

ORDINANCE NO. 2009-5

AN ORDINANCE TO REGULATE WIND ENERGY CONVERSION SYSTEMS

WHEREAS, large-scale wind energy conversion systems ("wind farms") may be constructed in Montgomery County, Indiana ("County"); and

WHEREAS, property owners whose property is in close proximity to wind farms may not benefit financially from such facilities, but may be substantially affected by their construction, operation and maintenance; and

WHEREAS, the construction, operation and maintenance of wind farms may have a negative impact on the infrastructure of the County; and

WHEREAS, the construction, operation and maintenance of wind farms may also have a negative impact on the environment and natural resources of the County; and

WHEREAS, the County desires to foster economic development and the creation of new jobs from the wind farms as well as other types of commercial and/or industrial development throughout the County; and

WHEREAS, the construction of wind farms could limit certain types of development within proximity of the wind farms for other commercial/industrial purposes that could also create new jobs in the County.

BE IT THEREFORE ORDAINED by the Board of Commissioners of Montgomery County, Indiana, that the Montgomery County Code of Ordinances is hereby amended by adding thereto a new Chapter 155 in the form attached to this Ordinance as Exhibit "A" and made a part hereof by reference.

27th All of which is ordained by the Board of Commissioners of Montgomery County this day of JULY, 2009.

VOTE

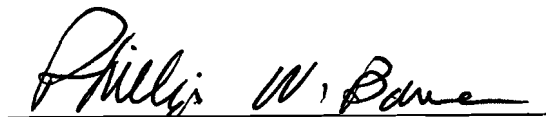
Yes _____ No _____

✓

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✓


Harry A. Siamas, Commissioner


Phillip W. Bane, Commissioner


Terry Hockersmith, Commissioner

ATTEST:



Michelle Cash, Auditor

EXHIBIT “A”

CHAPTER 155: WIND ENERGY CONVERSION SYSTEMS

Section

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§ 155.01 STATUTORY AUTHORIZATION.

This Chapter is enacted as an exercise of the County's police power to regulate the use or possession of property that might endanger the public health, safety or welfare, pursuant to I.C. 36-8-2-4 and the Indiana Home Rule Law, I.C. 36-1-3.

§ 155.02 PURPOSE.

This Chapter is adopted for the following purposes:

- (A) To assure that any development and production of wind-generated electricity in Montgomery County will preserve the public health, safety and welfare; and
- (B) To provide a regulatory scheme for the permitting, construction, operation, maintenance and decommissioning of wind-generated electricity facilities in the County.

§ 155.03 DEFINITIONS.

For purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

APPLICANT. The entity or person who submits to the Building Commissioner an application for a WECS Project, or a Building Permit for one or more WECS Towers.

BOARD. The Board of Commissioners of Montgomery County, Indiana.

BUILDING COMMISSIONER. The Building Commissioner of Montgomery County, Indiana.

COUNTY. Montgomery County, Indiana.

FAA. The Federal Aviation Administration.

FINANCIAL ASSURANCE. Reasonable assurance from a credit-worthy party, examples of which include a surety bond, trust instrument, cash escrow, or irrevocable letter of credit or combinations thereof.

LANDOWNER. Any person or entity owning real estate in Montgomery County, Indiana.

NON-PARTICIPATING LANDOWNER. Any Landowner who is neither an “Owner” nor a “Participating Landowner,” as those terms are defined herein.

OPERATOR. The entity or person responsible for the day-to-day operation and maintenance of a WECS, including any third party subcontractors.

OWNER. The entity(ies) or person(s) with an equity interest in a WECS, including its or their respective successors and assigns. Owner does not include (i) a Participating Landowner who owns less than a 5% equity interest in the WECS, or (ii) any person holding a security interest in the WECS solely to secure an extension of credit.

PARTICIPATING LANDOWNER. A Landowner from whom land is leased for locating a WECS.

PRIMARY STRUCTURE. For each property, a structure that one (1) or more persons occupy principally for either business or personal use. Primary Structure includes structures such as Residences and commercial buildings. Primary Structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.

PROFESSIONAL ENGINEER. A qualified individual who is licensed as a professional engineer in any state in the United States.

RESIDENCE. A structure that is used or intended for use by one (1) or more persons use as a dwelling place.

SUBSTATION. A structure containing apparatus that connects below- or above-ground electrical collection lines of the WECS to the electric utility grid, with or without increasing the voltage.

