

THIS ORDINANCE IS FOR UNINCORPORATED POSEY COUNTY

Renewable Energy Generation Systems

Solar and Wind: Tier 1, 2, and 3 projects

PREAMBLE

WHEREAS, the generation of electricity from wind and solar resources must by practicality be located where sufficient wind and solar resources exist;

WHEREAS, wind and solar energy projects may be undertaken in differing sizes ranging from large scale projects intending to deliver wholesale electricity to the grid (commercial), to smaller installations on one or more contiguous parcels and intended to deliver electricity for use onsite (non-commercial), to installations on a single parcel designed to generate supplemental electricity, for use or credit, for the parcel on which it is sited (private);

WHEREAS, the size of the generation project and intended use of the electricity generated results in differing burdens and/or benefits on the County and thus require differing approval and permitting;

WHEREAS, development of wind energy projects and solar energy projects may result in substantial economic investment in the County to the benefit the County and its residents through lease payments, tax payments, and temporary and permanent employment opportunities;

WHEREAS, construction of a commercial scale wind energy or solar energy project involves the use of heavy equipment and the transport of heavy loads that have the potential of damaging public and private infrastructure of the County, including roads, bridges, and drainage structures and for disruption on public roads;

WHEREAS, the failure to complete a commercial wind or solar project after the commencement of construction, the failure to continue in operation, and/or the failure to remove the wind energy or solar energy facility after the end of its useful life create significant risks of damage to the value of the property of adjacent landowners, the environment, and the safety and security of persons in the County;

WHEREAS, the adoption of an ordinance regulating the location, construction, and operation of wind and solar projects is necessary and appropriate to achieve and secure the benefits of these projects and to avoid and/or minimize the risks, dangers, and inconvenience to health, safety, and general welfare of the County;

WHEREAS, the adoption of the following wind energy and solar energy ordinance is necessary to achieve the goals set forth in the Comprehensive Plan for Posey County;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Posey County that the following standards are required for the approval and permitting of a solar and wind energy projects in Posey County, Indiana.

153.120 SOLAR ENERGY PROJECTS

- 153.121.01 APPLICATION OF ORDINANCE
- 153.121.02 DEFINITIONS
- 153.122 ENERGY CONVERSION SYSTEM DISTINCTIONS
- 153.123 DESIGNATION OF USE IN DISTRICTS
- 153.124.01 APPROVAL PROCESS
- 153.124.02 PRELIMINARY DEVELOPMENT PLAN APPROVAL
- 153.124.03 FINAL DEVELOPMENT PLAN APPROVAL
- 153.125 IMPROVEMENT LOCATION PERMITS AND COMMENCEMENT OF CONSTRUCTION
- 153.126.01 CONSTRUCTION STANDARDS
- 153.126.02 DEVELOPMENT STANDARDS
- 153.126.03 SETBACKS AND HEIGHT RESTRICTIONS
- 153.127.01 POST-CONSTRUCTION AND CONTINUED MAINTENANCE
- 153.127.02 POST-CONSTRUCTION MODIFICATIONS
- 153.128 NO PREEMPTION
- 153.129 PROPERTY VALUE GUARANTEE FORM

153.121.01 APPLICATION OF ORDINANCE. This Ordinance applies to ground-mounted solar energy conversion systems. This Ordinance does not apply to roof-top or integrated solar installations on buildings or facilities and all such installations remain subject to applicable building and safety codes. Any solar energy system intended to be installed over, in or on water systems, natural or otherwise, are regulated in the same manner as similar ground-mounted systems with any additional applicable review due to the water-based installation.

- A. **(SECS-1)** Solar Energy Conversion System—Tier 1
- B. **(SECS-2)** Solar Energy Conversion System—Tier 2
- C. **(SECS-3)** Solar Energy Conversion System—Tier 3

153.121.02 DEFINITIONS

ACRONYM GUIDE-

LEDO – Local Economic Development Organization
SECS - Solar Energy Conversion System

AMBIENT BASELINE SOUND PRESSURE LEVEL The L90 A-weighted sound pressure emissions level (the level of sound exceeded 90% of the time) for a project area prior to construction as determined by a baseline acoustics emissions study.

APPLICANT The term “Applicant” when used in connection with or in respect of a project shall mean the person(s) and/or entity(s) which is/are the developer and/or owner of the project which prepares and files the initial application to the applicable approval body, and the term shall include all successors and assigns of the initial Applicant. The term “Applicant” shall not include any person or entity which signs the application solely in the capacity as an Owner of an interest in real property on which a project shall be located. When used in this Ordinance to affix liability or for a binding agreement or obligation, Applicant shall include the Owner or Operator of the project that intends to be legally liable or so bound.

AREA PLAN COMMISSION refers to the Posey County Area Plan Commission.

CO-APPLICANT The term “Co-Applicant” when used in connection with or in respect of a project shall mean a person or entity which executes an application for a project solely because of an ownership interest in real property to be used in connection with the project.

COLLECTOR Any power line that carries electrical power from one or more solar panels or transformers or converters associated with solar panels to the point of interconnection with the electrical power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the project.

COUNTY Posey County, Indiana.

DECOMMISSIONING PLAN The term “Decommissioning Plan” with regards to a project shall have the meaning and include the requirements set forth at Sections 153.124.03 (E) and (H) and 153.127.01.

DECOMMISSIONING SECURITY The term “Decommissioning Security” with regards to a project shall have the meaning and meet the requirements as set forth at Sections 153.124.03 (E) and (H) and 153.127.01.

DISTAL SOLAR PANEL means each solar panel closest to an adjoining Non-Participating property line.

DRAINAGE PLAN The term “Drainage Plan” with regards to a project shall mean the storm water management plan approved by the Soil and Water Conservation District-District Technician for the project as required by Section 153.124.03 (C).

ECONOMIC DEVELOPMENT AGREEMENT An agreement between the Applicant, Owner and/or Operator and the County setting forth the applicant, owner and/or operator’s financial commitment to support economic development and/or provide other financial assistance in the County, or any portion thereof as required by Section 153.124.03 (G).

NON-PARTICIPATING Property or the property-owner of land adjacent to a SECS project that is not participating in the project as a Co-Applicant.

OPERATOR The term “Operator” when used in connection with or in respect of a project means any person or entity which has the primary involvement with or responsibility for the use, operation, or maintenance of all or a portion a project.

OWNER The term “Owner” when used in connection with or in respect of a project shall mean any person or entity and his, her, or its assigns and successors in interest which has any ownership interest in any or all of the necessary devises to convert solar energy into electricity. The term “Owner” does not include any person or entity whose ownership interest in a SECS is limited to an interest in real property which is used in a SECS.

SOLAR ENERGY CONVERSION SYSTEM (SECS) The generating equipment and all ancillary equipment used in the production of electrical energy from solar resources.

TRANSPORTATION PLAN The detailed route plan used for construction and maintenance by a project as required in Section 153.124.03(B).

SAFETY AND SECURITY PLAN The SECS project site safety and security plan as provided by Section 153.124.03(D).

VIEW SHED AREA means the areas of visual impact of a project as set forth in Section 153.124.02(F).

SECS NET SALVAGE VALUE The net value of the all saleable parts and commodities which make up the SECS whether sold as used parts or on a commodity/scrap basis or any combination thereof (whichever is greater) after deducting all estimated costs and expenses of dismantling, removal, and transportation and all costs and expenses of sale (including but not limited to all commissions and fees) and the amount necessary to pay and satisfy all liens, security interests, and other encumbrances attaching to the SECS. The commodity/scrap value shall be based on the prior five (5) years average scrap value of the commodity.

153.122 ENERGY CONVERSION SYSTEM DISTINCTIONS. Only Photovoltaic and Thermal Solar energy conversion systems may be installed in the County. Concentrated Solar Power systems may not be installed in the County. Acreage is measured from a perimeter fence surrounding the total solar generation facilities including any substations, energy storage or electrical support buildings. Any solar energy generation facilities intended to be operated as an integrated system shall be regulated according to the aggregate total acreage. Any subsequent phase of an approved project shall meet the criteria required of the total acreage of all phases.

Type	Acreage	Other
SECS-1	Greater than 20 acres	Electricity sold to utility transmission lines

SECS-2	More than 1 acre up to 20 acres on one or more properties	Electricity used primarily for on-site use
SECS-3	One acre or less and one landowner	Electricity exclusively behind the meter generation for single property owner

153.123 DESIGNATION OF USE IN DISTRICTS. Subject to the requirements of this Ordinance, the designated solar energy projects are permitted uses (X) or special exception (E) uses in the following districts. No Improvement Location Permits shall issue to any Applicant without the Area Plan Commission granting preliminary and final approval at public hearings.

District	SECS-1	SECS-2	SECS-3
A	X	X	X
RS or R-1		E	E
RT		E	E
R-2		E	E
RM or R-3		E	E
RMH		E	E
PUD		E	E
R-O or O		E	E
B-1 or NC		E	E
B-1A or CS		E	E
B-2 or CG		E	E
B-3 or CH		E	E
CBD			
M-1	X	X	X
M-2	X	X	X

153.124.01 APPROVAL PROCESS.

- A. All Tier 1 and Tier 2 projects subject to this Ordinance shall be considered at two public hearings before the Area Plan Commission and shall comply with all requirements of this Ordinance. The first hearing shall consider granting preliminary approval. The second hearing shall consider granting final approval. Final approval may not be granted sooner than 28 days after preliminary approval absent extraordinary circumstances proven by the Applicant to the satisfaction of the Area Plan Commission.
- B. Tier 3 projects are required to submit only a final development plan and need only one hearing for consideration and approval of a final development plan. Tier 3

projects need submit only the following with its Final Development Plan application: Section 153.124.02 (A), (B), (D) and coordination with any applicable agencies listed in (E), and Section 153.124.03 (D).

- C. An application for any use designated as a Special Exception shall be heard by the Board of Zoning Appeals prior to submission of a site development plan to the Area Plan Commission. Applicant may submit the preliminary site development plan and the Special Exception application at the same time, however, the BZA must take action on the Special Exception Application prior to the public hearing on a preliminary site development plan before the Area Plan Commission.
- D. Following final approval, the Applicant must comply with the requirements as set forth in this Ordinance with respect to receiving improvement location permits for the project.
- E. Any Applicant seeking a variance allowed under 153.126.03 (G) from any setback or height restriction requirement of this Ordinance must receive that approval from the applicable Board of Zoning Appeals and submit such variance approval with its final development plan application. Only the Area Plan Commission may approve any departure from the procedures for approval or any modification of final approval.
- F. All information provided and gathered during a preliminary development plan review and/or a final development plan review may be used by the Commission in determining whether to approve or disapprove the plan and, if approved, what reasonable additional restrictions or provisions shall be included in the plan in addition to those outlined herein.

153.124.02 PRELIMINARY DEVELOPMENT PLAN APPROVAL. A completed application for preliminary development plan approval signed by the Applicant shall be filed with the Area Plan Commission. If the Applicant is not the owner of the real property on which the project is sited, all property owners of the real property where the project is to be located must be Co-Applicants. The application shall include the following items submitted in both hard copy and electronic format:

- A. **PROJECT SUMMARY.** An initial project summary including a description of the project stating the approximate total name plate generating capacity and the name plate generating capacity of each solar panel, the total acreage included in the project and the GIS coordinates of the general outline of the project area, the potential equipment manufacturers and type of solar energy conversion system to be used, the number of solar panels, the size and maximum height of the solar panels, and description of substations, power inverters, maintenance structures, storage yards, permanent solar resource monitoring structures and equipment, and other buildings that are a direct functional part of the project. If any part of the project will include battery storage, the kinds of batteries to be used, the manufacturer, and the type of installation shall also be included.

