updated as necessary every five (5) years. These estimates will be approved by the County Commissioners.**

### C. Financial Assurance

Applicant/**Owner/Operator** will provide financial assurance in an amount at least equal to said demolition, **and** removal, **and site restoration** contractor cost estimate, through the use of ~~a bond, or other security~~ **an escrow account. 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) acceptable to the County,** for the cost of decommissioning each tower constructed under the permit. ~~Said security will be returned to Applicant/Owner/Operator~~ **agrees to fully fund the escrow account to cover the cost of decommissioning. The County will return all escrow account funds to the Owner, less related expenses incurred by the County, along with an explanatory statement upon completion of each tower being** properly decommissioned, as determined by the Henry County Planning Commission.

### A. Discontinuation and Abandonment

#### 1. Discontinuation

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All WECS shall be considered a discontinued use after ~~one (1) year~~ **three (3)**

months without energy production, unless a plan is developed and submitted to the Henry County Planning Commission outlining the steps and schedule for returning each non-producing or idle the WECS to service.

2. Abandonment by the Owner or Operator

~~In the event of abandonment by the owner or operator, the applicant will provide and affidavit to the Henry County Planning Commission representing that all easements for wind turbines shall contain terms that provide financial assurance, including access to the salvage value of the decommissioned within after one (1) year of expiration or earlier terminations of the project.~~

In the event of abandonment by the owner or operator for a period of six (6) months, the County shall encumber the funds established as part of the Decommissioning Agreement to be used in removing the abandoned WECS. Any salvage value of the WECS becomes the property of the County.

3. Removal

An applicant's obligations shall include removal of all physical materials pertaining to the project improvements to a depth of four (4) feet below ground level within ninety (90) days of the discontinuation or abandonment of the facility, and restoration of the project area to ~~as near as practicable~~ the condition of the site immediately before construction of such improvements by the owner, or by Henry County at the owner's expense.

4. Written Notices

Prior to implementation of the existing procedures for the resolution of such default(s), the appropriate County body shall first provide written notice to the owner and/or operator, setting forth the alleged default(s). Such written notice shall provide the owner and/or operator a reasonable time period not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default(s).

5. Unresolved Defaults

If the County determines at its discretion, that the parties cannot resolve the alleged default(s) **within** the good faith negotiation period, the existing County ordinance provision(s) addressing the resolution of such default(s) shall govern.

6. Costs Incurred to the County

If the County removes a tower and appurtenant facilities, it may sell the salvage to defray the costs of removal **with any balance paid into the general fund and any shortfall billed to the Owner and Landowner(s) who shall be held jointly and severally liable.** By approval, the permittee or grantor grants a license to Henry County to enter the property to remove a tower pursuant to the terms of an approved decommissioning plan.

7. **Specific conditions of the Decommissioning Agreement are in Appendix D and must be signed and included with the Improvement Location Permit application.**

### 9.13 LIABILITY INSURANCE

The owner or operator of any WECS shall maintain a current general liability policy covering bodily injury and property damage and name Henry County as an additional insured with dollar amount limits of at least two million dollars (\$2,000,000) per occurrence, and **five fifty million dollars (\$50,000,000) in the aggregate, and a deductible of no more than five thousand dollars (\$5,000).** The policy shall also include liability insurance for infrasound or noise-caused sleep deprivation and other negative health impacts.

**9.14 CHANGE OF OWNER/OPERATOR**

At least 180 days prior to a Change of ownership, the HCPC and the Henry County Commissioners shall be notified in writing of the intent to change ownership. The proposed transfer of ownership shall not be valid until the new Owner/Operator has shown proof of compliance with all specific requirements of the original Applicant/Owner/Operator. Requirements include, but are not limited to, general liability, financial assurance, maintenance capabilities, decommissioning, *applicable bonds* and escrow accounts.

**9.15 COMPLAINTS**

The WECS Owner/Operator shall establish a toll-free telephone number with 24 hour-per-day, 365 day-per-year staffing to manage incoming complaints, along with a monitored email address, for the submission of electronic complaints, and a physical address for the submission of written complaints. All complaints, without regard for mode, shall carry the same weight as written complaints and shall be logged including the date, time, complainant, complainant location, topic, and specific problem. Complainants shall receive a response within 24 hours verifying remediation of the problem. Problems which cannot be remediated within 24 hours shall cause the offending WECS to cease operation until the problem can be remediated. All complaints shall be presented to the Henry County Commissioners along with remediation plans at their regularly-scheduled meetings.

**9.16 NON-COMPLIANCE**

The WECS Owner/Operator shall be notified by the Henry County Commissioners of Non-Compliance in writing and given 24 hours to cease operations and 30 days to correct the offense. Failure to comply with this notice shall result in a fine of \$25,000 per day per occurrence, paid to the Henry County Treasurer and shall result in revocation of the Commission Approved Use and Improvement Location Permit.

**9.17 INDEMNIFICATION**

Any application for a WECS with the County shall contain an indemnification provision. The provision shall require the applicant 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, 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 might 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 said WECS, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the County, or its employees or agents. 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.

**INCLUSION OF APPENDICES**

**The appendices hereto are included in the whole of the ordinance.**

**Appendix A** – Installation of Utilities for WECS in a County Right-of-Way, Installation of Utilities for WECS in a Regulated Drain Easement, Access and Entries to County Highways for Wind Energy Conversion Systems (work in progress)

**Appendix B** – Real Property Value Protection Plan (to be finalized)

**Appendix C** – Road Use Agreement (to be determined) **Appendix D**

– Decommissioning Agreement (to be determined) **Appendix E** –

Economic Development Agreement (to be determined)