WECS PROJECT. A WECS development consisting of two (2) or more WECS Towers.

WECS TOWER. A free-standing or guyed support structure to which the rotor, nacelle and generator are attached.

WECS TOWER HEIGHT. The distance from the rotor blade at its highest point to the top surface of the WECS Tower foundation.

WIND ENERGY CONVERSION SYSTEM(S) ("WECS"). All necessary devices that together convert wind energy into electricity and deliver that electricity to an electric utility's transmission lines, including but not limited to one or more rotors, nacelles, generators, WECS Towers, electrical components, WECS Tower foundations, Substations, electrical cabling from WECS Towers to Substations, meteorological towers, communications facilities, and other related facilities and equipment.

§ 155.04 APPLICABILITY AND SCOPE.

This Chapter governs WECS Projects that generate electricity to be sold to wholesale or retail markets, except owners of WECS with an aggregate generating capacity of 100 kilowatts (KW) or less and a WECS Tower height not exceeding 170 feet, who locate a WECS entirely on their own property. If a WECS Project is located or to be located partly in Montgomery County and partly in another county, this Chapter applies to the part of the Project located in Montgomery County.

§ 155.05 PROHIBITION.

Except as expressly provided otherwise herein, no person or entity shall construct or operate a WECS in Montgomery County without having fully complied with the provisions of this Chapter.

§ 155.06 ADMINISTRATION.

(A) *WECS Building Permit Required*. No person may construct or operate a WECS Tower within the corporate boundaries of Montgomery County unless a WECS Building Permit has been approved, financial assurances for decommissioning have been given pursuant to this Chapter, and an Economic Development Agreement and a Road Use Agreement (both as described herein) have been entered into by the Board and the Applicant, Owner or Operator.

(B) *Supercedure*. Nothing in this Chapter is intended to supercede any requirement of state or federal law, except that this Chapter may impose stricter requirements, in whole or in part, than may be imposed by any state or federal authority.

(C) *Powers and Duties of the Building Commissioner*. The Building Commissioner has the following powers and duties:

(1) To issue WECS Building Permits in accordance with the criteria set forth in this Chapter and Chapter 150 of this Code;

(2) To administer and enforce the provisions of this Chapter and all orders issued pursuant thereto;

(3) To conduct investigations and obtain data with respect to any aspect of any WECS regulated under this Chapter, and to collect and disseminate information regarding any WECS;

(4) To order suspension of operation of any WECS upon any repeated or willful violation of any of the provisions of this Chapter or when there is an imminent threat of substantial harm to the health, safety or welfare of Montgomery County residents, public or private property in Montgomery County, or natural resources;

(5) To accept grants or funds for purposes of administration of this Chapter and research into wind-generated electricity;

(6) To cooperate with any other governmental entity to further the purposes of this Chapter; and

(7) To collect fees from Applicants in accordance with this Chapter, as amended from time to time.

§ 155.07 WECS PROJECT APPROVAL.

(A) *Requirement.* No entity or person may construct, own or operate a WECS Project in Montgomery County without first obtaining a WECS Building Permit from the Building Commissioner, and entering into an Economic Development Agreement and Road Use Agreement with the Board. To begin the WECS Project approval process, the following information shall be submitted to the Building Commissioner:

(1) *Project Description.* A narrative description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer(s), type(s) of WECS(s), number of WECS Towers, and name plate generating capacity of each wind turbine generator; the maximum height of the WECS Towers and maximum diameter of the WECS rotor(s); the general location and total acreage of the WECS Project; and

(2) *Applicant, Owner and Operator.* Identification of the name, mailing address, email address, telephone number and brief description of each Applicant, Owner, and Operator, including their respective business structures; and

(3) *Property Owners.* Identification of the names, mailing addresses and tax parcel numbers of all property owners who will have WECS Towers, Substations, access roads or underground cabling located on their properties; and

(4) *Topographic Map.* A topographic map of the WECS project site and the surrounding area with contours of not more than five (5) foot intervals. If any WECS Tower is to be constructed within six (6) nautical miles from a public use airport, a map of sufficient scale depicting the airport and Towers shall also be provided; and

(5) *Site Plan.* A site plan submitted both on paper (on one or more 36" x 24" sheets showing individual WECS Tower sites at a scale not greater than 1 inch = 20 feet), and on digital media in shapefile format and coordinate system State Plane Indiana West, NAD83. The site plan shall include:

