

**WIND ENERGY PROJECT
ORDINANCE**

ORDINANCE NUMBER 2021-02

WHEREAS, the Board of Commissioners of Gibson County, State of Indiana wishes to establish safety regulations for wind energy projects in the County.

NOW THEREFORE BE IT ORDAINED by the Board as follows:

§20-01 Legislative Intent.

(a) *Findings.*

(1) The Board of Commissioners of Gibson County hereby finds that the development of wind energy projects may provide substantial economic investment in the County to the benefit of the County and its residents, through lease payments, tax payments, and temporary and permanent employment opportunities;

(2) However, the construction of a commercial scale wind energy project involves the use of heavy equipment and the transport of heavy loads that may impact public and private infrastructure of the County, including roads, bridges, and drainage structures; and

(3) Further, the failure to safely operate a wind energy facility and to remove it after the end of its useful life could impact safety and security of the citizens of the County.

(b) *Purposes of Ordinance.* Therefore, the Board's purpose in adopting this ordinance is:

(1) To regulate the construction, operation and decommissioning of a wind energy projects so as to achieve and secure the benefits of these projects for the citizens of Gibson County; and

(2) To minimize the risks to the health, safety, and general welfare of County residents by ensuring that wind energy project operations shall be curtailed whenever those operations may impact the issuance of weather information by the National Weather Service.

§20-02 Definitions.

(a) **Administrator** means the office of County government to which authority to review applications is assigned by the Board of County Commissioners. As used in this Ordinance, **Administrator** shall include his or her authorized representatives.

(b) **Affected Land** means the sum of acreage that has been leased or purchased, or will be lease or purchased, for the purpose of constructing, installing, or maintaining a WECS project.

(c) **Board** means the Board of Commissioners of Gibson County, Indiana.

(d) **County** means Gibson County, Indiana.

(e) **Complete Application** means an application for a permit, renewal, modification or transfer which is determined by the Administrator to be complete for the purpose of commencing review of the application in accordance with the requirements of this

Ordinance, but which may need to be supplemented during the course of review in order to enable the Administrator to make any findings or determinations required by this Ordinance.

- (f) **Effective Date** means the date on which this Ordinance takes effect.
- (g) **Life of the WECS Project** means the total economic and environmental limit of a WECS project.
- (h) **NWS** means the National Weather Service, which is a line office of the National Oceanic and Atmospheric Administration of the United States Department of Commerce.
- (i) **Operation** includes constructing, installing, or maintaining a WECS project.
- (j) **Operations Plan** means a description of activities to be performed by an operator over the life of the WECS project, including all maps, plans, the schedule for operations within the life of the WECS project, written material, and all information required of an Operations Plan pursuant to § 20-11 of this Ordinance.
- (k) **Operator** means any person operating a WECS project.
- (l) **Person** means any individual, partnership, corporation, legal business entity, or governmental agency.
- (m) **Reclamation** means the conditioning of the affected land to make it suitable for any productive use including, but not limited to, the planting of forests, the planting of crops for harvest, the seeding of grass and legumes for grazing purposes, the protection and enhancement of wildlife and aquatic resources, and other lawful purposes.
- (n) **Reclamation Plan** means a description of activities to be performed by an operator to reclaim the land to be affected over the life of the WECS project. The **Reclamation Plan** shall describe the proposed method of reclaiming the affected land, providing, where possible, for orderly, continuing reclamation concurrent with the schedule for reclamation. The **Reclamation Plan** shall include maps, plans, the schedule for reclamation, planting plans, written material, and all information required pursuant to § 20-11.
- (o) **WECS (Wind Energy Conversion System)** means all necessary devices that together convert wind energy into electricity and store or deliver that electricity to a utility's transmission lines, including but not limited to the rotor, nacelle, generator, WECS tower, electrical components, foundation, transformer, and electrical cabling from the WECS tower, substation, wind farm collection system, communications facilities, and other required facilities and equipment.
- (p) **WECS Project** means all lands on which any WECS will be operated.
- (q) **WECS Tower** means the monopole, freestanding or guyed structure that supports the energy capture, conversion, storage, or transfer components of a WECS project.

§ 20-03 Administration of Ordinance.

(a) *Generally.* No person may operate a WECS project within the boundaries of the County unless a permit has been approved, and financial assurances for reclamation have been posted, pursuant to this Ordinance.