- B. **APPLICANT AND CO-APPLICANTS.** A description of the Applicant, Owner and Operator and any other responsible party and if applicable each of their intermediate and ultimate parent companies, listing experience in similar projects and gross capitalization. List names, addresses, email addresses, websites and phone numbers of the Applicants, Owners and Operators and all Co-Applicants.
- C. **MAPS.** A map or maps of the project site and surrounding quarter-mile radius that shows the topography (at 2-foot contours), political and natural features of the project site. The map shall include the individual land parcels by state tax parcel number and clearly identify whether the property is participating in the project or not. The map shall also identify the zoning designations, all streets and roadways by classification, municipal and township boundaries, residential structures, public lands, public and private schools (including colleges and universities) existing utilities and transmission lines, public safety facilities, governmental boundaries, public recreational land, and any commercial or public structure such as stores, churches, airports or landing strips. If more than one map is submitted, all maps shall be drawn at the same scale. All maps shall be submitted in hard copy and electronic format as specified by the Executive Director of the Area Plan Commission.
- D. **SITE PLAN.** The Applicant shall submit a site plan at an appropriate scale showing the proposed location of the project facilities; proposed access roads; substations; maintenance structures; storage yards; permanent solar resource measuring or monitoring installations; electrical cabling; ancillary equipment; and any other structures that are a direct functional part of the project. Each contiguous row of solar panels and/or structure should be assigned a unique identification number on the site plan. In addition, the site plan shall show: primary structures within one quarter mile of any project; property lines, including identification of non-participating adjoining properties; setback lines; public roads; County regulated drains, open ditches or tiles including private tiles if located in a public right of way; location of all above-ground utility lines; location of all existing underground utility lines associated with the site; recognized historic or heritage sites as noted by the Indiana Department of Natural Resources; floodplains; and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines, and the location of any other condition or facility regulated by any other agency having jurisdiction of activity on the site. This site plan must also be distributed to emergency management agencies, fire departments serving any part of the project site, the County Sheriff, and the chief executive body of any municipal government whose boundary is within 2 miles of the project site.
- E. **COORDINATION WITH APPLICABLE ENTITIES.** The Applicant shall submit a summary report identifying the entities the Applicant has communicated and coordinated with respect to the project. The report shall list the entity name, the primary contact person at the entity and contact information, the dates of coordination and list of documents submitted to each agency. The report shall also transmit any comments, suggestions, concerns, approvals, or disapprovals with respect to the

project issued by the entity and/or communicated to the Applicant. The following entities shall be contacted:

Authority	Purpose	Type of Documentation	When Required
Federal			
FAA	Coordinate to reduce any flight or airport interference	Compliance letters for each solar project	Preliminary
DOD Siting, NOAA	Coordinate siting to mitigate radar interference or any other interference.	Any recommendations or comments received submitted to APC	Preliminary
EPA	Compliance with air and water quality standards under NEPA	Any recommendations or comments submitted to APC	Preliminary
USFWS Indiana Field Office Migratory Bird Treaty Act (MBTA) Eagle Protection Act Endangered Species Act	Compliance with any solar guidelines	Any recommendations or comments submitted to APC and part of Natural Resources Report	Preliminary
Army Corps of Engineers	Floodplain or wetlands involvement	Designations and comments and permit if required	Preliminary
State			
IDNR	Historic Preservation, Flood Plains	Comments	Preliminary
IDEM	Endangered Species	Comments	Preliminary
Local			
Private airport authorities permitted by FAA and IAA	Coordinate siting process	Any recommendations or comments submitted to APC	Preliminary
Posey County Soil & Water Conservation District	Drainage Plan Approval	Drainage Plan	Final
Telecommunications Infrastructure Owners and Operators	All telecommunications owners and operators with infrastructure within 2 miles of project boundary shall be notified and consulted	Any comments or recommendations received from owners and operators shall be submitted to the APC	Preliminary

Highway Supervisor	Road Plan Approval (construction, maintenance, access cuts)	Transportation Plan	Final
Local Emergency Response	Life Line access, safety protocols	Safety and Security Plan	Final

F. VISUAL IMPACT EVALUATION REPORT: The Applicant shall submit a Visual Impact Evaluation Report evaluating the visual impact of all solar panels on properties within certain distances of the project. The report shall assess the visual impact on all properties within the visual impact zones identified below. The following shall be included in the Visual Impact Evaluation Report:

1. a map depicting the dimensions of the proposed site, names and addresses of adjoining property owners not participating in the project that clearly identifies the setbacks distance in feet from each of the each proposed Distal Solar Panel and adjoining property lines, the site of each of the photographic simulations taken in the View Shed Area, town and city boundaries, historic sites/districts, state and local designated scenic areas and roads, recreational areas, open space and conservation areas, schools, parks, water resources, military installations, airports or landing strips, cell towers, weather and radar stations
2. detailed description of the potential visibility of each Distal Solar Panel and the methodology used evaluate visibility within the following View Shed Areas and maps of the applicable View Shed Area identifying town and city boundaries, historic sites/districts, state and local designated scenic areas and roads, recreational areas, open space and conservation areas, schools, parks, water resources, military installations, airports or landing strips, cell towers, weather and radar stations
3. View Shed Areas Defined: ½ mile radius from each Distal Solar Panel adjacent to the project boundary
4. Photographic simulations of the View Shed Area in sufficient number to capture the general visibility of Distal Solar Panels and a map depicting the location for each photographic simulation
5. Any mitigation measures proposed to minimize the visual impact of the project

G. NOISE EVALUATION REPORT. The applicant shall submit a Noise Evaluation Report for each grouping of solar panels and any substation or facility that emits noise in the project. The report shall state the daytime and nighttime base-line noise level at the primary dwelling on an adjoining non-participating parcel, in the event permission for the receptor to be located at the primary dwelling is not granted by the non-participant, then at a point on the property line closest to the primary dwelling; the potential noise level generated by the solar panels and inverters and any substation associated with the project; the manufacturer's technical documentation of the proposed solar energy generating equipment noise levels. The Noise Evaluation Report shall include the projected maximum levels of infrasonic sound, ultrasonic

sound, impulsive noise and prominent discrete tones generated and measured at the primary dwelling on the non-participating parcel (or property line receptor if permission not given as set forth above). The report shall include a map depicting the noise study area radius, project boundaries, sound level monitoring locations and the nearest receptor locations. The Noise Evaluation Report shall include any potential mitigation measures to minimize sound levels.

- H. **TELECOMMUNICATIONS AND WIRELESS SIGNALS REPORT.** The Applicant shall submit a Telecommunications and Wireless Signals Report identifying any expected interference with over the air communications and information gathering and provide a verified statement that it will mitigate any such interference. The Applicant will coordinate its report with NOAA and any other agencies dependent on wireless communications that may be affected.
- I. **NATURAL RESOURCE IMPACT REPORT.** The Applicant shall submit a natural Resources Impact Report for the proposed project site. The Natural Resources Impact Report shall include a detailed description of the potential natural resource impacts as a result of the construction, operation, and maintenance of the SECS that includes identification and analysis of (a) topography, geology, vegetation, soil types, water resources including wetlands, avian, terrestrial, and marine wildlife habitats as applicable; (b) compliance with applicable air and water quality standards; (c) compliance with any USFWS solar energy guidelines as applicable, and (d) compliance with any site specific recommendations made by IDNR or IDEM. The report shall include a study area map with identification of any areas of importance such as bat habitat, flood zones, wetlands and watercourses evaluated in the report. The report shall also include any potential mitigation measures such as open space, erosion control, and habitat replacement to reduce the identified impacts on the project area.
- J. **COST REIMBURSEMENT.** For Tier 1 projects only, an agreement and written undertaking with adequate surety, bond, or other accepted form of adequate financial assurance must be submitted to pay or reimburse the County, the Area Plan Commission, any impacted school corporation, and any other impacted municipal corporation for all expenses incurred by the County, the Area Plan Commission, any impacted school corporation or municipal corporation in evaluating the documents required to be submitted for preliminary and final development plan approval. The costs to be reimbursed shall include expenses and professional fees actually incurred including but not limited to all electrical, structural, mechanical, acoustical and transportation engineers, aviary experts, financial consultants, attorneys and other professionals. Within forty-five (45) days of submission of an invoice, the Applicant shall pay or reimburse all such expenses. This obligation for payment or reimbursement of professional fees shall continue so long as the SECS-1 is in existence through the completion of decommissioning and its removal.

153.124.03 FINAL DEVELOPMENT PLAN APPROVAL. After approval of the Primary Development Plan, a petition for Final Development Plan approval shall be submitted to the Area Plan Commission and shall include:

- A. **REVISED SITE PLAN.** A revised site plan indicating any changes to the site plan submitted for the Preliminary Development Plan Approval.
- B. **TRANSPORTATION PLAN.** A Transportation Plan recommended by the SECS Transportation Committee and approved by the County Commissioners including a form of financial assurance acceptable to the County Commissioners for the repair or replacement of all damaged roads, bridges, signage, or other transportation structures during construction, maintenance, and operation.
- C. **DRAINAGE PLAN.** A Drainage Plan approved by the Posey County Soil and Water Conservation District-District Technician and including a form of financial assurance acceptable to the County for the repair or replacement of all damaged drains, ditches, and tiles (if in the public right of way). The Transportation Plan and the Drainage Plan shall state that any newly constructed access roads shall not impede the flow of water and will comply with the County drainage ordinance.
- D. **SAFETY AND SECURITY PLAN.** A Safety and Security Plan which must include adequate provisions for site security and safety. If the plan includes using County services, it should include signatures of the proper authorities indicating they are aware of their role and capable of performing it. Coordination with local emergency responders and area hospitals must be included.
- E. **DECOMMISSIONING PLAN.** A Decommissioning Plan to ensure that the project is properly decommissioned. The Decommissioning Plan must be updated and approved by the Area Plan Commission every five (5) years after the approval of the initial Decommissioning Plan and after any material improvements are added to the project, in the same manner as the initial Decommissioning Plan. The Decommissioning Plan shall include financial assurance that the project facilities are properly decommissioned upon the end of the project life or abandonment consistent with this Ordinance. The financial assurance must be provided at the completion of construction and prior to the issuance of any improvement location permit. The obligations with respect to decommissioning shall include removal and proper disposal of all physical material pertaining to the project improvements to a depth of five (5) feet beneath the soil surface, and restoration of the area occupied by the project improvements such that it is suitable for an equivalent land use to what existed immediately before construction of such improvements. The Decommissioning Plan shall include a contractor cost estimate from a licensed engineer with experience in these matters for demolition and removal of similar facilities. The Decommissioning Plan must include proper disposal of all hazardous material and Operator must provide to the Area Plan Commission the certification of disposal issued by the entity providing the disposal service and/or the receiving

disposal facility. All disposal must comply with local, state and federal law, rules and regulations in effect at the time of decommissioning.