- (a) the proposed location of each WECS Tower, guy lines and anchor bases (if any);
- (b) WECS access roads;
- (c) Substations;
- (d) electrical cabling;
- (e) ancillary equipment;

- (f) Primary Structures within one quarter (1/4) of one (1) mile of any WECS Tower;
 - (g) property lines, including identification of adjoining properties;
 - (h) setback lines;
 - (i) public roads, bridges, and drainage;
 - (j) location of all above-ground utility lines within a distance of two (2) times the WECS Tower Height of any WECS Tower;
 - (k) recognized historic or heritage sites within the WECS area, as noted by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources;
 - (l) any wetlands within the WECS area, based upon a delineation prepared in accordance with the applicable U. S. Army Corps of Engineer requirements and guidelines;
 - (m) Location of all existing underground utility lines associated with the WECS site;
 - (n) Location of any lay down yard to be used in construction; and
- (6) *Jobs Estimate*. An estimate of the number of permanent jobs to be created in the County by the WECS Project; and
- (7) *Estimated Project Budget and Construction Timetable* . A project budget to include the estimated investment in real and personal property, any applicable phasing of construction, and the estimated timetable for construction; and
- (8) *Decommissioning Plan*. A Decommissioning Plan which satisfies the requirements of § 155.15 of this Chapter; and
- (9) *Financial Assurance for Property Owners*. An affidavit by the Applicant stating that all easements for WECS, Substations and underground cabling shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the Participating Landowners to ensure that the WECS facilities will be properly decommissioned within twelve (12) months of termination or abandonment of the WECS.

§155.08 ECONOMIC DEVELOPMENT AGREEMENT.

(A) *Agreement Required*. No WECS Project shall be constructed or substantially modified unless the Applicant or Operator first enters into an Economic Development Agreement with the Board. The Economic Development Agreement shall provide for the following:

- (1) Detailed description of the WECS Project;
- (2) Detail of the timing of project implementation;

(3) Detail of economic development incentives provided to the Applicant or Operator by the County including, but not limited to:

(a) The level of Tax Abatement to be granted, if any, for consideration of the Road Use Agreement, and other benefits accruing to the County; and

(b) Other reasonable assistance to be provided by the County.

(4) Payment(s) to be made by the Applicant or Operator to the County in consideration for the possible elimination or restriction of other new residential, agricultural, recreational or commercial/industrial development resulting from the development of the wind farm ("Economic Development Payments").

(5) Allowance for the payment in lieu of property taxes ("PILOT") in the event of any change in law, rules, or regulations which would exempt any or all of the investment in the WECS by the Applicant or Operator.

(6) Any other general provisions deemed necessary and agreed to by the Applicant or Operator and the Board.

(7) Payments to be made by the Applicant or Operator for the use, repair, and modification of County roads and County drainage system necessary to accommodate the WECS Project (to be detailed in a Road Use Agreement between the Applicant or Owner and the County).

(8) Description of other incentives and benefits provided to the Applicant or Operator by any other governmental agency.

(B) *Agreement Individually Negotiated.* The Economic Development Agreement will be negotiated for each WECS Project between the Applicant, Owner or Operator and the Board based on the Project scope and specifics of each WECS Project in the County.

§ 155.09 COUNTY ROADS AND DRAINAGE

(A) *Agreement Required.* No WECS Project shall be constructed or substantially modified unless the Applicant or Operator first enters into a County Road Use and Drainage Repair Agreement with the Board. The County Road Use and Drainage Repair Agreement shall provide for the following:

(1) A detailed map indicating any County road to be utilized for construction, operation, maintenance, or decommissioning by the Applicant, Owner, or Operator; including any other County-owned or controlled property such as bridges, culverts, road shoulders, and intersections ("Designated Roads").

(2) Process for determining the existing condition of each Designated Road prior to any use by the Applicant, Owner, or Operator. Such process may involve video and/or textual narrative for each Designated Road, with the cost of such report to be borne by the Applicant, Owner, or Operator (a "Designated Road Condition Report").

(3) Timelines for completing the Designated Road Condition Report, role of the Montgomery County Highway Superintendent (“Highway Superintendent”), and process for settling any disputes as to the Road Condition Report.