(b) Where two or more parcels of land containing operations are not adjoining, a separate permit shall be required for each parcel.

(c) *Supersedure.* Nothing in this Ordinance is intended to supersede any requirement of federal or state law, except that when permitted this Ordinance may impose stricter requirements, in whole or in part, than may be imposed by any other federal, state, or county authority.

§ 20-04 Administrator of Ordinance.

(a) *Appointment.* On or before the effective date, the Board shall determine which office within the County government shall be assigned the powers and duties of the Administrator under this Ordinance. The Board may, from time to time, reassign the powers and duties to a different office within the County government.

(b) *Powers and duties.* The Administrator has the following powers and duties:

(1) To issue permits, modifications to permits, renewal permits, and transfers in accordance with the criteria set forth in this Ordinance;

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

(3) To delegate the duties and powers granted to and imposed upon him or her under this Ordinance;

(4) To conduct investigations and obtain data with respect to any aspect of the operations regulated under this Ordinance, and to collect and disseminate information regarding operations of WECS facilities;

(5) To order an immediate suspension of any operation upon any repeated or willful violation of any of the provisions of this Ordinance or when there is an imminent threat of substantial harm to citizens of the County, natural resources, property, or the County's water supply;

(6) To accept grants or funds for purposes of administration of this Ordinance and research into the operations;

(7) To cooperate with any other governmental entity to further the purposes of this Ordinance;

(8) To contract with any person to achieve the purposes of this Ordinance; and

(9) To assess fees upon an applicant consistent with the expenses involved in hiring consultants to assist the Administrator with the review of the application and to provide inspection, monitoring, and assessment upon request by the Administrator.

§ 20-05 Applications for New Permits.

An application for a new permit may be submitted for a term not to exceed five years. A complete application for a new permit must be accompanied by a One Hundred Thousand Dollar (\$100,000.00) application fee (per WECS Tower) and contain:

(1) A completed application in the form specified by the Administrator;

(2) A legal description and acreage of the affected land;

(3) A vicinity map of the area, showing:

a. The affected land;

c. Any dedicated public rights-of-way and easements; and

d. The boundaries of all adjacent and adjoining property lying within 660 feet of the affected land, and consistent with § 20-05(a)(4);

(4) A listing of names and addresses of the owners of property lying within 660 feet of the affected land, as shown by a certified issue of the Auditor of the County (or adjacent county), or by a title insurance company, and dated not more than 45 days prior to the date of the application;

(5) A copy of all applications, approvals, or permits needed from other city, county, state, or federal agencies for the purposes of the operations;

(6) A copy of all letters of grant, or other approvals from all County boards or committees, if applicable;

(7) The identity of the operator if the operator is a person different from the applicant;

(8) The name of every legal owner of the affected land;

(9) The name of every owner of any leasehold interest in the affected land;

(10) The name of any lessor or purchaser of record of the affected land under a lease agreement or contract for the purchase of real estate;

(11) If the applicant is a business entity other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(12) If the applicant is a partnership, corporation, association, or other business entity, the following where applicable:

a. The names and addresses of every officer, partner, or director or person performing a function similar to a director of the applicant;

b. The name and address of each person owning, of record, at least 10% of any class of voting stock of the applicant; and

c. A list of all names under which the applicant, partner, or principal shareholder previously operated a WECS project within the United States within the last five years preceding the date of submission of the application;

(13) A statement of whether the applicant or a subsidiary, an affiliate, or a person controlled by or under common control with the applicant has ever held a permit that within the five-year period preceding the date of the application was suspended or revoked or is in the process of revocation, and if so, a brief explanation of the facts involved and identification of the state in which this action occurred;

(14) A statement of whether the applicant or a subsidiary, an affiliate, or a person controlled by or under common control with the applicant has ever had a bond or similar security deposited in lieu of bond forfeited, and if so, a brief explanation of the facts involved and identification of the state in which this action occurred;

(15) A listing of all notices of violations, and their final resolution, of a federal statute or regulation, or a state statute or rule pertaining to air quality or water quality incurred by the applicant or a subsidiary, an affiliate, or a person controlled by or under common control of the applicant in connection with any WECS project during the three-year period before the date of the application;

(16) Construction information and specifications for every WECS tower included in the WECS project per § 20-07, including the equipment name, height, hazard signage, a copy of the standard product specification sheet; and

(17) An operations plan per § 20-11.