- F. **CONSTRUCTION AND OPERATION BOND.** A Construction and Operation Bond that runs from the date of commencement of construction through the tenth (10th) year of operation of the project. The Applicant shall demonstrate that it has the financial resources to construct and operate the project by providing evidence of: (1) adequate funding of one hundred percent (100%) of the estimated cost of construction of the project; (2) performance and payment bonds or other sureties from the Applicant and/or major equipment suppliers and contractors; (3) the existence of written warranties from contractors and/or manufacturers which have demonstrated financial ability to repair and/or replace defective work, materials, and equipment; and (4) adequate casualty, builders risk, business interruption, and liability insurance for the replacement of the project facilities and the individual components thereof. The Applicant may provide such cost estimates, bids, contracts, warranties, feasibility studies, engineering studies and reports, insurance certificates, loan and other financing commitments to provide the requested information.
- G. **ECONOMIC DEVELOPMENT AGREEMENT.** For any project seeking tax abatement or other economic considerations for the project from government, the Applicant shall submit an Economic Development Agreement approved by the County Commissioners. The Economic Development Agreement must be developed in consultation with the Local Economic Development Organization ("LEDO") and the County Council. The Economic Development Agreement shall include, as applicable, estimated property taxes and any tax abatement, any economic development payments, estimated lease payments and overall cost and tax revenue impact on the County as well as the estimated current economic impact of the project area in its current use. The Economic Development Agreement may also include a Property Value Guarantee Agreement in the form found in 153.129.
- H. **ADDITIONAL ASSURANCES.** The Applicant shall provide a notarized statement acknowledging and affirming the following with respect to the project:
1. All duties and obligations of each of the Applicant, Owner, and Operator shall be joint and several, and shall be binding upon all each of their heirs, successors in interest, and assigns. At least thirty (30) days prior to any transfer of any ownership interest in the project, written notice shall be given to the Executive of the municipality where the project is located and the Area Plan Commission. All bonds, sureties, letters of credit or other financial assurances provided under this Ordinance shall remain in full force and effect upon any transfer, assignment, or conveyance of an ownership interest until the successor in interest delivers an accepted replacement obligation. The transfer, assignment or conveyance of an ownership interest in the project without the advance approval of replacement bonds, sureties, letters of credit or other financial assurances shall constitute a default and shall not relieve the responsible party of liability. However, the transfer of the interest of the Owner(s) shall be allowed without advance approval

so long as the bond, surety, letter of credit or other financial assurance posted by the Applicant or Operator covers the successors in interest of the Owner(s).

2. An Owner, or Applicant, or Operator which violates any provision of this Ordinance (including violations by their agents, contractors or subcontractors) shall be subject to fines and all legal remedies under 153.210 *et seq.* Any Owner, or Applicant, or Operator or a contractor or agent thereof who engages in any activity prohibited by or under the control of this Ordinance without first obtaining any required approval or permit including but not limited to an Improvement Location Permit or a Certificate of Occupancy shall be subject to fines and all legal remedies under 153.210 *et seq.* Each day a violation occurs or continues constitutes a separate offense. The authority to assess fines rests only with the Area Plan Commission. The Area Plan Commission shall also have all recourse to address violations as provided by law.
 3. Enforcement of this Ordinance shall be in compliance with Chapter 153.210 of the Zoning Ordinances of Posey County, as it may be amended.
- I. TIME LIMITATION. An application for Final Development Plan approval must be submitted no later than two years after the Preliminary Development Plan approval. If not submitted within two years, the Applicant must re-submit its Preliminary Development Plan for approval before submitting its Final Development Plan. The Applicant may, but is not required, combine its Preliminary and Final Development Plan approval into one submission in that case. No project may exceed the total acreage approved in the Final Development Plan by more than 2% without further approval by the Area Plan Commission.

153.125 IMPROVEMENT LOCATION PERMITS AND COMMENCEMENT OF CONSTRUCTION. After Final Development Plan approval is obtained, but before any construction commences or Improvement Location Permits may be issued, all applicable state and federal permits, approvals and licenses must be obtained (with copies provided to the Area Plan Commission) and all state and federal statutes and regulations must be complied with and the following requirements satisfied:

- A. INSURANCE REQUIREMENTS. The Owner or Operator of the project shall maintain liability policies covering (1) bodily injury and property damage and (2) environmental contamination arising from construction, operation, maintenance, and decommissioning of the project. Limits on the bodily injury and property damage policy shall be of at least \$2 million per occurrence and \$5 million in the aggregate with a deductible of no more than \$20,000 and on the environmental contamination policy shall be of at least \$1 million per occurrence and \$2 million in the aggregate with a deductible of no more than \$50,000. All such policies shall name the County and the municipality in which the project is located as an additional insured and a binder shall be provided annually to the County.

- B. **SIGNAGE AND CONTACT.** The Applicant shall establish a 24-hour toll-free phone number for the registering of complaints and concerns. This number shall be posted at every project service road intersection with a public roadway throughout the project area before Improvement Location Permits are issued and before any construction or earth moving can commence. If legitimate complaints are not remedied within 48 hours the county may address these complaints with any expenses incurred to be reimbursed by the Applicant.

- C. **PRE-CONSTRUCTION MEETING.** The Applicant must attend a Pre-Construction Meeting between the Area Plan Commission Executive Director, Area Plan Commission President, County Building Inspector, and any other public officer or official whose input is deemed appropriate to verify that all requirements in the Ordinance have been met. This meeting shall take place as the final step before construction and all other requirements should already have been met. Once reviewed, if all requirements have been met, the Applicant may then obtain Improvement Location Permits. If any requirements have not been met then further pre-construction meetings will be held until it can be verified that the identified issues have been resolved.

- D. **FEES.** All Improvement Location Permit fees must be paid for the entire project before any Improvement Location Permits will be issued. No improvement location permit shall issue if the Applicant has overdue amounts owed to the County.

153.126.01 CONSTRUCTION STANDARDS. Prior to and during construction the Applicant, Owner and Operator shall be responsible for:

- A. Implementing reasonable dust control measures during construction.

- B. Complying with existing septic and well regulation as required by the County Health Department and the Indiana Department of Public Health.

- C. Repairing all damages to County owned or regulated or Non-Participating Landowners' waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction or maintenance of the project. Damages must be completely repaired to original or better condition, and so as not to impede the flow of water. All repairs must be completed in a timely manner and the Owner, Operator, and/or Applicant shall be responsible for loss or damage proximately resulting from its impairment of such drainage structures. All repairs to County regulated drainage structures must be completed within fourteen (14) days.

- D. Using concrete armoring techniques at each and every location where County regulated drains and subsurface power transmission lines of any type cross. Unopened bags of premixed concrete shall be laid on top of the transmission lines to cover six inches on both sides of the line and eight feet to each side of the County regulated drain the line is crossing. Open drain and transmission line intersections where the line is below the invert of the open drain shall be armored using the same technique.

- Red warning tape (printed with “warning electrical line below” or similar language) shall be buried no closer than 12 inches above the actual power line at all crossing locations. The County Surveyor or agent designated by the County Surveyor shall inspect every such crossing before backfilling. Concrete armoring techniques will not be required in cases where directional boring is used.
- E. Installing permanent, visible markers where directional boring is used. Markers shall be placed within the line of sight indicating directional changes and borings.
 - F. Submitting a weekly plan of work detailing where construction and transportation activities will occur to the Area Plan Commission staff, County Highway Supervisor, County Sheriff, County Surveyor, Soil & Water Conservation District, the Superintendent(s) of the School District(s) in which construction is occurring and to the emergency services with jurisdiction over the areas in which construction is occurring. This shall include notification of any oversize or overweight loads entering or exiting the project each day as well as any work on roads, drainage, or access roads.
 - G. Adhering to the approved Transportation Plan. The County Highway Superintendent and/or appropriate municipal road personnel shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage. The County Highway Superintendent and/or appropriate municipal road personnel may choose to require remediation of road damage during or upon completion of the project and is authorized to collect fees for oversized load permits. If repairs are not made in a timely manner, the County Highway Superintendent and/or appropriate municipal road personnel is authorized to make repairs and charge the Applicant a fee to cover the costs of repair. Such fees shall be established at the start date of construction and may be revised at three-month intervals. Further, a corporate surety bond shall be required by the County Highway Superintendent and/or appropriate municipal road personnel to ensure the County or affected municipality that future repairs are completed to the satisfaction of the County or affected municipality. The bond shall not be released at the conclusion of construction of the project, but it may be reduced to cover any damages or losses from the operation and maintenance of the project. If the Applicant or its contractors require material changes from the approved Transportation Plan or if post completion repairs, improvements, or expansions require oversize and overweight loads or involve new routes, an Amended Transportation Plan must be approved in the same manner as the initial plan. Any violation of the approved Transportation Plan may be subject to fines as provided in 153.210 *et seq.* and in addition, may also be subject to fines established by the governing body having jurisdiction over the roadway(s) affected.
 - H. Adhering to the approved Development Plans. Any non-material proposed changes, modifications, or amendments to the Development Plans must be approved by the Executive Director of the Area Plan Commission and the Executive Director shall thereafter make report of the non-material changes, modifications, or amendments to the Area Plan Commission. All material changes to the approved Development Plans

must be approved by the Area Plan Commission. The Executive Director shall have the authority and discretion, considering all relevant factors, to determine whether the proposed change is material.

153.126.02 DEVELOPMENT STANDARDS

- A. All installed equipment shall conform to applicable industry standards and the application shall include certificates of design compliance of the proposed equipment from nationally recognized third parties in the business of certifying compliance.
- B. All electrical components of the project shall conform to applicable local, state, and national codes, and relevant national and international standards.
- C. A visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
- D. All solar panels and accessory buildings for the project must be fenced in with a fence not less than 7 feet in height.
- E. All warning lights in the project shall conform to best industry practices to reduce impacts on migrating birds and other wildlife. No red pulsating incandescent lights or white strobe lights shall be installed. All lighting shall be in compliance with applicable Federal Aviation Administration regulations. All lighting shall be shielded so that no glare extends substantially beyond the boundaries of the project and installed lights shall be Dark Sky certified.
- F. At any Non-Participating Landowner's residential lot, public school, public library, or recreational area within one-quarter mile of the project boundaries, for a period of more than 10% out of every hour, the audible A-weighted sound pressure levels as a result of the sound emitted by the project shall not exceed either, the greater of 45 decibels or, 5 decibels above the Ambient Baseline Sound Pressure Level of the project. The Ambient Baseline Sound Pressure Level, if used, shall be determined by a baseline acoustic emissions study conducted by the County Area Plan Commission and funded by the Applicant. Measurement of sound and vibration levels shall be conducted adhering to best practices within the applicable industry and in compliance with all other applicable county, state and federal regulations.

153.126.03 SETBACKS AND HEIGHT RESTRICTIONS

- A. No part of the project shall be constructed in any required setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the County Commissioners.
- B. No solar panel may be located less than One Hundred (100) feet from any Non-Participating landowner property line.

- C. Any SECS project proposed shall not have a boundary closer than one mile to any municipal boundary line.
- D. No solar panel may exceed 25' in height at its highest extended rotation.
- E. No Tier 3 SECS solar panel may exceed the height restriction in the underlying zoning district.
- F. Applicant shall give notice to the owner of any private certified landing strip. Setbacks will be determined based upon the agreement of the landing strip owner, Applicant, and the Area Plan Commission which shall take into consideration the guidelines provided in a U.S. Department of Transportation FAA Advisory Circular dated February 26, 2014, as may be updated. Proof of notice must be included with the Preliminary Development Plan.
- G. Allowed Variances. Variances may only be granted for relief from 153.126.03 (B). However, the variance application must include an executed agreement between the applicant and all participating and non-participating landowners affected by the requested variance prior to consideration of the variance request by the Board of Zoning Appeals.