(4) Identification of any County-regulated drains that may be affected (“Drain Location Map”) by the Applicant, Owner, or Operator to be provided to the Montgomery County Drainage Board.

(5) Allowed Usage of the Designated Roads by the Applicant, Owner, or Operator as granted by the Board.

(6) Required improvements to the Designated Roads by the Applicant, Owner, or Operator and approval thereof by the Highway Superintendent and/or the Board as necessary.

(7) Safety requirements, including:

(a) Speed limits,

(b) Directional and/or warning signage,

(c) Notices to emergency agencies, school corporations, and other entities as deemed necessary for road closures that may be required.

(8) Dust control measures.

(9) Removal of temporary improvements.

(10) Designated road repair identification, repair, and cost responsibility.

(11) Performance assurances required of the Applicant, Owner, or Operator.

(12) Applicable fines for non-compliance with the County Road Usage and Drainage Repair Agreement.

(13) Any other provisions deemed necessary and agreed to by the Applicant, Owner, or Operator and the Board.

(B) *Agreement Individually Negotiated.* A County Road Use and Drainage Repair Agreement will be negotiated for each WECS between the Applicant, Owner, or Operator and the Board based on the project scope and specifics for each WECS project in the County.

§ 155. 10 WECS BUILDING PERMITS.

(A) *Building Permit Required.* No WECS Tower or Substation shall be constructed or substantially modified unless the Applicant or Operator first obtains a WECS Building Permit from the Building Commissioner, pursuant to Chapter 150 of this Code and the requirements of this Chapter.

(B) *Application for WECS Building Permit.* In addition to the requirements for a Building Permit under Chapter 150 of this Code, the Applicant shall provide the following information to the Building Commissioner:

(1) Location of all above-ground utility lines within a radius equal to two (2) times the height of the proposed WECS Towers.

(2) Location of all underground utility lines associated with the WECS Tower sites.

(3) Dimensional representation of the structural components of the tower construction including the base and footings.

(4) Schematic of electrical systems associated with the WECS Towers including all existing and proposed electrical connections.

(5) Certificate(s) of design compliance that the relevant wind turbine manufacturers have obtained from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energie, or an equivalent third party, that the nacelle, rotor, generator and electrical components conform to industry standards then applicable.

(6) Certificate by a Professional Engineer that the foundation and tower design of each WECS Tower is sufficient to withstand wind load requirements for structure as defined by the International Code Council, and is within accepted professional standards, given local soil and climate conditions.

(7) Copies of all necessary recorded access easements and necessary recorded utility easements.

(8) A fire protection plan for construction and operation of the facility.

(9) To the extent applicable, a drainage plan for construction and operation approved by the Montgomery County Drainage Board.

(10) To the extent applicable, an erosion control plan approved by the Montgomery County Soil and Water Conservation District.

(11) Proof of compliance with the Indiana Tall Structures Act, I.C. 8-21-10.

(12) Any other information reasonably requested by the Building Commissioner.

§ 155.11 DESIGN AND INSTALLATION STANDARDS.

(A) Electrical Components.

(1) All turbines and other electrical components of the WECS Tower shall conform to applicable local, state, and national codes, and relevant national and international industry standards. Used, experimental or prototype equipment shall not be installed or used as part of a WECS Tower without the prior written approval of the Building Commissioner.

(2) All electrical collection cables between WECS Towers shall be located underground unless they are located on public or utility rights-of-way or with prior written approval of the Building Commissioner. All transmission lines that are buried should be at a depth consistent with or greater than local utility and telecommunication underground lines standards or as negotiated with the Landowner until the same reach the property line or a Substation adjacent to the property line.

(3) No appurtenances other than those associated with the wind turbine operations shall be connected to any WECS Tower except with express, written permission by the Building Commissioner.

(B) *Controls and Brakes.* 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. All mechanical brakes shall be operated in a fail-safe mode.

(C) *Color.* Except as otherwise required by FAA regulations, towers and blades shall be painted white or gray or another non-obtrusive color. Finishes shall be matte or non-reflective.

(D) *Warnings.*

(1) A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and Substations.

(2) Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to at least fifteen (15) feet above the ground.

(E) *Climb Prevention.* All WECS Towers must include features to deter climbing or be protected by anti-climbing devices including at minimum the following:

(1) Locked WECS Tower doors to prevent unauthorized entry; and

(2) No outside ladders or stairways on any WECS Tower.

