

---

---

## **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All ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed.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 Structures	Man-made trees, clock towers, bell steeples, light poles and similar 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 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.
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.
<u>Commission Approved Use</u>	<u>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.</u>
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.
Communications Transmission System or Communications System	A wired communication transmission system, open video system or wireless communications transmission system regulated by these Regulations.
Comprehensive or Master Plan	The current adopted Comprehensive/Master Plan of Henry County.
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 timely put to that end. 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.
<u>Improvement Location Permit</u>	<u>A document issued under Title 1, Section 14 of the Henry County Development Code, prerequisite to the issuance of a Building Permit, and indicating that the proposed use, erection, construction, enlargement, alteration, repair, movement, improvement, removal, conversion or demolition of any building or structure or use of the land complies with the sections of this Ordinance.</u>
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	<del>Means a</del> 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 <u>guyed</u> wires and ground anchors.
Operator	<del>The Operator means t</del> he 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/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	<del>Means a</del> qualified 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.
Roof and/or Building Mount Facility	A low power mobile radio service telecommunications facility on which 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.
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 t</del> he 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	<del>Means t</del> 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 t</del> The collection of WECS and Substations as specified in the siting approval application pursuant to this Ordinance.
WECS Tower	<del>Means t</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 t</del> The distance from the rotor blade at its highest point to the surface of the ground existing prior to construction.
Wind Energy Conversion electricity Systems (WECS)	<del>Means a</del> All necessary devices that together convert wind energy into 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, <u>Meteorological Tower(s)</u> , 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.
	<u>Commercial WECS</u> 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.
	<u>Non-Commercial WECS</u> 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

	<u>Micro-WECS</u> 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/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 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 facilities/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 telecommunication services to the residents and businesses of the County;
2. Minimize adverse visual effects of facilities/towers through careful design and siting standards;
3. Encourage the location of facilities/towers in non-residential areas through performance standards and incentives;
4. Avoid potential damage to adjacent properties from facility/tower failure through structural standards and setback requirements; and
5. Provide mechanisms for the mitigation of facility/tower proliferation through facility/tower sharing requirements for all new facility/tower Applicants and those existing facilities/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 communication facilities/towers, including sketches, Primary and Secondary Plats.

#### **D. Jurisdiction**

1. These Regulations apply to all wireless communications facilities/towers, as defined in Section 2 above, located within the County Jurisdictional Area (See Title 1, Section 2.2.)
2. No wireless communications facility/tower may be constructed without an approved and signed Site Plan from the Planning Commission.

E. Enactment

In order that wireless communications facilities/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 communication facility/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. Separability

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 facilities/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 communication facilities/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 Developer has 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/towers shall follow the same procedure as detailed in the County's Zoning Ordinance for permitted uses and/or Commission Approved Uses, as the circumstances would require.

### B. Additional Procedures

In addition to the information required elsewhere in the County's Zoning Ordinance for permitted uses and/or Commission Approved Uses, development applications for wireless communications facilities/towers shall include the following supplemental information:

1. A report from a qualified and licensed professional engineer that:
  - (a) Describes the 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 facility/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 telecommunications service facilities/towers, a letter of intent committing the facility/tower Owner and his, her or its successors to allow the shared use of the 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 facility/tower's compliance with the County's structural and electrical standards; and

- (d) A copy of any purchase agreement and/or lease for the land upon which the subject 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/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 communication 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 facility(ies)/tower(s) on the proposed site.

#### 5. General Approval Standards

Generally, approval of a wireless communication facility/tower can be achieved if the following items are met:

- (a) The location of the proposed facility/tower is compatible with the County's Master Plan and Zoning Ordinance;
- (b) All efforts to co-locate on an existing facility/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 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 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 facility/tower does not exceed that which is essential for its intended use and public safety;
- (g) The Owner of the wireless communication 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 facility/tower;
- (h) There exists no other existing facility/tower that can reasonably serve the needs of the Owner of the proposed new facility/tower;
- (i) The proposed 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 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 facility/tower

will have a security fence around the facility/tower base or the lot where the facility/tower is located; and

- (k) The facility/tower is in compliance with any other applicable local, state or 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 telecommunication facilities/towers erected, constructed or located within the County shall comply with the following requirements:

1. A proposal for a new commercial wireless telecommunication service facility/tower shall not be approved unless the Planning Commission finds that the telecommunications equipment planned for the proposed facility/tower cannot be accommodated on an existing or approved facility/tower or building within a one (1) mile search radius, one-half (.5) mile search radius for facilities/towers less than one hundred twenty (120) feet in height, one-quarter (.25) mile search radius for facilities/towers less than eighty (80) feet in height, of the proposed 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 facility/tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved 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 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 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 facility/tower or building.