153.127.01 POST-CONSTRUCTION AND CONTINUED MAINTENANCE

- A. **DECOMMISSIONING SECURITY.** At the completion of construction but before any commercial operations begins, the Applicant shall secure and provide to the Area Plan Commission a performance bond, surety bond, letter of credit, or other form of financial assurance that is acceptable to the Area Plan Commission (the “Decommissioning Security”) equal to 125% of the estimated cost of decommissioning the project pursuant to the Decommissioning Plan. The Decommissioning Security, in computing the estimated cost of decommissioning, shall consider and deduct up to 65% of the Net Salvage Value (as defined) of the project. The amount of the Decommissioning Security shall be adjusted annually by January 31 by an amount equal to the increase in the CPI Index. “CPI Index” shall mean the Consumer Price Index for “All Urban Consumers, U.S. City Average, All items,” issued by the Bureau of Labor Statistics of the United States Department of Labor, or, if discontinued or no longer published, such other governmental index that most closely matches the manner in which inflation had been previously tracked as selected by the Area Plan Commission. The Decommissioning Plan and Decommissioning Surety shall be re-evaluated every five (5) years commencing with the operation of the project by a licensed engineer approved by the Area Plan Commission and qualified to provide an estimate of the cost of decommissioning of the project and the Net Salvage Value of the project (the “Decommissioning Engineer”). A new Decommissioning Security in the revised amount, if any, shall be provided within sixty (60) days of the approval of the updated Decommissioning Plan.

- B. WASTE REMOVAL.** All solid waste whether generated from supplies, equipment, parts, packaging, or operation or maintenance of the facility, including old parts and equipment, shall be removed from the site in a timely manner. All hazardous waste generated by the operation and maintenance of the facility, including but not limited to lubricating materials, shall, be handled in a manner consistent with all local, state and federal rules and regulations.
- C. MODIFICATIONS.** Any physical modification to the project that alters the mechanical load, mechanical load path, nameplate generating capacity, size or location or major electrical components shall require a new improvement location permit and/or if there is more than a 2% increase in total acreage of the project. Like-kind replacements that do not have the effects listed above do not require new permitting. Prior to making any physical modification (other than a like-kind replacement), the Applicant shall confer with the Building Inspector to determine whether the physical modification requires new permitting.
- D. INSPECTIONS.** Upon request of the Building Commissioner of the affected governmental unit or the Executive of the affected governmental unit, Operator shall provide an annual inspection report for all facilities in the project to the Building Commissioner and Executive, at Operator's cost. In addition, the Building Commissioner, approved designees, along with licensed third party engineers/professionals retained by the County for the specific purpose of conducting inspections of the project shall have the right, at any reasonable time and with sufficient prior notice, to accompany the Applicant, or his agent, on the project premises to inspect the project and its construction and maintenance and to identify any necessary repairs. The Applicant of the project may retain a licensed third party professional engineer familiar with the applicable systems to prepare and submit to the County Building Commissioner a written report which addresses the repairs or alterations requested, and which suggest 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 County Building Inspector that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The County Building Inspector 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 County Building Inspector and the Applicant or a third-party professional engineer retained by them, as to the repairs or alterations which are required, the decision of the County Building Inspector shall be final. These inspections do not relieve any liability of the Owner or Operator for damages or injuries arising from or related to the project. The Area Plan Commission Executive Director will inspect and determine compliance with zoning regulations and approved development plans and the Executive Director shall thereafter make appropriate report(s) to the Area Plan Commission for action, if any action is necessary.
- E. COMPLAINTS.** If, after construction, the Applicant receives a written complaint related to interference caused with local broadcast residential television,

telecommunication, communication or microwave transmissions, the Applicant shall promptly resolve the complaint.

- F. AS-BUILT PLANS.** The Applicant shall deliver to the Executive Director of the Area Plan Commission and to all providers of emergency services serving the project area a copy of the as-built site map. Upon request by the local fire department, the Applicant shall cooperate with the local fire department to develop or update the fire department's emergency response plan. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.
- G. RECORD OF GROUND DISTURBANCE AND ROAD USAGE.** On completion of construction the Applicant shall submit to the County Surveyor a site map detailing all ground disturbed through construction activity, surface and subsurface as-built infrastructure and all routes over which trucks and equipment traveled. The scale and format of the submitted map shall conform to the County Surveyor's specifications.
- H. LIABILITY FOR DRAINAGE.** For a period of five (5) years following the completion of construction the Applicant shall be liable for all costs of repair to county drain tiles, regulated drains and ditches and other county regulated surface and subsurface structures and private tiles located in the public right of way within fifty (50) feet of the routes and disturbed ground. This period shall be extended for any damages occurring as a result of operations, replacement or maintenance of the project after the five year period.
- I. ABANDONMENT.** A SECS or any individual solar panel constituting a portion of the project is presumed at the end of its useful life and/or abandoned if the SECS or the individual solar panel generates no electricity for a continuing period of twelve (12) months. This presumption may be rebutted by submitting to the Area Plan Commission for approval and within ninety (90) days of submission obtaining approval thereof of a plan outlining the steps and schedules for returning the SECS or individual solar panel to service. Any SECS or individual solar panel which pursuant to the terms hereof is either reached the end of its useful life and/or abandoned pursuant to the terms hereof shall be subject to removal pursuant to the Decommissioning Plan.
- J. UNSAFE STRUCTURES.** Any SECS or structure thereof declared to be unsafe by the County Building Commissioner or the Area Plan Commission 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 or rehabilitation within 12 months or be deemed abandoned and at the end of its useful life and subject to Decommissioning. Nothing herein prevents the County Building Commissioner or the Area Plan Commission issuing an immediate cease use order as to any structure that he or she determines is unsafe during the repair or rehabilitation period.

153.127.02 **POST CONSTRUCTION MODIFICATIONS.** Any post-construction proposed non-material modifications, alterations, expansions, or changes of any type or size to the Final Development Plan must be approved by the Area Plan Commission. All material post construction proposed changes must apply in the same way as a new project. The Area Plan Commission shall have the authority and discretion, considering all relevant factors to determine whether the proposed post-construction change is material.

153.128 **NO PREEMPTION.** Nothing in this Ordinance is intended to preempt other applicable state and federal laws and regulations, except to the extent this Ordinance provides higher or more stringent standards.

153.129 **PROPERTY VALUE GUARANTEE FORM.** The following is the form of Property Value Guaranty to be used by the County Commissioners and the Local Economic Development Organization (LEDO) in the Economic Development Agreement provided for in 153.124.03 (G) if a property value guaranty is a part of the Agreement.

The following form of Property Value Guaranty shall be used by the County Commissioners as part of the Economic Development Agreement, if a Property Value Guaranty is included in the Agreement. The County Commissioners shall determine and complete the matters which are left blank in the following form:

PROPERTY VALUE GUARANTEE

Legal Name of Owner and Operator of the (Legal Name of SECS project) and their assigns and successors in interest (hereinafter jointly and severally referred to as "Guarantor") agree to guarantee (the "Guarantee") the value of all owner-occupied residential dwellings owned by all Non-Participating Landowners owners of record (hereinafter referred to individually as "Owner" and collectively as "Owners") as of the date of the granting of secondary approval of the Development Plan for the [Legal Name] for properties which are located within one mile of a SECS solar panel as shown on the approved Site Plan contained within the Development Plan in all directions and to guarantee the value of all residential dwellings owned by Owners whose ownership is of record in the office of the Posey County Recorder on the date of the granting of secondary approval of the Development Plan.

The location of each Owner of a residential dwelling within one mile of a solar panel shall be noted on the Development Plan. Within thirty (30) days of the granting of secondary approval of the Development Plan, the Guarantor shall provide each eligible Owner with written notice by certified mail to the Owner's address as set forth in the property tax records of Posey County describing the terms of the Guarantee. To qualify for the Guarantee each Owner must notify the Guarantor within ninety (90) days of the mailing of the notice of his or her intent to participate, and Guarantor shall thereafter obtain and submit to Owner an M.A.I. appraisal of Owner's property within sixty (60) days following the date of the Guarantor's receipt of Owner's notice. Owner may accept the value of the property based on the appraisal or may obtain his or her own M.A.I. appraisal. If the Owner's appraisal is less than or within 5% above the Guarantor's appraisal, the guaranteed value ("Guaranteed Value") shall be the average of the two appraisals. If the Owner's appraisal is more than 5% above the Guarantor's appraisal and the Owner is not

willing to accept the Guarantor's appraisal, the two appraisers shall agree upon a third M.A.I. appraiser, to be paid for 50% by Guarantor and 50% by the Owner, who shall appraise the property and whose appraised value shall become the Guaranteed Value for that property.

The period of the Guarantee shall be for a period of _____ years following the issuance of a Certificate of Occupancy for the operation of the [Legal Name] SECS system. The Guarantee shall extend only to Owners of record as of the date of the approval of the Secondary Development Plan for the SECS system and not to the assignees or subsequent owners or purchasers. In the event any property covered by this Guarantee is listed for sale by a licensed real estate broker for a period of not less than _____ and during such period, and Owner either does not receive an offer or receives an offer below the Guaranteed Value, Owner, subject to the restrictions below, shall notify Guarantor of the intent to exercise Owner's right under this Guarantee and within thirty (30) days of the receipt of this notice Guarantor shall do one of the following:

- A. Authorize Owner to accept the pending bona fide offer and to pay the Owner at closing of the sale the difference between the purchase price set forth in the offer and the guaranteed value.
- B. Immediately take steps to purchase the dwelling from Owner at the guaranteed value with such purchase to be completed within sixty (60) days of receipt by Guarantor of notice by Owner of Owner's failure to receive a bona fide offer for the guaranteed value after having listed the property for a period of _____ with a licensed real estate broker.

In any case in which there is a purchase offer pending for which Owner expects to make a claim under this Guarantee, Owner shall provide a copy of such offer to Guarantor. In the event Guarantor is required to purchase Owner's dwelling, Owner shall convey fee simple title to the property, free and clear of all liens and encumbrances by delivery of a Warranty Deed at closing. At closing Guarantor shall pay for preparation of the warranty deed, vendor's affidavit, and all title insurance fees, closing fees, and all survey expenses if it is necessary to subdivide the dwelling from other real estate of the Owner. Guarantor's obligations hereunder are hereby expressly made contingent upon Owner: performing routine maintenance and repairs on the dwelling; the dwelling or property being in the same condition on the date of sale as it was on the date first appraised hereunder; the delivery of the property free and clear of all liens and subject only to such easements and other encumbrances commonly accepted in residential real estate transactions; and Owner conveying fee simple title to the dwelling or property to Guarantor by recordable Warranty Deed at closing. All notices to Owner and Guarantor shall be to the address of Owner and Guarantor as listed on the property tax records of Posey County.

The following fee schedule is for informational purposes only as the fee schedule is set by the Posey County Area Plan Commission

AMENDMENT TO FEE SCHEDULE:

The following fees shall be added to the Posey County Area Plan Commission Fee Schedule for 2020:

SECS

- SECS Tier 1 \$20,000.00 plus \$1,700.00 per megawatt
- SECS Tier 2 \$ 7,000.00
- SECS Tier 3 \$ 75.00

153.130 WIND ENERGY PROJECTS

- 153.131.01 APPLICATION OF ORDINANCE
- 153.131.02 DEFINITIONS
- 153.132 ENERGY CONVERSION SYSTEM DISTINCTIONS
- 153.133 DESIGNATION OF USE IN DISTRICTS
- 153.134.01 APPROVAL PROCESS
- 153.134.02 PRELIMINARY DEVELOPMENT PLAN APPROVAL
- 153.134.03 FINAL DEVELOPMENT PLAN APPROVAL
- 153.135 IMPROVEMENT LOCATION PERMITS AND COMMENCEMENT OF CONSTRUCTION
- 153.136.01 CONSTRUCTION STANDARDS
- 153.136.02 DEVELOPMENT STANDARDS
- 153.136.03 SETBACKS AND HEIGHT RESTRICTIONS
- 153.137.01 POST-CONSTRUCTION AND CONTINUED MAINTENANCE
- 153.137.02 POST-CONSTRUCTION MODIFICATIONS
- 153.138 NO PREEMPTION
- 153.139 PROPERTY VALUE GUARANTEE FORM

153.131.01 APPLICATION OF ORDINANCE. This Ordinance applies to vertical and horizontal wind energy conversion systems whether ground mounted or building mounted. Any wind energy system intended to be installed over, in or on water systems, natural or otherwise, are regulated in the same manner as similar ground-mounted systems with any additional applicable review due to the water-based installation.