(F) *Blade Clearance.* The minimum distance between the ground and any protruding blade(s) utilized on a WECS Tower 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.

(G) *Noise and Vibration.* Noise levels generated by the operation of a WECS shall not exceed sixty (60) decibels measured from the nearest Primary Structure. Noise and vibration levels shall comply with all other applicable county, state and federal laws, ordinances or regulations.

(H) *Utility Interconnection.* The WECS, if interconnected to a utility system, shall meet the requirements for interconnection and operate as set forth in the electrical utility's service regulations applicable to WECS, as amended from time to time.

(I) *Setbacks.*

(1) Except as otherwise provided herein, no WECS Tower shall be located within any of the following minimum setback distances:

Distance from . . .	Minimum Setback Distance
Property line, measured from the center of the WECS Tower to the property line	1.1 times the WECS Tower Height
Residences, measured from the center of the WECS Tower to the nearest corner of the structure	Not less than: (i) 1,000 feet from Residences of Participating Landowners; or (ii) 1,300 feet from Residences of Non-Participating Landowners
Road or street rights-of-way, measured from the center of the WECS Tower to the nearest edge of the right-of-way	1.1 times the WECS Tower Height , or 350 feet, whichever is greater
Railroad rights-of-way, public utility easements, or underground pipeline easements, measured from the center of the WECS Tower to the nearest edge of the right-of-way or easement	1.1 times the WECS Tower Height , or 350 feet, whichever is greater
Regulated drains subject to jurisdiction of the Montgomery County Drainage Board pursuant to I.C. 36-9-27, measured from the nearest edge of the WECS Tower foundation	75 feet from (i) the center line of any tiled drain or (ii) the top edge of the nearest bank of an open drain
Sugar Creek, measured from the center of the WECS Tower to the nearest ordinary high water mark	2,640 feet (½ mile) from the nearest “ordinary high water mark” as defined by 312 IAC 1-1-26
Incorporated limits of a municipality, or boundary of a platted residential subdivision outside the corporate limits of a municipality, measured from the center of the WECS Tower to the nearest point on such corporate limits or subdivision boundary	1,500 feet
State, county, city or town parks, measured from the center of the WECS Tower to the nearest point on the park boundary	1,500 feet

(2) No Substation shall be located nearer than 1,000 feet from any Residence. Participating Landowners may agree in writing to reduce the 1,000-foot Substation setback from Residences on their property. Any such written agreement shall be executed and acknowledged

by all affected Participating Landowners, filed with the Building Commissioner and recorded in the office of the Recorder of Montgomery County.

(3) No WECS Tower or Substation shall be located within any dedicated public easement or public right-of-way.

(4) Adjacent Landowners may agree in writing to reduce the minimum setbacks from their common property lines. Any such written agreement shall be executed and acknowledged by all affected Landowners, filed with the Building Commissioner and recorded in the office of the Recorder of Montgomery County.

(5) New Residences built adjacent to or within the area of a WECS shall observe the minimum setback requirements set forth above for Residences.

(J) Lighting.

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

(2) Any WECS Tower, Substation, underground cabling or other WECS facility declared to be unsafe by the Montgomery County Building Inspector by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, 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 the County Ordinances governing the removal of nuisances.

(K) Water Wells and Septic Systems. All WECS facilities shall comply with applicable septic and well regulation as required by the Montgomery County Health Department and the State of Indiana Department of Public Health.

(L) Navigable Airspace. No WECS Tower or Substation shall be located at a location or a height that is determined by the FAA to be an obstruction or a hazard to navigable airspace.

(M) Compliance with Additional Regulations. Nothing in this Chapter is intended to preempt other applicable state and federal laws and regulations.

§ 155.12 WASTE MANAGEMENT.

All solid waste whether generated from supplies, equipment, parts, packaging used or consumed in the construction, operation or maintenance of a WECS, including retired or replaced parts and equipment, shall be removed from the site in a timely manner consistent with industry standards. All hazardous waste generated by the operation and maintenance of a WECS, including but not limited to lubricating materials, shall be handled in a manner consistent with all local, state and federal rules and regulations.

§ 155.13 OPERATION AND MAINTENANCE.

(A) *Interference.* 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 respond to resolve the interference.