§ 20-06 Renewals, Transfers, and Modifications.

(a) *Applications.* Permits issued pursuant to this Ordinance are renewable or transferable. A complete application for renewal or transfer shall be submitted to the Administrator accompanied by a One Hundred Thousand Dollar (\$100,000.00) application fee (per WECS Tower) and, shall contain the following information:

- (1) Completed application form consistent with the requirements of § 20-05;
- (2) An updated operations plan;
- (3) A written description of any changes to the operations plan;
- (4) An identification of reclamation accomplished during the existing permit term;
- (5) Copies of all applications, approvals or permits needed from other city, county, state or federal agencies; and
- (6) Other related information that may be required by the Administrator consistent with the objectives and requirements of this Ordinance.

(b) *Requirements for Transfer.* The Administrator may or may not require a public meeting on a transfer application but is obligated to publish a statement of availability for review of the application, and a final declaration in the event that the permit transfer application has been approved.

(c) *Request for Modification.* In the event that an operator requests a modification to an existing permit because of a change in the operations plan, that application will be treated as a new application, and all requirements of this Ordinance will apply. The original permit conditions will remain in effect until a decision has been made on the modification application.

§ 20-07 Standards for WECS Projects.

(a) *Tower Requirements.* The following standards apply to every WECS tower included in any WECS project:

- (1) Subject to subsection (4), a WECS permit shall not be granted unless the distance, measured as a straight line, from the vertical centerline of the base of the WECS Tower:
 - a. the centerline of any: (i) runway located on a public use airport, private use airport, or municipal airport; (ii) public use highway, street, or road; (iii) railroad easement or right-of-way; or (iv) utility transmission or distribution line (as measured from the center of the line itself, and not from the center or edge of a related easement); or
 - b. the property line of any nonparticipating property;

is equal to a distance that is at least five (5) times the WECS Tower's blade tip height, as measured from the ground to the tip of the blade.

- (2) Subject to subsection (4), a permit may not be issued unless the distance, measured as a straight line, from the vertical centerline of the base of the WECS Tower to the nearest point on the outer wall of a dwelling located on a non-participating property is equal to a distance that is at least five (5) times the WECS Tower's blade tip height, as measured from the ground to the tip of the blade.

(3) The provisions of the Ordinance shall not be more restrictive than the standards of the Federal Aviation Administration under 14 CFR Part 77 concerning the safe, efficient use and preservation of the navigable airspace.

(4) The distance requirements set forth in subsections (1) and (2) may be waived with respect to the siting of any one (1) wind power device, subject to the written consent of the owner of each affected non-participating property.

(5) A WECS Tower shall be white, gray, or other Administrator approved non-obtrusive color.

(b) *General Project Requirements.* The following standards apply to every WECS project:

(1) All electric devices shall have proper warning signage. A list of the electric equipment and standard signage shall be made part of the application.

(2) All guy-wire support shall be marked in such a manner that the first eight feet from the ground level are covered with high visibility yellow or orange. Under no circumstance shall a fence be considered adequate for this requirement. If a WECS tower is one hundred feet in height or greater, the 1/3 and 2/3 points of the outside most guy-wire supports shall be marked with a high visibility yellow or orange marker ball.

(3) Any electric lines installed as part of the WECS project shall be located underground.

(4) Signs shall not be permitted on WECS towers except for warning and hazard signs as required by law. Any standard symbol or design which identifies the manufacturer shall not be considered a sign for the purposes of this Ordinance.

(5) A standard metal road sign including the owner's name, emergency contact phone number, and the physical address shall be posted at the entrance of the access drive to the WECS project. The sign shall be posted just outside of the public way site triangle.

(6) A WECS project shall be designed, constructed, and operated so not to interfere with local broadcast television, telecommunication, communication, microwave, or weather radar transmissions. If the WECS project owner or manager receives a written complaint related to interference, the owner or manager shall alleviate the complaint within 30 days.

(7) All solid wastes whether generated from supplies, equipment, parts, packaging, or operation of a WECS project, including parts and equipment related to the construction, installation, or maintenance, shall be removed from the site promptly and disposed of in accordance with all federal, state, and local laws. All hazardous materials or waste related to the operation shall be handled, stored, transported, and disposed of in accordance with all applicable federal, state, and local laws.

(8) Any publicly maintained utilities shall be installed in compliance with the adopted standards of the affected community. Written proof shall be obtained from the affected community that the plans meet its minimum standards.