- D. **(WECS-1)** Wind Energy Conversion System—Tier 1
- E. **(WECS-2)** Wind Energy Conversion System—Tier 2
- F. **(WECS-3)** Wind Energy Conversion System—Tier 3

153.131.02 DEFINITIONS

ACRONYM GUIDE-

LEDO – Local Economic Development Organization

WECS - Wind Energy Conversion System

AMBIENT BASELINE SOUND PRESSURE LEVEL The L90 A-weighted sound pressure emissions level (the level of sound exceeded 90% of the time) for a project area prior to construction as determined by a baseline acoustics emissions study.

APPLICANT The term “Applicant” when used in connection with or in respect of a project shall mean the person(s) and/or entity(s) which is/are the developer and/or owner of the project which prepares and files the initial application to the applicable approval body, and the term shall include all successors and assigns of the initial Applicant. The term “Applicant” shall not include any person or entity which signs the application solely in the capacity as an Owner of an interest in real property on which a project shall be located. When used in this Ordinance to affix liability or for a binding agreement or obligation, Applicant shall include the Owner or Operator of the project that intends to be legally liable or so bound.

AREA PLAN COMMISSION refers to the Posey County Area Plan Commission.

CO-APPLICANT The term “Co-Applicant” when used in connection with or in respect of a project shall mean a person or entity which executes an application for a project solely because of an ownership interest in real property to be used in connection with the project.

COLLECTOR Any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electrical power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the project.

COUNTY Posey County, Indiana.

CRITICAL WIND SPEED The wind speed at which WECS turbine sound pressure levels are at greatest variance with Ambient Baseline Sound Pressure Level.

DECOMMISSIONING PLAN The term “Decommissioning Plan” with regards to a project shall have the meaning and include the requirements set forth at Sections 153.134.03 (E) and (H) and 153.137.01.

DECOMMISSIONING SECURITY The term “Decommissioning Security” with regards to a project shall have the meaning and meet the requirements as set forth at Sections 153.134.03 (E) and (H) and 153.137.01.

DRAINAGE PLAN The term “Drainage Plan” with regards to a project shall mean the storm water management plan approved by the Soil and Water Conservation District-District Technician for the project as required by Section 153.134.03 (C).

ECONOMIC DEVELOPMENT AGREEMENT An agreement between the Applicant, Owner and/or Operator and the County setting forth the applicant, owner and/or operator’s financial commitment to support economic development and/or provide other financial assistance in the County, or any portion thereof as required by Section 153.134.03 (G).

NON-PARTICIPATING Property or the property-owner of land adjacent to a WECS project that is not participating in the project as a Co-Applicant.

OPERATOR The term “Operator” when used in connection with or in respect of a project means any person or entity which has the primary involvement with or responsibility for the use, operation, or maintenance of all or a portion a project.

OWNER The term “Owner” when used in connection with or in respect of a project shall mean any person or entity and his, her, or its assigns and successors in interest which has any ownership interest in any or all of the necessary devises to convert wind energy into electricity. The term “Owner” does not include any person or entity whose ownership interest in a WECS is limited to an interest in real property which is used in a WECS.

TRANSPORTATION PLAN The detailed route plan used for construction and maintenance by a project as required in Section 153.134.03(B).

SAFETY AND SECURITY PLAN The WECS project site safety and security plan as provided by Section 153.134.03(D).

VIEW SHED AREA means the areas of visual impact of a project as set forth in Section 153.134.02(F).

WIND ENERGY CONVERSION SYSTEM (WECS) The generating equipment and all ancillary equipment used in the production of electrical energy from wind resources.

WECS NET SALVAGE VALUE (NSV) The net value of the all saleable parts and commodities which make up the WECS whether sold as used parts or on a commodity/scrap basis or any combination thereof (whichever is greater) after deducting all estimated costs and expenses of dismantling, removal, and transportation and all costs and expenses of sale (including but not limited to all commissions and fees) and the amount necessary to pay and satisfy all liens, security interests, and other encumbrances attaching to the WECS. The commodity/scrap value shall be based on the prior five (5) years average scrap value of the commodity.

WECS TOWER The support structure to which the nacelle and rotor are attached and is a freestanding or guyed structure that supports a wind turbine generator.

WECS TOWER HEIGHT The distance from the rotor blade at its highest point to adjacent grade.

153.132 ENERGY CONVERSION SYSTEM DISTINCTIONS. Acreage is measured from a perimeter fence surrounding the total wind energy generation facilities including any substations, energy storage or electrical support buildings. Any wind energy generation facilities intended to be operated as an integrated system shall be regulated according to the aggregate total acreage. Any subsequent phase of an approved project shall meet the criteria required of the total acreage of all phases.

Type	Acreage	Other
WECS-1	Greater than 20 acres	Electricity sold to utility transmission lines
WECS-2	More than 1 acre up to 20 acres on one or more properties	Electricity used primarily for on-site use
WECS-3	One acre or less and one landowner	Electricity exclusively behind the meter generation for single property owner

153.133 DESIGNATION OF USE IN DISTRICTS. Subject to the requirements of this Ordinance, the designated wind energy projects are permitted uses (X) or special exception (E) uses in the following districts. No Improvement Location Permits shall issue to any Applicant without the Area Plan Commission granting preliminary and final approval at public hearings.

District	WECS-1	WECS-2	WECS-3
A	X	X	X
RS or R-1			
RT			
R-2			
RM or R-3			
RMH			
PUD			
R-O or O			
B-1 or NC			
B-1A or CS			
B-2 or CG			
B-3 or CH			
CBD			
M-1	X	X	X
M-2	X	X	X

153.134.01 APPROVAL PROCESS.

- A. All Tier 1 and Tier 2 projects subject to this Ordinance shall be considered at two public hearings before the Area Plan Commission and shall comply with all requirements of this Ordinance. The first hearing shall consider granting preliminary approval. The second hearing shall consider granting final approval. Final approval may not be granted sooner than 28 days after preliminary approval absent extraordinary circumstances proven by the Applicant to the satisfaction of the Area Plan Commission.
- B. Tier 3 projects are required to submit only a final development plan and need only one hearing for consideration and approval of a final development plan. Tier 3 projects need submit only the following with its Final Development Plan application: Section 153.134.02 (A), (B), (D) and coordination with any applicable agencies listed in (E), and Section 153.134.03 (D).
- C. An application for any use designated as a Special Exception shall be heard by the Board of Zoning Appeals prior to submission of a site development plan to the Area Plan Commission. Applicant may submit the preliminary site development plan and the Special Exception application at the same time, however, the BZA must take action on the Special Exception Application prior to the public hearing on a preliminary site development plan before the Area Plan Commission.
- D. Following final approval, the Applicant must comply with the requirements as set forth in this Ordinance with respect to receiving improvement location permits for the project.
- E. Any Applicant seeking a variance allowed under 153.136.03(H) from any setback or height restriction requirement of this Ordinance must receive that approval from the applicable Board of Zoning Appeals and submit such variance approval with its final development plan application. Only the Area Plan Commission may approve any departure from the procedures for approval or any modification of final approval.
- F. All information provided and gathered during a preliminary development plan review and/or a final development plan review may be used by the Commission in determining whether to approve or disapprove the plan and, if approved, what reasonable additional restrictions or provisions shall be included in the plan in addition to those outlined herein.

153.134.02 PRELIMINARY DEVELOPMENT PLAN APPROVAL. A completed application for preliminary development plan approval signed by the Applicant shall be filed with the Area Plan Commission. If the Applicant is not the owner of the real property on which the project is sited, all property owners of the real property where the project is to be located

must be Co-Applicants. The application shall include the following items submitted in both hard copy and electronic format:

- A. **PROJECT SUMMARY.** An initial project summary including a description of the project stating the approximate total name plate generating capacity and the name plate generating capacity of each wind tower, the total acreage included in the project and the GIS coordinates of the general outline of the project area, the potential equipment manufacturers and type of wind energy conversion system to be used, the number of towers, the maximum height of the wind towers and maximum diameter of the rotors, and description of substations, power inverters, maintenance structures, storage yards, permanent wind resource monitoring structures and equipment, and other buildings that are a direct functional part of the project. If any part of the project will include battery storage, the kinds of batteries to be used, the manufacturer, and the type of installation shall also be included.
- B. **APPLICANT AND CO-APPLICANTS.** A description of the Applicant, Owner and Operator and any other responsible party and if applicable each of their intermediate and ultimate parent companies, listing experience in similar projects and gross capitalization. List names, addresses, email addresses, websites and phone numbers of the Applicants, Owners and Operators and all Co-Applicants.
- C. **MAPS.** A map or maps of the project site and surrounding quarter-mile radius that shows the topography (at 2-foot contours), political and natural features of the project site. The map shall include the individual land parcels by state tax parcel number and clearly identify whether the property is participating in the project or not. The map shall also identify the zoning designations, all streets and roadways by classification, municipal and township boundaries, residential structures, public lands, public and private schools (including colleges and universities) existing utilities and transmission lines, public safety facilities, governmental boundaries, public recreational land, and any commercial or public structure such as stores, churches, airports or landing strips. If more than one map is submitted, all maps shall be drawn at the same scale. All maps shall be submitted in hard copy and electronic format as specified by the Executive Director of the Area Plan Commission.
- D. **SITE PLAN.** The Applicant shall submit a site plan at an appropriate scale showing the proposed location of the project facilities; proposed access roads; substations; maintenance structures; storage yards; permanent wind resource measuring or monitoring installations; electrical cabling; ancillary equipment; and any other structures that are a direct functional part of the project. Each wind tower and/or supporting structure should be assigned a unique identification number on the site plan. In addition, the site plan shall show: primary structures within one quarter mile of any project; property lines, including identification of non-participating adjoining properties; setback lines; public roads; County regulated drains, open ditches or tiles including private tiles if located in a public right of way; location of all above-ground utility lines; location of all existing underground utility lines associated with the site; recognized historic or heritage sites as noted by the Indiana Department of Natural

Resources; floodplains; and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines, and the location of any other condition or facility regulated by any other agency having jurisdiction of activity on the site. This site plan must also be distributed to emergency management agencies, fire departments serving any part of the project site, the County Sheriff, and the chief executive body of any municipal government whose boundary is within 2 miles of the project site. The site plan shall identify any public, private, or parochial school property (not including home schools) located within two miles of the project boundaries. For purposes of this section and 153.136.03, “school” means any public, private, or parochial educational facility for students from K-12 registered with the State of Indiana and does not include home schools.