(B) *Coordination with Local Fire Department.*

(1) The Applicant, Owner or Operator shall submit to the local fire department a copy of the site plan.

(2) Upon request by the local fire department, the Owner or Operator shall cooperate with the local fire department to develop the fire department's emergency response plan.

(3) Nothing in this Section shall alleviate the need to comply with all other applicable fire laws and regulations.

(C) *Materials Handling, Storage and Disposal.*

(1) All solid wastes related to the construction, operation and maintenance of the WECS shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.

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

§ 155.14 LIABILITY INSURANCE.

The Owner or Operator of a WECS shall maintain a current general liability policy covering bodily injury and property damage and name the County as an additional insured with limits of at least two million dollars (\$2,000,000) per occurrence and five million dollars (\$5,000,000) in the aggregate, with a deductible of no more than five thousand dollars (\$5,000). Such policy or policies shall be issued by insurer(s) reasonably acceptable to the Building Commissioner. The Owner or Operator shall provide the Building Commissioner a certificate or certificates of all such insurance in force from time to time.

§ 155.15 DECOMMISSIONING PLAN.

(A) Prior to receiving WECS Project approval or a WECS Tower Building Permit under this Chapter, the Applicant, Owner, and/or Operator must formulate a written Decommissioning Plan reasonably acceptable to and approved by the Board, to ensure that the WECS Project is properly decommissioned.

(B) Decommissioning shall include removal of WECS Towers (including foundations to the extent specified in Section 155.15(C) of this Chapter), rotors, nacelles, generators, above-ground wiring or cabling, electrical components, Substations, access roads and any other associated facilities.

(C) A Decommissioning Plan shall provide for removal of all WECS Tower foundations or footings to a depth of forty-eight inches (48") beneath the soil surface, and restoration of the area occupied by the Project improvements, including access roads, to as near as practicable to the same condition that existed immediately before construction of such improvements. Participating Landowners may waive in writing the requirement to remove access roads to WECS Towers on their property.

(D) A Decommissioning Plan shall also address the need for and planned use of County roads and infrastructure needed and necessary to carry out the Plan in a prompt manner. In order to protect and preserve the County's roads and infrastructure, and to the extent not otherwise included in the County Road Use and Drainage Repair Agreement required under Section 155.09 of this Chapter, the Owner or Operator, prior to the commencement of decommissioning pursuant to the approved Decommissioning Plan, shall provide financial assurance in an amount reasonably acceptable to the Board to cover the cost of any damage to or destruction of County roads or infrastructure which may be caused by decommissioning of the WECS Towers or Project in accordance with the Decommissioning Plan.

(E) Prior to receiving WECS Project approval or a WECS Tower Building Permit, the Applicant, Owner or Operator shall submit to the Building Commissioner a contractor cost estimate for demolition and removal of the WECS improvements, and a detailed estimate of the salvage value of the WECS components. The cost estimate shall be provided by a competent and qualified party such as a Professional Engineer, a contractor capable and experience in WECS decommissioning, or other person(s) with relevant experience or expertise in WECS decommissioning reasonably acceptable to the Building Commissioner.

(F) The Applicant, Owner or Operator must provide financial assurance in an amount at least equal to the 125% of the amount of the demolition and removal contractor cost estimate minus the reasonable salvage value of the WECS components, in the form of a surety bond, irrevocable letter of credit or other security reasonably acceptable to the Building Commissioner. No such surety bond or irrevocable letter of credit shall be released until the WECS is properly decommissioned in accordance with the Decommissioning Plan, as determined by the Building Commissioner.

(G) The amount of financial assurance agreed to by the Board and the Applicant, Owner or Operator shall be reviewed on each five-year anniversary of the date of the Decommissioning Plan. As part of such review process, the Applicant, Owner or Operator shall submit to the Building Commissioner an updated cost estimate for demolition and removal of the WECS components, in accordance with Section 155.15(F) of this Chapter. If such updated cost estimate is in an amount greater than the original cost estimate submitted pursuant to Section 155.15(E), the Building Commissioner may order the Applicant, Owner or Operator to increase the amount of financial assurance so as to equal at least 125% of such updated cost estimate. If such updated cost estimate is in an amount less than the original cost estimate submitted pursuant to Section 155.15(E) of this Chapter, the Building Commissioner may permit the Applicant, Owner or Operator to decrease the amount of financial assurance, but not to an amount less than 125% of such updated cost estimate.