(9) Any publicly maintained utilities shall be located in a recorded utility easement in favor of the affected.

(10) All taps made to any publicly maintained utilities shall be done in compliance with the adopted standards of the affected community. Written proof shall be obtained from the affected community that the plans meet their minimum standards.

- (11) The WECS project shall meet the Storm Water Standards of the County. Any publicly maintained storm water drainage facilities shall be located in a recorded storm water easement in favor of the affected community.
- (12) Access drives should be located directly across from other access drives on the other side of the public way unless the Administrator finds it not to be feasible.
- (13) Any time access drive is required on an arterial road the use of either (A) a frontage road or rear collector road that shall be dedicated to the affected community and built to their adopted standards, or (B) a shared driveway system that shall be located in an ingress/egress easement that includes a maintenance agreement.
- (14) Any WECS project shall require the approval by the County Engineer of a heavy haul route for construction traffic.
- (c) *Shadow flickering.* A WECS Project permit shall be issued unless the Operator demonstrates that it will install or locate shadow flicker computer modeling to estimate the amount of shadow flicker anticipated by the WECS Project and the WECS Project has been designed such that industry standard computer modeling indicates that any non-participating property will not experience more than thirty (30) hours per year of shadow flicker under planned operating conditions for the WECS Project.
- (d) *Sound limits.* A WECS Project must operate in a manner such that (1) the audible sound attributable to the WECS Project will not exceed thirty (30) A-weighted decibels, as modeled at the outer wall of an affected dwelling; and (2) no low-frequency noise or infrasound noise from the WECS Project shall be created that causes the noise level both within the project boundary and a 1-mile radius beyond the project boundary to exceed the following limits.

<u>1/3 Octave Band Center Frequency (Hz)</u>	<u>Sound Pressure Level (dB)</u>
2 to 1	70 (each band)
16 ²	68
20	68
25	67
31.5	65
40	62
50	60
63	57
80	55
100	52
125	50
250	47
500	45
1000	42
2000	40
4000	37
8000	35

§ 20-09 Procedures and Timeframes.

(a) *General procedures and timeframes.* The following describes the general procedures in the processing of new or renewal permit applications under this Ordinance.

(1) Before an application is submitted to the Administrator, the applicant is encouraged to request a pre-application meeting with the Administrator and staff to discuss the proposed operation and to clarify application procedures. At this presubmission meeting, the operation will be informally discussed, permit requirements identified, and the applicant will be provided with guidance in the mechanics of the application and review process based on information provided by the applicant.

(2) Each applicant subject to the requirements of this Ordinance must submit five copies of the application to the Administrator. The applicant must also submit full and complete copies to the following: County Surveyor, Soil and Water Conservation Service, County Engineer, and any other person designated by the Administrator.

(3) The Administrator shall review the application and make a determination of a complete application within 45 days of the date of receipt by the Administrator. In the event that the Administrator determines that the application is incomplete, the Administrator shall communicate the deficiencies in writing to the applicant. A new completeness review period of 30 days shall commence from the date of receipt of the resubmitted application. If the Administrator fails to make a determination of a complete application within the timeframes above, the application will be deemed complete.

(4) When the Administrator deems the application complete, the applicant, upon receipt of written notification from the Administrator, shall:

a. Publish within five working days a statement of complete application in a local newspaper of general circulation in the County at least one time per week for two consecutive weeks;

b. Mail a copy of the statement of complete application by certified mail, return receipt requested, to each person identified in the application pursuant to subparagraphs (a)(8) - (12) of § 20-05; and,

c. Mail a copy of the statement of complete application by certified mail, return receipt requested, to every person who has made a written request to the Administrator for such statement.

(5) The statement of complete application shall identify that:

a. The complete application is available for public review;

b. The date on which the Administrator deemed the application complete;

c. The location(s) where the complete application can be reviewed; and

d. That written comments on the complete application may be submitted to the Administrator for a period of 30 days from the date on which the Administrator deemed the application complete.

(6) The original return receipts for mail service shall be submitted to the Administrator by the applicant.

(7) At the time the application has been deemed complete, each applicant for a permit under this Ordinance shall file within five working days of the date of complete application, an entire copy of the complete application for public inspection in the Princeton Public Library and at any other location designated by the Administrator.