- E. **COORDINATION WITH APPLICABLE ENTITIES.** The Applicant shall submit a summary report identifying the entities the Applicant has communicated and coordinated with respect to the project. The report shall list the entity name, the primary contact person at the entity and contact information, the dates of coordination and list of documents submitted to each agency. The report shall also transmit any comments, suggestions, concerns, approvals, or disapprovals with respect to the project issued by the entity and/or communicated to the Applicant. The following entities shall be contacted:

Authority	Purpose	Type of Documentation	When Required
Federal			
FAA	Coordinate to reduce any flight or airport interference	Compliance letters for each wind turbine	Preliminary
DOD Siting, NOAA	Coordinate siting to mitigate radar interference or any other interference. No wind turbine shall be installed in the “No Build” zone as determined by NOAA	Any recommendations or comments received submitted to APC	Preliminary
EPA	Compliance with air and water quality standards under NEPA	Any recommendations or comments submitted to APC	Preliminary
USFWS Indiana Field Office Migratory Bird Treaty Act (MBTA) Eagle Protection Act Endangered Species Act	Compliance with Land-Based Wind Energy Guidelines	Any recommendations or comments submitted to APC and part of Natural Resources Report	Preliminary

Army Corps of Engineers	Floodplain or wetlands involvement	Designations and comments and permit if required	Preliminary
State			
IDNR	Historic Preservation, Flood Plains	Comments	Preliminary
IDEM	Endangered Species	Comments	Preliminary
Local			
Private airport authorities permitted by FAA and IAA	Coordinate siting process	Any recommendations or comments submitted to APC	Preliminary
Posey County Soil & Water Conservation District	Drainage Plan Approval	Drainage Plan	Final
Telecommunications Infrastructure Owners and Operators	All telecommunications owners and operators with infrastructure within 2 miles of project boundary shall be notified and consulted	Any comments or recommendations received from owners and operators shall be submitted to the APC	Preliminary
Highway Supervisor	Road Plan Approval (construction, maintenance, access cuts)	Transportation Plan	Final
Local Emergency Response	Life Line access, safety protocols	Safety and Security Plan	Final

F. VISUAL IMPACT EVALUATION REPORT: The Applicant shall submit a Visual Impact Evaluation Report evaluating the visual impact of all turbines on properties within certain distances of the project. The report shall assess the visual impact on all properties within the visual impact zones identified below. The following shall be included in the Visual Impact Evaluation Report:

1. a map depicting the dimensions of the proposed site, names and addresses of adjoining property owners not participating in the project that clearly identifies the setbacks distance in feet from each of the proposed turbine locations and adjoining property lines, the site of each of the photographic simulations taken in the View Shed Area, town and city boundaries, historic sites/districts, state and local designated scenic areas and roads, recreational areas, open space and conservation areas, schools, parks, water resources, military installations, airports or landing strips, cell towers, weather and radar stations
2. detailed description of the potential visibility of each proposed turbine and the methodology used evaluate visibility within the following View Shed Areas and maps of the applicable View Shed Area identifying town and city boundaries, historic sites/districts, state and local designated scenic areas and

roads, recreational areas, open space and conservation areas, schools, parks, water resources, military installations, airports or landing strips, cell towers, weather and radar stations

3. View Shed Areas Defined (a) turbine height less than 200 feet – 2 mile radius from each turbine foundation; (b) greater than 200 feet to 400 feet – 4 mile radius from each turbine foundation; (c) greater than 400 feet to 600 feet – 6 mile radius from each turbine foundation; (d) greater than 600 feet – 8 mile radius from each turbine foundation
4. Photographic simulations of the View Shed Area in sufficient number to capture the general visibility of turbines and a map depicting the location for each photographic simulation
5. Any mitigation measures proposed to minimize the visual impact of the project

G. NOISE EVALUATION REPORT. The applicant shall submit a Noise Evaluation Report for each proposed wind turbine location and any substation or facility that emits noise in the project. The report shall state the daytime and nighttime base-line noise level at the primary dwelling on an adjoining non-participating parcel, in the event permission for the receptor to be located at the primary dwelling is not granted by the non-participant, then at a point on the property line closest to the primary dwelling; the potential noise level generated by each turbine and when all turbines are operating and inverters and any substation associated with the project; the manufacturer's technical documentation of the proposed turbines noise levels. The Noise Evaluation Report shall include the projected maximum levels of infrasonic sound, ultrasonic sound, impulsive noise and prominent discrete tones generated and measured at the primary dwelling on the non-participating parcel (or property line receptor if permission not given as set forth above). The report shall include a map depicting the noise study area radius, project boundaries, sound level monitoring locations and the nearest receptor locations. The Noise Evaluation Report shall include any potential mitigation measures to minimize sound levels.

H. SHADOW FLICKER EVALUATION REPORT (WIND). The Applicant for a WECS project shall submit a Shadow Flicker Evaluation Report for each of the proposed turbine locations that includes an analysis of conditions that may cause shadow flicker, the methodology used to evaluate shadow flicker and the manufacturer's technical documentation relating to shadow flicker. A study area map of the proposed site depicting the shadow flicker analysis area radius, locations of proposed turbines and all off-site (not in the project area) occupied structures and areas of shadow flicker occurrence identified by total annual hours. The Shadow Flicker Evaluation Report shall identify the following with respect to each turbine and any off-site occupied structure located within one mile of the project boundary: distance in feet to the closest turbine; shadow length and intensity, shadow flicker frequency, specific times shadow flicker is expected to occur, duration of shadow flicker in total annual hours. The Shadow Flicker Evaluation Report shall include any mitigation measures proposed to minimize the impact of shadow flicker.

- I. TELECOMMUNICATIONS AND WIRELESS SIGNALS REPORT. The Applicant shall submit a Telecommunications and Wireless Signals Report identifying any expected interference with over the air communications and information gathering and provide a verified statement that it will mitigate any such interference. The Applicant will coordinate its report with NOAA and any other agencies dependent on wireless communications that may be affected.
- J. NATURAL RESOURCE IMPACT REPORT. The Applicant shall submit a natural Resources Impact Report for the proposed project site. The Natural Resources Impact Report shall include a detailed description of the potential natural resource impacts as a result of the construction, operation, and maintenance of the WECS that includes identification and analysis of (a) topography, geology, vegetation, soil types, water resources including wetlands, avian, terrestrial, and marine wildlife habitats as applicable; (b) compliance with applicable air and water quality standards; (c) compliance with USFWS Land-Based Wind Energy Guidelines as applicable, and (d) compliance with any site specific recommendations made by IDNR or IDEM. The report shall include a study area map with identification of any areas of importance such as bat habitat, flood zones, wetlands and watercourses evaluated in the report. The report shall also include any potential mitigation measures such as open space, erosion control, and habitat replacement to reduce the identified impacts on the project area.
- K. COST REIMBURSEMENT. For Tier 1 projects only, an agreement and written undertaking with adequate surety, bond, or other accepted form of adequate financial assurance must be submitted to pay or reimburse the County, the Area Plan Commission, any impacted school corporation, and any other impacted municipal corporation for all expenses incurred by the County, the Area Plan Commission, any impacted school corporation or municipal corporation in evaluating the documents required to be submitted for preliminary and final development plan approval. The costs to be reimbursed shall include expenses and professional fees actually incurred including but not limited to all electrical, structural, mechanical, acoustical and transportation engineers, aviary experts, financial consultants, attorneys and other professionals. Within forty-five (45) days of submission of an invoice, the Applicant shall pay or reimburse all such expenses. This obligation for payment or reimbursement of professional fees shall continue so long as the WECS-1 is in existence through the completion of decommissioning and its removal.

153.134.03 FINAL DEVELOPMENT PLAN APPROVAL. After approval of the Primary Development Plan, a petition for Final Development Plan approval shall be submitted to the Area Plan Commission and shall include:

- A. REVISED SITE PLAN. A revised site plan indicating any changes to the site plan submitted for the Preliminary Development Plan Approval.
- B. TRANSPORTATION PLAN. A Transportation Plan recommended by the WECS Transportation Committee and approved by the County Commissioners including a

form of form of financial assurance acceptable to the County Commissioners for the repair or replacement of all damaged roads, bridges, signage, or other transportation structures during construction, maintenance, and operation.

- C. **DRAINAGE PLAN.** A Drainage Plan approved by the Posey County Soil and Water Conservation District-District Technician and including a form of financial assurance acceptable to the County for the repair or replacement of all damaged drains, ditches, and tiles (if in the public right of way). The Transportation Plan and the Drainage Plan shall state that any newly constructed access roads shall not impede the flow of water and will comply with the County drainage ordinance.
- D. **SAFETY AND SECURITY PLAN.** A Safety and Security Plan which must include adequate provisions for site security and safety, including without limitation the specific protocol, times and contact information for shutting down a wind turbine. If the plan includes using County services, it should include signatures of the proper authorities indicating they are aware of their role and capable of performing it. Coordination with local emergency responders and area hospitals must be included.
- E. **DECOMMISSIONING PLAN.** A Decommissioning Plan to ensure that the project is properly decommissioned. The Decommissioning Plan must be updated and approved by the Area Plan Commission every five (5) years after the approval of the initial Decommissioning Plan and after any material improvements are added to the project, in the same manner as the initial Decommissioning Plan. The Decommissioning Plan shall include financial assurance that the project facilities are properly decommissioned upon the end of the project life or abandonment consistent with this Ordinance. The financial assurance must be provided at the completion of construction and prior to the issuance of any improvement location permit. The obligations with respect to decommissioning shall include removal and proper disposal of all physical material pertaining to the project improvements to a depth of five (5) feet beneath the soil surface, and restoration of the area occupied by the project improvements such that it is suitable for an equivalent land use to what existed immediately before construction of such improvements. The Decommissioning Plan shall include a contractor cost estimate from a licensed engineer with experience in these matters for demolition and removal of similar facilities. The Decommissioning Plan must include proper disposal of all hazardous material and the Operator must provide to the Area Plan Commission the certification of disposal issued by the entity providing the disposal service and/or the receiving disposal facility. All disposal must comply with local, state and federal law, rules and regulations in effect at the time of decommissioning.
- F. **CONSTRUCTION AND OPERATION BOND.** A Construction and Operation Bond that runs from the date of commencement of construction through the tenth (10th) year of operation of the project. The Applicant shall demonstrate that it has the financial resources to construct and operate the project by providing evidence of: (1) adequate funding of one hundred percent (100%) of the estimated cost of construction of the project; (2) performance and payment bonds or other sureties from the

Applicant and/or major equipment suppliers and contractors; (3) the existence of written warranties from contractors and/or manufacturers which have demonstrated financial ability to repair and/or replace defective work, materials, and equipment; and (4) adequate casualty, builders risk, business interruption, and liability insurance for the replacement of the project facilities and the individual components thereof. The Applicant may provide such cost estimates, bids, contracts, warranties, feasibility studies, engineering studies and reports, insurance certificates, loan and other financing commitments to provide the requested information.

G. ECONOMIC DEVELOPMENT AGREEMENT. For any project seeking tax abatement or other economic considerations for the project from government, the Applicant shall submit an Economic Development Agreement approved by the County Commissioners. The Economic Development Agreement must be developed in consultation with the Local Economic Development Organization ("LEDO") and the County Council. The Economic Development Agreement shall include, as applicable, estimated property taxes and any tax abatement, any economic development payments, estimated lease payments and overall cost and tax revenue impact on the County as well as the estimated current economic impact of the project area in its current use. The Economic Development Agreement may also include a Property Value Guarantee Agreement in the form found in 153.139.