(H) A WECS, or any WECS Tower within a WECS project, shall be considered abandoned if it has not been operated for the generation of electricity for a continuous period of more than twelve (12) months. Upon abandonment of a WECS or WECS Tower, the Owner or Operator

shall promptly proceed with decommissioning in accordance with the Decommissioning Plan approved by the Board.

(I) If an Owner or Operator fails, neglects or refuses to promptly commence or continue with decommissioning in accordance with the approved Decommissioning Plan, the Building Commissioner shall send written notice of such default to the Owner and Operator. Such notice shall provide the Owner and Operator a reasonable time, not to exceed ninety (90) days to either commence or resume decommissioning of the abandoned WECS or WECS Tower. Upon the failure, neglect or refusal of the Owner or Operator to commence or resume decommissioning within the time specified in such notice, the Building Commissioner may demolish and remove the abandoned WECS or WECS Tower according to the approved Decommissioning Plan, at the expense of the Owner or Operator. For such purposes, the Building Commissioner may enter upon any Participating Landowner's property. To recover the cost of such demolition and removal, the Building Commissioner may proceed against the surety bond or other security provided by the Applicant to secure performance under the Decommissioning Plan. In addition to, and not in lieu of proceeding against the surety bond or other security, the Building Commissioner may, but shall not be required to, sell any salvage WECS property in any commercially reasonable manner, subject to the rights of any secured creditor holding a security interest in such property, and apply the net proceeds of any such sale toward the cost of such demolition and removal.

§ 155.16 VARIANCES.

(A) *Prior Approval Required.* No WECS may be constructed, modified or expanded without full and complete compliance with the requirements and standards contained in this Chapter, unless a variance is first granted by the Board.

(B) *Application for Variance.* The Applicant or Operator shall submit an Application for Variance, in the form prescribed by the Building Commissioner, for any variances sought in connection with a WECS. A single Application for Variance may be submitted for all variances sought. The filing fee for an Application for Variance shall be \$250.00. In addition, the Applicant or Operator shall be responsible for all publication fees and postage costs for the publication and service of notices as required by this Chapter, as well as any other direct costs incurred by the County in consideration of the application for variance.

(C) *Action on Application.* All Applications for Variance shall be heard and determined by the Board in accordance with § 155.18.

§ 155.17 ENFORCEMENT.

(A) The Owner or Operator of a WECS shall submit, on an annual basis, a summary of the operation and maintenance reports to the Building Commissioner. In addition to the above annual summary, the Owner or Operator shall furnish such other operation and maintenance reports as the Building Commissioner reasonably requests.

(B) Any physical modification to a WECS that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the Owner or Operator shall confer with the Building Commissioner to determine whether the physical modification requires re-certification.

(C) The Building Commissioner may and his or her staff, along with licensed professionals retained for the specific purpose of conducting inspections, may inspect any WECS facility upon twenty-four (24) hours prior notice, or without notice in the event of an emergency posing a threat of imminent harm to the environment or to the health, safety or general welfare of the public. If any Owner or Operator refuses the Building Commissioner access to a WECS for purposes of making an inspection, the Building Commissioner may order a suspension all WECS operations until such time as the inspection has occurred and the Building Commissioner is satisfied that no imminent threat of substantial harm to health, human safety or the environment exists, or that such threat has been eliminated.

(D) The fee for each inspection shall be as determined by the Board from time to time, and shall be payable by the Owner or Operator to the Building Commissioner, in addition to reimbursement to the County of the actual fees charged by licensed professionals retained by the Building Commissioner to conduct or assist with such inspection.

(E) If the Building Commissioner finds that any WECS facility is in violation of the requirements of this Chapter, he or she may order the Owner or Operator to take appropriate actions in order to bring facilities into compliance with this Chapter. Noncompliance with any such order is a separate violation of this Chapter in addition to the violation complained of.

(F) The Building Commissioner may also suspend or revoke a WECS Project approval or WECS Tower Building Permit for repeated or willful violation of any of the terms of the WECS Project approval or Building Permit or the provisions of this Chapter if the Building Commissioner determines there is an imminent threat of irreparable harm to the environment; or of serious hazard to the health, safety, and general welfare of the public.

(G) If a WECS Project Approval or WECS Tower Building Permit is revoked, the Building Commissioner may order the Applicant, Owner or Operator to commence decommissioning of the WECS upon 30 days notice.