(8) Any person may submit written comments concerning a permit application with respect to the effect of the proposed WECS project on the health, safety, or general welfare of the public,

or, with respect to impact on the County's water supply to the Administrator within 30 days from the date of the statement of complete application. The Administrator shall, thereafter, transmit any comments received to the applicant and make the comments available to the public at the office of the Administrator.

(9) The Administrator may, in his or her discretion, schedule a public meeting within 60 days of the determination of complete application to hear comments and responses to either the application or the written statements received. A stenographic record of any such public meeting will be made.

(b) *Decisions on applications.*

(1) The Administrator shall approve or approve with conditions the application within 150 days of the determination of complete application.

(2) A complete application shall only be approved if the Administrator finds that:

a. The application is accurate and complete and in compliance with the requirements of this Ordinance;

b. The operation will not impose a significant detrimental impact on the health, safety, and general welfare of the public or the County's water supply; and

c. The financial security requirements set forth herein are met.

(3) If the Administrator does not approve or deny the application within 150 days of the determination of complete application, the application shall be deemed approved.

(4) If the Administrator denies the application, the applicant may request a public hearing within 30 days of the date of the Administrator's denial of the application in accordance with § 20-17 of this Ordinance.

(5) Any person directly adversely aggrieved by the Administrator's disposition of an application may request a public hearing within 30 days of the date of the Administrator's disposition of the application in accordance with § 20-17 of this Ordinance.

(6) Notwithstanding the time periods for decisions specified in this Ordinance, the Administrator shall not be required to issue a decision on an application, nor shall any application be deemed approved, until the applicant has provided:

a. Satisfactory proof of any public notice required;

b. Posted any financial security required; and,

c. Paid all fees and costs assessed by the Administrator.

(7) A permit issued under this Ordinance is effective upon issuance. Within five working days after a permit is issued, the Administrator shall publish a declaration that the permit has been issued, in these locations:

a. A local newspaper of general circulation in the County at least one time per week for two consecutive weeks;

b. On the front page of the Office of County Government website, for a period of 30 days; and

c. At the Office of the Administrator for a period of 30 days.

(8) At any time during the review of an application for a new permit, modification, renewal, or transfer, the Administrator may request in writing additional information, concerning the information and studies identified in § 20-11(i), which is reasonably necessary to make any findings, determinations, or decisions on an application. Such a written request will

be explicit, and will indicate a reasonable date by which the Administrator is to receive the additional information. Failure to provide information by the date specified in the request may be grounds for denial of the application.

(c) *Time periods.* Any time period specified in this Ordinance may be extended for good cause or by mutual written consent of the applicant and the Administrator.

§ 20-10 Financial Security.

(a) Before the Administrator may issue a new, renewal, or modification permit, the applicant shall furnish financial security, naming the County as beneficiary, in an amount determined by the Administrator to be sufficient to ensure the performance of the reclamation of the affected land.

(b) Financial security shall be in the form of a bond from a corporate surety licensed to do business as such in the State of Indiana, an irrevocable letter of credit, parent guarantee or any other form the Administrator may deem acceptable. Any interest accruing as a result of such security shall be the exclusive property of the operator.

(c) The amount shall be based upon the estimated cost of reclaiming the affected land, which shall be derived from information contained in the permit application and upon such information as an investigation by the Administrator may disclose based on the actual cost of reclamation to the County.

(d) The financial security shall remain in full force and effect until the Administrator has approved the reclamation. The operator may secure the release of that portion of the financial security for affected land on which reclamation has been completed and approved by the Administrator.

(e) The Administrator has the right to continue the financial security for two years after reclamation has been completed to assure that the reclamation of the area will succeed.

(f) If the financial security required under this Ordinance shall for any reason be cancelled, the operator shall provide a valid replacement under the same conditions as described in this section within 30 days after receiving notice thereof. Failure to provide replacement financial security within such period shall result in the automatic and immediate suspension of the operations permit, which suspension shall continue until the operator provides the Administrator with satisfactory evidence of the establishment of replacement financial security.

(g) If the operator fails to commence or to complete the reclamation as required, the Administrator may attach the financial security furnished by the operator. In any event, the full cost of completing reclamation shall be the primary liability of the operator and/or the person engaged in the operations or processing and the secondary liability of the landowner, and the Administrator may bring suit to recover all costs to secure the reclamation not covered by the financial security. The materials, machinery, implements, and tools of every description which may be found at the WECS project, or other assets of the operator and/or the person engaged in the operations shall be subject to a lien of the Administrator for the amount expended for reclamation of affected land and shall not be removed without the written consent of the Administrator. Such lien may be foreclosed under state law in the same manner as a mechanic's lien.