H. ADDITIONAL ASSURANCES. The Applicant shall provide a notarized statement acknowledging and affirming the following with respect to the project:

1. All duties and obligations of each of the Applicant, Owner, and Operator shall be joint and several, and shall be binding upon all each of their heirs, successors in interest, and assigns. At least thirty (30) days prior to any transfer of any ownership interest in the project, written notice shall be given to the Executive of the municipality where the project is located and the Area Plan Commission. All bonds, sureties, letters of credit or other financial assurances provided under this Ordinance shall remain in full force and effect upon any transfer, assignment, or conveyance of an ownership interest until the successor in interest delivers an accepted replacement obligation. The transfer, assignment or conveyance of an ownership interest in the project without the advance approval of replacement bonds, sureties, letters of credit or other financial assurances shall constitute a default and shall not relieve the responsible party of liability. However, the transfer of the interest of the Owner(s) shall be allowed without advance approval so long as the bond, surety, letter of credit or other financial assurance posted by the Applicant or Operator covers the successors in interest of the Owner(s).
2. An Owner, or Applicant, or Operator which violates any provision of this Ordinance (including violations by their agents, contractors or subcontractors) shall be subject to fines and all legal remedies under 153.210 *et seq.* Any Owner, or Applicant, or Operator or a contractor or agent thereof who engages in any activity prohibited by or under the control of this Ordinance without first obtaining any required approval or permit including but not limited to an

Improvement Location Permit or a Certificate of Occupancy shall be subject to fines and all legal remedies under 153.210 *et seq.* Each day a violation occurs or continues constitutes a separate offense. The authority to assess fines rests only with the Area Plan Commission. The Area Plan Commission shall also have all recourse to address violations as provided by law.

3. Enforcement of this Ordinance shall be in compliance with Chapter 153.210 of the Zoning Ordinances of Posey County, as it may be amended.
- I. **TIME LIMITATION.** An application for Final Development Plan approval must be submitted no later than two years after the Preliminary Development Plan approval. If not submitted within two years, the Applicant must re-submit its Preliminary Development Plan for approval before submitting its Final Development Plan. The Applicant may, but is not required, combine its Preliminary and Final Development Plan approval into one submission in that case. No project may exceed the total acreage approved in the Final Development Plan by more than 2% without further approval by the Area Plan Commission.

153.135 IMPROVEMENT LOCATION PERMITS AND COMMENCEMENT OF CONSTRUCTION. After Final Development Plan approval is obtained, but before any construction commences or Improvement Location Permits may be issued, all applicable state and federal permits, approvals and licenses must be obtained (with copies provided to the Area Plan Commission) and all state and federal statutes and regulations must be complied with and the following requirements satisfied:

- A. **INSURANCE REQUIREMENTS.** The Owner or Operator of the project shall maintain liability policies covering (1) bodily injury and property damage and (2) environmental contamination arising from construction, operation, maintenance, and decommissioning of the project. Limits on the bodily injury and property damage policy shall be of at least \$2 million per occurrence and \$5 million in the aggregate with a deductible of no more than \$20,000 and on the environmental contamination policy shall be of at least \$1 million per occurrence and \$2 million in the aggregate with a deductible of no more than \$50,000. All such policies shall name the County and the municipality in which the project is located as an additional insured and a binder shall be provided annually to the County.
- B. **SIGNAGE AND CONTACT.** The Applicant shall establish a 24-hour toll-free phone number for the registering of complaints and concerns. This number shall be posted at every project service road intersection with a public roadway throughout the project area before Improvement Location Permits are issued and before any construction or earth moving can commence. If legitimate complaints are not remedied within 48 hours the county may address these complaints with any expenses incurred to be reimbursed by the Applicant.
- C. **PRE-CONSTRUCTION MEETING.** The Applicant must attend a Pre-Construction Meeting between the Area Plan Commission Executive Director, Area Plan

Commission President, County Building Inspector, and any other public officer or official whose input is deemed appropriate to verify that all requirements in the Ordinance have been met. This meeting shall take place as the final step before construction and all other requirements should already have been met. Once reviewed, if all requirements have been met, the Applicant may then obtain Improvement Location Permits. If any requirements have not been met, then further pre-construction meetings will be held until it can be verified that the identified issues have been resolved.

- D. FEES. All Improvement Location Permit fees must be paid for the entire project before any Improvement Location Permits will be issued. No improvement location permit shall issue if the Applicant has overdue amounts owed to the County.

153.136.01 CONSTRUCTION STANDARDS. Prior to and during construction the Applicant, Owner and Operator shall be responsible for:

- A. Implementing reasonable dust control measures during construction.
- B. Complying with existing septic and well regulation as required by the County Health Department and the Indiana Department of Public Health.
- C. Repairing all damages to County owned or regulated or Non-Participating Landowners' waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction or maintenance of the project. Damages must be completely repaired to original or better condition, and so as not to impede the flow of water. All repairs must be completed in a timely manner and the Owner, Operator, and/or Applicant shall be responsible for loss or damage proximately resulting from its impairment of such drainage structures. All repairs to County regulated drainage structures must be completed within fourteen (14) days.
- D. Using concrete armoring techniques at each and every location where County regulated drains and subsurface power transmission lines of any type cross. Unopened bags of premixed concrete shall be laid on top of the transmission lines to cover six inches on both sides of the line and eight feet to each side of the County regulated drain the line is crossing. Open drain and transmission line intersections where the line is below the invert of the open drain shall be armored using the same technique. Red warning tape (printed with "warning electrical line below" or similar language) shall be buried no closer than 12 inches above the actual power line at all crossing locations. The County Surveyor or agent designated by the County Surveyor shall inspect every such crossing before backfilling. Concrete armoring techniques will not be required in cases where directional boring is used.
- E. Installing permanent, visible markers where directional boring is used. Markers shall be placed within the line of sight indicating directional changes and borings.

- F. Submitting a weekly plan of work detailing where construction and transportation activities will occur to the Area Plan Commission staff, County Highway Supervisor, County Sheriff, County Surveyor, Soil & Water Conservation District, the Superintendent(s) of the School District(s) in which construction is occurring and to the emergency services with jurisdiction over the areas in which construction is occurring. This shall include notification of any oversize or overweight loads entering or exiting the project each day as well as any work on roads, drainage, or access roads.

- G. Adhering to the approved Transportation Plan. The County Highway Superintendent and/or appropriate municipal road personnel shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage. The County Highway Superintendent and/or appropriate municipal road personnel may choose to require remediation of road damage during or upon completion of the project and is authorized to collect fees for oversized load permits. If repairs are not made in a timely manner, the County Highway Superintendent and/or appropriate municipal road personnel is authorized to make repairs and charge the Applicant a fee to cover the costs of repair. Such fees shall be established at the start date of construction and may be revised at three-month intervals. Further, a corporate surety bond shall be required by the County Highway Superintendent and/or appropriate municipal road personnel to ensure the County or affected municipality that future repairs are completed to the satisfaction of the County or affected municipality. The bond shall not be released at the conclusion of construction of the project, but it may be reduced to cover any damages or losses from the operation and maintenance of the project. If the Applicant or its contractors require material changes from the approved Transportation Plan or if post completion repairs, improvements, or expansions require oversize and overweight loads or involve new routes, an Amended Transportation Plan must be approved in the same manner as the initial plan. Any violation of the approved Transportation Plan may be subject to fines as provided in 153.210 *et seq.* and in addition, may also be subject to fines established by the governing body having jurisdiction over the roadway(s) affected.

- H. Adhering to the approved Development Plans. Any non-material proposed changes, modifications, or amendments to the Development Plans must be approved by the Executive Director of the Area Plan Commission and the Executive Director shall thereafter make report of the non-material changes, modifications, or amendments to the Area Plan Commission. All material changes to the approved Development Plans must be approved by the Area Plan Commission. The Executive Director shall have the authority and discretion, considering all relevant factors, to determine whether the proposed change is material.

153.136.02 DEVELOPMENT STANDARDS

- A. All installed equipment shall conform to applicable industry standards and the application shall include certificates of design compliance of the proposed equipment from nationally recognized third parties in the business of certifying compliance.

- B. All WECS Towers shall be installed with a tubular, monopole type tower. Meteorological towers may be guyed. All WECS Towers shall be uniform in design and appearance.
- C. All WECS Towers 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. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.
- D. All electrical components of the project shall conform to applicable local, state, and national codes, and relevant national and international standards.
- E. WECS Towers and blades shall be painted with non-reflective white or gray color. The Applicant shall comply with all applicable Federal Aviation Administration color requirements. No advertising or signage shall be allowed on a WECS Tower, except for manufacturer's name on the nacelle.
- F. A visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
- G. All WECS Tower designs must include features to deter climbing or be protected by anti-climbing devices such as: 1) fences with locking portals at least eight feet high, 2) anti-climbing devices 15 feet vertically from the base of the wind tower, and/or 3) locked wind tower doors.
- H. All warning lights in the project shall conform to best industry practices to reduce impacts on migrating birds and other wildlife. No red pulsating incandescent lights or white strobe lights shall be installed. All lighting shall be in compliance with applicable Federal Aviation Administration regulations. All lighting shall be shielded so that no glare extends substantially beyond the boundaries of the project and installed lights shall be Dark Sky certified.
- I. At any Non-Participating Landowner's residential lot, public school, public library, or recreational area within one-quarter mile of the project boundaries, for a period of more than 10% out of every hour, the audible A-weighted sound pressure levels as a result of the sound emitted by the project shall not exceed either, the greater of 45 decibels or, 5 decibels above the Ambient Baseline Sound Pressure Level of the project at Critical Wind Speeds. The Ambient Baseline Sound Pressure Level, if used, shall be determined by a baseline acoustic emissions study conducted by the County Area Plan Commission and funded by the Applicant. Measurement of sound and vibration levels shall be conducted adhering to best practices within the applicable industry and in compliance with all other applicable county, state and federal regulations.

- J. The maximum WECS turbine shadow flicker experiences at a Non-Participating landowner dwelling shall be zero. Measurements to assess shadow flicker shall be for all Non-Participating landowner dwellings located within 0.6 miles or 3,168 feet of a turbine. If shadow flicker will exceed this level then a shadow flicker mitigation plan must be submitted for each affected Non-Participating dwelling which shall provide for zero shadow flicker for the affected Non-Participating dwelling.
- K. The minimum distance between the ground and any protruding blade(s) utilized on a WECS Tower shall be fifty (50) 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.

153.136.03 SETBACKS AND HEIGHT RESTRICTIONS

- A. No part of the project shall be constructed in any required setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the County Commissioners.
- B. No WECS Tower may be located less than the greater of (a) 2.5 times the height of the WECS Tower including the blade at its highest point or (b) the manufacturer's recommended setback as determined by a blade throw study performed and certified by a professional engineer to any Non-Participating landowner property line
- C. No WECS Tower or permanent Meteorological Towers may be located less than 1.5 times the height of the WECS Tower including the blade at its highest point to any residential structure inside or outside the project boundaries.
- D. No WECS Tower may be located less than 1.5 times the height of the WECS Tower to a dedicated roadway, railroad right-of-way, overhead electrical transmission or distribution lines.
- E. Any WECS project proposed shall not have a project boundary closer than one mile to any municipal boundary line or closer than two miles to any public, private, or parochial school property boundary line. See 153.134.02(D).
- F. No Tier 3 WECS Tower may exceed the height restriction in the underlying zoning district.
- G. Applicant shall give notice to the owner of any private certified landing strip. Setbacks will be determined based upon the agreement of the landing strip owner, Applicant, and the Area Plan Commission which shall take into consideration the guidelines provided in a U.S. Department of Transportation FAA Advisory Circular dated February 26, 2014, as may be updated. Proof of notice must be included with the Preliminary Development Plan.