It is the Applicant's responsibility to adequately show due diligence in seeking to co-locate telecommunications facilities/towers. The Applicant shall submit documented refusals of attempts to co-locate on facilities/towers within the search area.

2. Any proposed commercial wireless telecommunication service 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 facility/tower is more than one hundred (100) feet in height or for at least one (1) additional user if the facility/tower is more than sixty (60) feet in height. Facilities/towers shall be designed to allow for future rearrangement of antennas upon the facility/tower and to accept antennas mounted at varying heights.

#### **B. Facility/Tower and Antenna Design Requirements**

Proposed and modified facilities/towers and antennas shall meet the following design requirements:

1. Facilities/towers 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 telecommunication service facilities/towers shall be of a monopole design unless the Planning Commission determines that an alternative design would better blend into the surrounding environment.

C. Facility/Tower Height

The maximum facility/tower height permitted in the County is to be calculated by applying the following:

1. If the 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 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 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 facility/tower shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements of the underlying Zoning District. 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. Facility/Tower Lighting

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 facility/tower.

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

The placement of wireless telecommunications antennas on roofs, walls and existing 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 facility/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 facility/tower designed for temporary use as defined in Title 5, Section 2.0 is subject to the following:

1. Use of a temporary facility is allowed only if the Owner has received a Temporary User Permit from the Planning Commission.
2. Temporary wireless facilities are permitted for use of no longer than thirty (30) days for use while constructing permanent facilities/towers and no longer than five (5) days for use during a special event.
3. Temporary facilities 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 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 facility/tower shall file annually with the Zoning Administrator a declaration as to continuing operation of every facility/tower installed subject to these Regulations. Failure to do so shall be determined to mean that the facility/tower is no longer in use and considered abandoned, thus subject to the following:
2. All abandoned or unused facilities/towers 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 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 facility/tower is not removed within one hundred eighty (180) days of the cessation of operations at a site, the facility/tower and associated facilities may be removed by the County and the costs of removal assessed against the property.
3. Unused portions of 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 facility/tower previously removed requires the issuance of a new wireless facility/tower permit.

#### J. Signs and Advertising

The use of any portion of a 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 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 Facility/Tower Standards: Zoning**

1. Facilities/Towers 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, facilities/towers 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 facility/tower height is technically necessary to successfully engage in amateur radio communications.

**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
4. 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.

**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.

**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.

**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 rule 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~~ 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 Zoning Administrator acting under the authority of 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); 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 WECS on their properties, if known.
  - (c) A topographic map of the project site and the surrounding area which shall encompass an area at least a quarter 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; and ancillary equipment). In addition, the site plan shall show: Principal-Primary Structures within one quarter of one mile of any WECS; property lines, including identification of adjoining properties; setback lines; public roads; location of all above-ground utility lines within a distance of two (2) times the WECS Tower Height of any WECS Tower; 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 review of the National Wetland Inventory or 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 department and any local law enforcement agencies serving any part of the site, and to the County Sheriff thirty (30) days prior to construction commencement.
  - (e) Location of all existing and recorded underground utility lines associated with in the proposed WECS project area.



~~(f)~~ Location of all State and County parks, schools, and hospitals.

~~(e)~~(g) A WECS Owner shall use shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by the proposed WECS. Turbines shall be sited such that shadow flicker will not fall on any non-participating landowner's Primary Building for more than thirty (30) hours annually, unless a waiver is signed by the potentially affected party(ies).

~~(f)~~(h) Sound survey utilizing standard computer modeling software measuring the anticipated operational noise level(s) for the WECS Tower(s).

2. In determining whether to approve the application for WECS Commission Approved Use (CAU), the HCPC shall determine whether the application satisfies each of criteria set forth in this Ordinance for Commission Approved Use (CAU), and make written findings thereof.

~~3.~~ The Commission Approved Use (CAU) granted by the HCPC for a WECS Project shall be valid for a period of ~~one two~~ (12) years, after which approval shall terminate and be of no further force or effect if construction ~~in earnest~~ of the approved WECS has not commenced. ~~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, the Applicant may be granted an additional extensions 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 the same proceedings, including notices, hearing, and reviews and as appropriate, approvals.

C. The Application for Improvement Location Permit

1. The Applicant shall apply to the Zoning Administrator 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 prior to the issuance of an Improvement Location Permit:

- (a) Location of all above-ground and buried recorded utility lines within a radius equal to two (2) times the height of the proposed WECS.
- (b) Location of all existing and recorded 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) Manufacturer's specifications and installation and operation instructions or specific WECS design information.