§ 20-11 Operations Plan.

- (a) The operations plan shall consist of:
 - (1) A written description of the proposed operation; and,
 - (2) Operations plan map of the proposed operation.
 - (3) A reclamation plan.
- (b) The operations plan map shall include the following:
 - (1) A map of the location of the WECS project including boundaries of the land controlled by the applicant;
 - (2) The boundary outline and legal description of the proposed affected land for the life of the WECS project; and
 - (3) All drainage features, water courses, water discharge points, water impoundments, and ground water monitoring locations.
- (c) The operations plan map shall be presented on a base map utilizing aerial photogrammetry, and be prepared by a licensed engineer, land surveyor, or other individual trained in such preparation and stamped by a professional licensed in Indiana. The Administrator reserves the right to reject aerial photographs or photogrammetry on the basis of being out of date, of poor quality, of improper scale or for other reasons that render them unsatisfactory for the required purpose.
- (d) The operations plan maps shall be presented with a horizontal scale not to exceed one-inch equals 200 feet. Contour intervals and/or cross sections shall be as prescribed by the Administrator.
- (e) The operations plan maps shall be prepared in a neat, legible manner and shall include a title block and legend containing the following information:
 - (1) The name and address of the applicant;
 - (2) The WECS project manager name and contact information;
 - (3) The scale, a north arrow and a reference datum;
 - (4) The name of the individual responsible for the preparation of the maps and/or photographs; and
 - (5) The date of preparation, and the record of work and/or revisions.
- (f) The written description of the operations plan shall include the following:
 - (1) The general geographic location of every WECS project to be covered by the permit;
 - (2) A description of topographic, cultural and land use features within and adjacent to the affected land;
 - (3) A description of the existing condition of the ground surface at the WECS project including areas already disturbed by operations, the existence of structures, vegetation, and water cover;
 - (4) A description of the applicant's proposed operations, the use of access drives, and ingress and egress from public ways;
 - (5) A description of the applicant's general direction of operations during the next five-year period;
 - (6) A description of the public ways in the County upon and along which equipment is planned to be hauled or carried;

- (7) A description of the heavy equipment planned to be used for the purpose of the operations;
- (8) A description of the applicant's proposed methods for preventing pollution from the operations, including but not limited to air pollution, water pollution and noise pollution, including:
 - a. A detailed plan designed to minimize impacts of noise including:
 - i. An existing conditions analysis, including measurements at adjacent properties;
 - ii. A list of equipment and operations that may impact noise pollution;
 - iii. Projections of sound decibel levels due to operations at boundaries of the affected land, adjacent public ways, and adjacent residential or commercial property; and
 - iv. Conclusions and recommendations.
 - b. Air quality efforts and dust control;
- (9) Descriptions of the applicant's proposed methods to minimize the potential adverse impact of the operations on the County including:
 - a. Methods to be used to protect nearby public and private property from damages;
 - b. Measures to mitigate visual impacts;
 - c. and
 - d. Other relevant information that the applicant provides to indicate efforts to minimize visual impacts.
- (g) The reclamation plan shall consist of a graphic and written description of the proposed reclamation.
 - (1) The graphic description shall include maps and cross sections that illustrate the final physical state of the reclaimed land.
 - (2) The written description shall describe the manner in which the affected land is to be reclaimed including the disposition of topsoil, and a schedule for performing such reclamation and planting and seeding plans.
- (h) The Administrator reserves the right to require studies relating to noise assessments, and visual studies, to be done by the applicant to supplement the operations plan if the operations plan fails to satisfy the objectives and requirements of this Ordinance.

§ 20-12 Annual Reports.

- (a) All operators shall submit an annual report within ten days of the anniversary date of the permit. The annual report shall contain the following information:
 - (1) A written description of their activities detailing all operations and reclamation during the past year;
 - (2) An updated operations plan depicting the current extent of operations, including current or proposed reclamation efforts;
 - (3) Results of studies or monitoring required under this Ordinance or by the Administrator or any other city, county, state or federal agency to ensure that the objectives and requirements of this Ordinance have been, are being, and will be satisfied;
 - (4) A statement of certification by the WECS project manager that all the operations reclamation conducted during the reporting year was in conformance with the permit and the approved plans, and that the operator is in compliance with this Ordinance;

- (5) Copies of correspondence with city, county, state, and federal agencies with regard to permitting, complaints, and enforcement matters;
 - (6) A log of all complaints from any person and efforts to resolve the complaints;
 - (7) A groundwater report that provides information regarding water flows, water quality, and operational activities to insure the protection of the County's aquifers.
- (b) The annual report shall include a review fee of \$10,000 at the time of submittal.