- H. Allowed Variances. Variances may only be granted for relief from 153.131 (B) or (C). However, the variance application must include an executed agreement between the applicant and all participating and non-participating landowners, municipality, or school district affected by the requested variance prior to consideration of the variance request by the Board of Zoning Appeals.

153.137.01 POST-CONSTRUCTION AND CONTINUED MAINTENANCE

- A. DECOMMISSIONING SECURITY. At the completion of construction but before any commercial operations begins, the Applicant shall secure and provide to the Area Plan Commission a performance bond, surety bond, letter of credit, or other form of financial assurance that is acceptable to the Area Plan Commission (the “Decommissioning Security”) equal to 125% of the estimated cost of decommissioning the project pursuant to the Decommissioning Plan. The Decommissioning Security, in computing the estimated cost of decommissioning, shall consider and deduct up to 65% of the Net Salvage Value of the project. The amount of the Decommissioning Security shall be adjusted annually by January 31 by an amount equal to the increase in the CPI Index. “CPI Index” shall mean the Consumer Price Index for “All Urban Consumers, U.S. City Average, All items,” issued by the Bureau of Labor Statistics of the United States Department of Labor, or, if discontinued or no longer published, such other governmental index that most closely matches the manner in which inflation had been previously tracked as selected by the Area Plan Commission. The Decommissioning Plan and Decommissioning Surety shall be re-evaluated every five (5) years commencing with the operation of the project by a licensed engineer approved by the Area Plan Commission and qualified to provide an estimate of the cost of decommissioning of the project and the Net Salvage Value of the project (the “Decommissioning Engineer”). A new Decommissioning Security in the revised amount, if any, shall be provided within sixty (60) days of the approval of the updated Decommissioning Plan.
- B. WASTE REMOVAL. All solid waste whether generated from supplies, equipment, parts, packaging, or operation or maintenance of the facility, including old parts and equipment, shall be removed from the site in a timely manner. All hazardous waste generated by the operation and maintenance of the facility, including but not limited to lubricating materials, shall, be handled in a manner consistent with all local, state and federal rules and regulations.
- C. MODIFICATIONS. Any physical modification to the project that alters the mechanical load, mechanical load path, nameplate generating capacity, size or location or major electrical components shall require a new improvement location permit and/or if there is more than a 2% increase in total acreage of the project. Like-kind replacements that do not have the effects listed above do not require new permitting. Prior to making any physical modification (other than a like-kind replacement), the Applicant shall confer with the Building Inspector to determine whether the physical modification requires new permitting.

- D. INSPECTIONS.** Upon request of the Building Commissioner of the affected governmental unit or the Executive of the affected governmental unit, Operator shall provide an annual inspection report for all facilities in the project to the Building Commissioner and Executive, at Operator's cost. In addition, the Building Commissioner, approved designees, along with licensed third party engineers/professionals retained by the County for the specific purpose of conducting inspections of the project shall have the right, at any reasonable time and with sufficient prior notice, to accompany the Applicant, or his agent, on the project premises to inspect the project and its construction and maintenance and to identify any necessary repairs. The Applicant of the project may retain a licensed third party professional engineer familiar with the applicable systems to prepare and submit to the County Building Commissioner a written report which addresses the repairs or alterations requested, and which suggest 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 County Building Inspector that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The County Building Inspector 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 County Building Inspector and the Applicant or a third-party professional engineer retained by them, as to the repairs or alterations which are required, the decision of the County Building Inspector shall be final. These inspections do not relieve any liability of the Owner or Operator for damages or injuries arising from or related to the project. The Area Plan Commission Executive Director will inspect and determine compliance with zoning regulations and approved development plans and the Executive Director shall thereafter make appropriate report(s) to the Area Plan Commission for action, if any action is necessary.
- E. COMPLAINTS.** If, after construction, the Applicant receives a written complaint related to interference caused by WECS with local broadcast residential television, telecommunication, communication or microwave transmissions, the Applicant shall promptly resolve the complaint.
- F. AS-BUILT PLANS.** The Applicant shall deliver to the Executive Director of the Area Plan Commission and to all providers of emergency services serving the project area a copy of the as-built site map. Upon request by the local fire department, the Applicant shall cooperate with the local fire department to develop or update the fire department's emergency response plan. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.
- G. RECORD OF GROUND DISTURBANCE AND ROAD USAGE.** On completion of construction the Applicant shall submit to the County Surveyor a site map detailing all ground disturbed through construction activity, surface and subsurface as-built infrastructure and all routes over which trucks and equipment traveled. The scale and format of the submitted map shall conform to the County Surveyor's specifications.

- H. LIABILITY FOR DRAINAGE.** For a period of five (5) years following the completion of construction the Applicant shall be liable for all costs of repair to county drain tiles, regulated drains and ditches and other county regulated surface and subsurface structures and private tiles located in the public right of way within fifty (50) feet of the routes and disturbed ground. This period shall be extended for any damages occurring as a result of operations, replacement or maintenance of the project after the five year period.
- I. ABANDONMENT.** A WECS or any individual WECS Tower constituting a portion of the project is presumed at the end of its useful life and/or abandoned if the WECS or the individual WECS Turbine generates no electricity for a continuing period of twelve (12) months. This presumption may be rebutted by submitting to the Area Plan Commission for approval and within ninety (90) days of submission obtaining approval thereof of a plan outlining the steps and schedules for returning the WECS or individual turbine to service. Any WECS or individual turbine or which pursuant to the terms hereof has either reached the end of its useful life and/or is abandoned pursuant to the terms hereof shall be subject to removal pursuant to the Decommissioning Plan.
- J. UNSAFE STRUCTURES.** Any WECS, WECS Tower, or structure thereof declared to be unsafe by the County Building Commissioner or the Area Plan Commission 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 or rehabilitation within 12 months or be deemed abandoned and at the end of its useful life and subject to Decommissioning. Nothing herein prevents the County Building Commissioner or the Area Plan Commission from issuing an immediate cease use order as to any structure that he or she determines is unsafe during the repair or rehabilitation period.

153.137.02 **POST CONSTRUCTION MODIFICATIONS.** Any post-construction proposed non-material modifications, alterations, expansions, or changes of any type or size to the Final Development Plan must be approved by the Area Plan Commission. All material post construction proposed changes must apply in the same way as a new project. The Area Plan Commission shall have the authority and discretion, considering all relevant factors to determine whether the proposed post-construction change is material.

153.138 **NO PREEMPTION.** Nothing in this Ordinance is intended to preempt other applicable state and federal laws and regulations, except to the extent this Ordinance provides higher or more stringent standards.

153.139 **PROPERTY VALUE GUARANTEE FORM.** The following is the form of Property Value Guaranty to be used by the County Commissioners and the Local Economic Development Organization (LEDO) in the Economic Development Agreement provided for in 153.134.03 (G) if a property value guaranty is a part of the Agreement.

The following form of Property Value Guaranty shall be used by the County Commissioners as part of the Economic Development Agreement, if a Property Value Guaranty is included in the Agreement. The County Commissioners shall determine and complete the matters which are left blank in the following form:

PROPERTY VALUE GUARANTEE

Legal Name of Owner and Operator of the (Legal Name of WECS project) and their assigns and successors in interest (hereinafter jointly and severally referred to as "Guarantor") agree to guarantee (the "Guarantee") the value of all owner-occupied residential dwellings owned by all Non-Participating Landowners owners of record (hereinafter referred to individually as "Owner" and collectively as "Owners") as of the date of the granting of secondary approval of the Development Plan for the [Legal Name] for properties which are located within one mile of a WECS tower as shown on the approved Site Plan contained within the Development Plan in all directions and to guarantee the value of all residential dwellings owned by Owners whose ownership is of record in the office of the Posey County Recorder on the date of the granting of secondary approval of the Development Plan.

The location of each Owner of a residential dwelling within one mile of a WECS tower shall be noted on the Development Plan. Within thirty (30) days of the granting of secondary approval of the Development Plan, the Guarantor shall provide each eligible Owner with written notice by certified mail to the Owner's address as set forth in the property tax records of Posey County describing the terms of the Guarantee. To qualify for the Guarantee each Owner must notify the Guarantor within ninety (90) days of the mailing of the notice of his or her intent to participate, and Guarantor shall thereafter obtain and submit to Owner an M.A.I. appraisal of Owner's property within sixty (60) days following the date of the Guarantor's receipt of Owner's notice. Owner may accept the value of the property based on the appraisal or may obtain his or her own M.A.I. appraisal. If the Owner's appraisal is less than or within 5% above the Guarantor's appraisal, the guaranteed value ("Guaranteed Value") shall be the average of the two appraisals. If the Owner's appraisal is more than 5% above the Guarantor's appraisal and the Owner is not willing to accept the Guarantor's appraisal, the two appraisers shall agree upon a third M.A.I. appraiser, to be paid for 50% by Guarantor and 50% by the Owner, who shall appraise the property and whose appraised value shall become the Guaranteed Value for that property.

The period of the Guarantee shall be for a period of ____ years following the issuance of a Certificate of Occupancy for the operation of the [Legal Name] WECS system. The Guarantee shall extend only to Owners of record as of the date of the approval of the Secondary Development Plan for the WECS and not to the assignees or subsequent owners or purchasers. In the event any property covered by this Guarantee is listed for sale by a licensed real estate broker for a period of not less than _____ and during such period, and Owner either does not receive an offer or receives an offer below the Guaranteed Value, Owner, subject to the restrictions below, shall notify Guarantor of the intent to exercise Owner's right under this Guarantee and within thirty (30) days of the receipt of this notice Guarantor shall do one of the following:

- A. Authorize Owner to accept the pending bona fide offer and to pay the Owner at closing of the sale the difference between the purchase price set forth in the offer and the guaranteed value.
- B. Immediately take steps to purchase the dwelling from Owner at the guaranteed value with such purchase to be completed within sixty (60) days of receipt by Guarantor of notice by Owner of Owner's failure to receive a bona fide offer for the guaranteed value after having listed the property for a period of _____ with a licensed real estate broker.

In any case in which there is a purchase offer pending for which Owner expects to make a claim under this Guarantee, Owner shall provide a copy of such offer to Guarantor. In the event Guarantor is required to purchase Owner's dwelling, Owner shall convey fee simple title to the property, free and clear of all liens and encumbrances by delivery of a Warranty Deed at closing. At closing Guarantor shall pay for preparation of the warranty deed, vendor's affidavit, and all title insurance fees, closing fees, and all survey expenses if it is necessary to subdivide the dwelling from other real estate of the Owner. Guarantor's obligations hereunder are hereby expressly made contingent upon Owner: performing routine maintenance and repairs on the dwelling; the dwelling or property being in the same condition on the date of sale as it was on the date first appraised hereunder; the delivery of the property free and clear of all liens and subject only to such easements and other encumbrances commonly accepted in residential real estate transactions; and Owner conveying fee simple title to the dwelling or property to Guarantor by recordable Warranty Deed at closing. All notices to Owner and Guarantor shall be to the address of Owner and Guarantor as listed on the property tax records of Posey County.

The following fee schedule is for informational purposes only as the fee schedule is set by the Posey County Area Plan Commission

AMENDMENT TO FEE SCHEDULE:

The following fees shall be added to the Posey County Area Plan Commission Fee Schedule for 2020:

WECS

- WECS Tier 1 \$20,000.00 plus \$1,700.00 per megawatt
- WECS Tier 2 \$ 7,000.00
- WECS Tier 3 \$ 800.00