(H) It is unlawful to violate any of the provisions of this Chapter, or fail to perform any duty imposed by this Chapter, or any order issued by the Building Commissioner. Any Owner or Operator found to have committed any such violation shall be subject to a penalty to be assessed by the Building Commissioner in an amount not to exceed \$2,500 for each day such violation continues.

(I) In determining the amount of a penalty to assess under this Chapter, the Building Commissioner shall consider the Owner or Operator's history of previous violations with respect to the WECS, the seriousness of the violation, including any irreparable harm to the environment and hazard to the health, safety, and general welfare of the public, the Owner or Operator's negligence, and the demonstrated good faith of the Owner or Operator to achieve rapid compliance after notification of the violation.

(J) Upon the assessment of a penalty under this Chapter, the Building Commissioner shall immediately inform the Owner or Operator of the amount of the penalty assessed and issue an order to pay the penalty. The Owner or Operator shall have 30 days from the receipt of the order to pay the penalty or appeal the assessment pursuant to § 155.18 of this Chapter.

§ 155.18 HEARINGS AND APPEALS. The Board shall hear and determine (1) appeals from any order, requirement, decision, or determination made by the Building Commissioner under

this Chapter or in relation to its enforcement, and (2) applications for approval of variances from the requirements of this Chapter.

(A) Appeals from Decisions or Orders of Building Commissioner.

(1) An appeal from a decision or order of the Building Commissioner must specify the grounds of the appeal and must be filed with the Board within thirty (30) days after the date of the decision or order being appealed.

(2) The Building Commissioner shall, on the request of the Board, transmit to it all documents, plans, and papers constituting the record of the action from which an appeal is taken.

(3) Certified copies of the documents, plans, and papers constituting the record may be transmitted for purposes of subsection (2) above.

(4) Upon appeal, the Board may reverse, affirm, or modify the order, requirement, decision, or determination appealed from. For this purpose, the Board has all the powers of the Building Commissioner from which the appeal is taken.

(B) Variances. In determining whether to approve an Application for Variance, the Board shall make written findings whether the proposed variance satisfies each of the following criteria:

(1) The approval will not be injurious to the public health, safety, morals and general welfare of the community;

(2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

(3) The need for the variance arises from some condition peculiar to the property involved; and

(4) The strict application of the terms of this Chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought.

(C) Hearings

(1) The Board shall fix a reasonable time for the hearing of appeals and Applications for Variances.

(2) Notice by publication in accordance with I.C. 5-3-1, and written notice to interested parties by certified mail, shall be given at least ten (10) days before the date set for the hearing.

(3) Interested persons shall include all Landowners owning real estate located within 1,000 feet of the property involved in the appeal or in the Application for Variance, and any other Landowner who files a written statement with the Building Commissioner of his or her claim of interest at least fourteen (14) days before the hearing. The Board may in its discretion designate additional interested parties.

(4) The party taking the appeal, or applying for the variance, shall assume the cost of publication and mailing of notice of the hearing.

(5) At the hearing, the party appealing or applying for the variance may appear in person, by agent, or by attorney.

(6) The Building Commissioner may appear before the Board at the hearing and present evidence in support of or in opposition to the granting of a variance or the determination of any other matter.

(7) Other persons may appear and present relevant evidence.

(8) No person may communicate with any member of the Board before the hearing with intent to influence the member's action on an appeal or Application for Variance pending before the Board. Not less than five (5) days before the hearing, however, the Building Commissioner or any interested party may file with the Board a written statement setting forth any facts or opinions relating to the matter.

(9) The Board may require any party adverse to any appeal or Application for Variance to enter a written appearance specifying the party's name and address.

(10) The Board shall hear and decide all appeals and Applications for Variance in an open public meeting, and each such decision shall be filed with the minutes of the Board's meetings.

§ 155.19 JUDICIAL REVIEW.

Each decision of the Board under § 155.18 is subject to judicial review by certiorari. Any person, other than the Building Commissioner, who is aggrieved by a decision of the Board may file a verified petition for judicial review, alleging that the decision is illegal in whole or in part and specifying the grounds of the illegality. All petitions for judicial review must be filed with an Indiana state court of general jurisdiction sitting in Montgomery County, Indiana, within thirty (30) days after the date of the decision of the Board.