§ 20-13 General Regulations.

- (a) All operations shall be subject to § 7-85 of the County Code (provisions for the protection of the aquifer serving the County's wells).
- (b) Any lights used for exterior illumination shall be directed away from adjoining public and private property.

§ 20-14 Operating Regulations.

- (a) *Conformity to laws and regulations.* All permitted operations shall conform to all applicable city, county, state, and federal statutes, ordinances, regulations, and standards relative to water or air pollution, noise and waste disposal, vibration, and land rehabilitation and after-use.
- (b) *Days and hours of operation.* The days and hours of WECS project construction and installation shall be as follows:
 - (1) There shall be no operations of any type on Sundays and holidays recognized by the State of Indiana.
 - (2) On weekdays, construction and installation shall only occur between the hours of 6:00 a.m. and 8:00 p.m.
 - (3) On Saturdays, construction and installation shall only occur between the hours of 8:00 a.m. and 2:00 p.m.
 - (4) Extensions to these hours may be approved by the Administrator based on a written request by the operator. For the purpose of this request, the Administrator will follow the procedures of public notice and comment found in §20-09 (b).

§ 20-15 Non-interference with Essential Services.

- (a) *Legislative finding.*
 - (1) The NWS and other persons have analyzed the real and potential impacts of WECS on weather radars. The analysis has revealed that the chief impact comes from the rotating blades, which produce a radar detectable signal similar to that produced by weather phenomena.
 - (2) Various experts note the damaging effects WECS projects may have on essential services such as television signals, microwave signals, agricultural global positioning systems, military defense radars, radio reception, and weather and doppler radar.
 - (3) Currently, the NWS' radar algorithm for removing clutter (caused by towers and other structures) is dependent upon an object having zero, or near zero, velocity, and thus it cannot remove the signal stemming from the rotating blades of a WECS tower. There is no known signal-processing algorithm that can remove WECS clutter while completely preserving the weather signal. WECS clutter contaminates the radar's base

data (reflectivity, velocity, spectrum width) and internal algorithms, which in turn can impact alerts and derived products (estimated precipitation, etc.).

- (4) As a result, essential services could be curtailed and critical radar data over WECS project areas can be lost, distracting forecasters as they conduct severe weather warning operations.
 - (5) NWS funded studies to develop an algorithm that can automatically identify WECS-corrupted signal data are in their initial stages and do not provide a mitigation option. Therefore, one available mitigation option is limited curtailment of WECS operations during severe weather events, including but not limited to tornadoes and severe thunderstorms.
 - (6) The Board hereby concludes that the curtailment of WECS operations in the County shall be required from time to time in order to allow essential services to continue, including weather forecasters to view radar data uncontaminated by WECS clutter.
- (b) *Condition upon Issuance of Permit.*
- (1) The Administrator may only issue a permit upon a finding that the WECS Project shall not interfere with (A) television signals; (B) microwave signals; (C) agricultural global positioning systems; (D) military defense radar; (E) radio reception; or (F) weather and doppler radar.
 - (2) The Administrator may only issue a permit upon a finding that the applicant has entered into a binding agreement with the NWS which provides, at a minimum, for operational curtailment of WECS operations during critical time periods such that weather forecasters will have the capability to view radar data uncontaminated by WECS clutter.
 - (3) The agreement shall entitle the NWS to request curtailment whenever WECS operations are impacting, or are expected to impact, a severe weather warning decision. Neither the NWS nor the County shall be responsible for any costs incurred by the WECS project operator as a result of a curtailment request.
 - (4) The agreement shall require the WECS Project Operator to feather the rotating blades during the curtailment period, bringing them to a stop or near stop, which will allow the radar to filter out any signals returned from the WECS.

§ 20-16 Enforcement.

(a) The Administrator may inspect any operation without prior notice or consent within normal business hours. If any operator or operator refuses access to the Administrator asking to make such an inspection, the Administrator may suspend all operations until such time as the inspection has occurred and the Administrator is satisfied that no imminent threat of substantial harm to health, human safety, or the environment exists or that such threat has been eliminated.