- (f) 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.
- (g) 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.~~
- (h) Necessary recorded access easements in public rights of way and necessary recorded utility easements in public rights of way, ~~copies of which shall be submitted to the HCPC.~~
- (i) 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.
- (j) 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.
- (k) A re-vegetation plan for restoring areas temporarily disturbed during construction ~~(Section 5.0, Title 7).~~
- (l) A fire protection plan for construction and operation of the facility. Local fire departments shall be appropriately trained to respond to WECS incidents.
- (m) Any other item reasonably requested by the HCPC.
- (n) A drainage plan for construction and operation must be developed and approved by the Henry County Drainage Board.
- ~~(o)~~ An erosion control plan must be developed in consultation with the Henry County Soil and Water Conservation District ~~(Section 5.0, Title 7).~~
- ~~(p)~~ All collection lines from WECS to the substation shall comply with standard utility cable burial depths to a minimum depth of forty (40) inches.

## 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 eCounty 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 non-participating 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.
3. Except as provided herein, ~~the setback distance for installation of any WECS Tower shall be, at a minimum, may not be nearer than 1,250 feet or two (2) times the height of the WECS Tower, whichever is greater, from a Primary Structure as measured from the center of the WECS Tower foundation at the~~

base of the WECS Tower to the nearest edge of the same Primary Structure, 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.

4. 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.

4.5. A participating landowner may waive the applicable WECS Tower setback distance from his/her respective Primary Structure. A non-participating landowner may waive the applicable WECS Tower setback distance from his/her respective Primary Structure and/or property line.

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 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

1. Turbines

All 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, Germanishcher 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. ~~Blades may be black in order to facilitate deicing.~~

3. Finishes

Finishes shall be matte or non-reflective.

~~4. Exceptions~~

~~Exception may be made for meteorological towers, where concerns exist relative to aerial spray applicators. No advertising or signage shall be permitted 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, tower number and location/EMS address shall also be posted ~~on~~ at the turbine, ~~or the entrance of the~~

access road, 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

All meteorological towers shall meet all FAA regulations as applicable.

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

H. Blade Clearance

1. The minimum distance between the ground and any protruding blades utilized on all WECS shall be ~~fifteen (15)~~ no less than forty (40) 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 ~~to reduce harm to migrating birds~~. Red pulsating incandescent lights are expressly prohibited. Notwithstanding anything herein, strobe lights will comply with applicable FAA requirements.

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 Towers.

J. 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 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 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 regulation 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 ~~from the nearest corner of a Principal Structure to a WECS Tower within 200 feet of a primary residence~~ may the sound pressure levels from a WECS Tower wind turbine exceed ~~the following sound levels~~ 50 dBA. 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.

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

D. 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.

E. 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.

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 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. To wit, 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 wind turbine operations shall be connected to any wind tower except with express, written permission by the HCPC.

**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 and maintenance workers, staging, construction, maintenance, and decommissioning by Applicant, its contractors and subcontractors for vehicles of over five (5) gross tons vehicle weight 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 insure 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.

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 addressed promptly.

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 notice being received and must be approved by the Henry County Drainage Board.

## 9.11 OPERATION AND MAINTENANCE

A. Physical Modifications

In general, 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 Planning Commission to determine whether the physical modification requires re-certification.

B. Inspections

Inspections, at a fee to be determined from time to time by the Henry County Planning Commission and paid by the applicant, may be made by Henry County Planning Commission no more than once 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 minimize and if necessary mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. In addition, the applicant, owner, and/or operator shall:

1. ~~Notification of~~Notify existing communication tower owners

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 interference following a complaint

If after construction of the WECS, the owner or operator receives a written complaint related to interference with local broadcast residential television,



telecommunication, communication or microwave transmissions, the owner or operator shall take reasonable steps to mitigate 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 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 a public nuisance and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures set forth in this Chapter.

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 County. In addition, the applicant shall also make available operation and maintenance reports as the 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 with sufficient prior notice, to accompany the owner or operator, or his/her agent, on to 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, within thirty (30) days after receiving notice from the Henry County Planning Commission that repairs or alterations requested, or within a 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, T~~ the County and the applicant, owner and/or operator shall formulate a decommissioning plan outlining the anticipated means and cost of removing a WECS 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.

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 will provide financial assurance in an amount at least equal to said demolition and removal contractor cost estimate, through the use of a bond, or other security acceptable to the County, for the cost of decommissioning each tower constructed under the permit. Said security will be released when each tower is properly decommissioned as determined by the Henry County Planning Commission.

D. Discontinuation and Abandonment

1. Discontinuation

All WECS shall be considered a discontinued use 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.

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 one (1) year of expiration or earlier terminations of the project.

3. Removal

An applicant's obligations shall include removal of all physical material 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) writing 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. 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.

### 9.13 LIABILITY INSURANCE

The ~~WECS Owner or Operator~~~~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 million dollars (\$5,000,000) in the aggregate, and a deductible of no more than five thousand dollars (\$5,000).

DRAFT