(b) The Administrator may also suspend or revoke a permit for repeated or willful violation of any of the terms of the permit or the provisions of this Ordinance if the Administrator determines there is an imminent threat of irreparable harm to the environment; or of serious hazard to the health, safety, and general welfare of the public, including the County's water supply.

(c) The Administrator may refuse to renew a permit upon a finding, supported by substantial evidence that the operator is in repeated or willful violation of any of the terms of the permit or the provisions of this Ordinance.

(d) Any person directly adversely aggrieved by an action taken or determination made by the Administrator may appeal, by requesting a public hearing within 30 days of the date of the Administrator's action, in accordance with § 20-17 of this Ordinance.

(e) It is unlawful to violate any of the provisions of this Ordinance, or fail to perform any duty imposed by this Ordinance, any permit condition, or any order issued by the Administrator. Any operator found to have committed such a violation shall be liable for a civil penalty not to exceed \$2,500. Additionally, any operator found to have committed a violation shall be liable for a penalty not to exceed \$2,500 for each day such violation continues. In determining the amount of a penalty to be imposed under this Ordinance, the Administrator shall consider the operator's history of previous violations, the seriousness of the violation, including any irreparable harm to the environment and hazard to the health, safety, and general welfare of the public, the operator's negligence, and the demonstrated good faith of the operator to achieve rapid compliance after notification of the violation.

(f) Upon the assessment of a penalty under this Ordinance, the Administrator shall, within 30 days of the assessment, inform the operator of the amount of the penalty assessed and issue an order to the operator to pay the penalty. The operator has 30 days from the receipt of the order to pay the penalty or request a public hearing pursuant to § 20-17 of this Ordinance to contest the imposition of the penalty or the amount of the assessment. If the operator requests a public hearing, the operator shall forward an amount equal to the assessed penalty to the Administrator, who shall place the amount in an escrow account.

(g) An operator who desires to contest the violation or amount of penalty assessed but fails to forward the amount to the Administrator waives all legal rights to contest the violation or amount of penalty assessed. If, following a public hearing addressing the violation or penalty assessed, the Board determines that a violation did not occur or the amount of the penalty shall be reduced, the Administrator shall, within 30 days of the decision, remit the appropriate amount to the operator with interest at a rate interest equal to the weekly average one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of penalty was paid.

(h) If a permit is suspended or revoked, the Administrator may require the operator to commence reclamation upon 30 days' notice.

§ 20-17 Hearings and Judicial Review.

(a) Any public hearing requested by this Ordinance shall be conducted in accordance with the procedures set forth in Indiana Code § 4-21.5-3. Any public hearing conducted pursuant to this Ordinance shall be before the Board.

(b) A public hearing may be requested by filing, in writing, a "Request for Public Hearing" with the Board on a form approved by the Board. A "Request for Public Hearing" shall be filed within 30 days of the action by the Administrator giving rise to the request or the right to a hearing is waived. A final action of the Board is subject to judicial review under Indiana Code 4-21.5-5.

§ 20-18 Severability.


The provisions of this Ordinance shall be severable and if any portion thereof or the applicability thereof to any person or circumstances shall be held to be invalid, the remainder of this Ordinance and the application thereof shall not be affected thereby. This Ordinance shall not supersede any provision of the Indiana Code except as authorized by the Indiana Constitution or the Indiana Code.

§ 20-19 Effective Date.

This Ordinance shall be in full force and effect 30 days from and after its passage. However, operations in existence on the effective date shall be granted 60 days from the effective date to file an application under this Ordinance, unless an extension is approved by the Administrator. Such approval can only be granted if a pre-submission meeting was held, upon request by the applicant, within 30 days after the effective date.

PASSED ON SECOND READING AND ADOPTED BY THE BOARD OF
COMMISSIONERS OF GIBSON COUNTY, INDIANA, ON THE 16TH DAY OF MARCH, 2021.

BOARD OF COMMISSIONERS OF GIBSON COUNTY, INDIANA



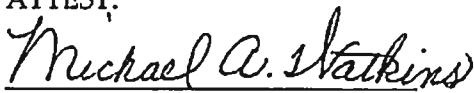
Commissioner



Commissioner

Commissioner

ATTEST:



Auditor