

COUNTY OF LAGRANGE

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE COUNTY OF LAGRANGE ORDINANCE NUMBER 2005-11-17A, COMMONLY KNOWN AS "THE LAGRANGE COUNTY ZONING ORDINANCE", AS AMENDED, TO ADD OR AMEND REGULATIONS REGARDING ZONE DISTRICTS, USE REGULATIONS, DIMENSIONAL STANDARDS, AND DEFINITIONS AND RULES OF INTERPRETATION

WHEREAS, the LaGrange County Plan Commission is an advisory plan commission established pursuant to I.C. 36-7-4-202; and

WHEREAS, the LaGrange County Plan Commission has determined that in the interest of promoting the public health, safety and general welfare of the community, certain regulations and amendments to the LaGrange County Zoning Ordinance would be appropriate; and

WHEREAS, on July 27, 2020 the LaGrange County Plan Commission, after notice to all interested parties pursuant to I.C. 5-3-1, did conduct a public hearing on said recommended amendments pursuant to I.C. 36-7-4-604, and thereafter certified to the Board of Commissioners of the County of LaGrange a favorable recommendation for the consideration and adoption of said amendments; and

WHEREAS, on August 3, 2020, the Board of Commissioners of the County of LaGrange did conduct a regular meeting with regard to the certified proposed amendments pursuant to I.C. 36-7-4-607, after all notices of its intention to consider said amendments had been provided as required by law. That the Board of Commissioners of the County of LaGrange in paying reasonable regard to the statutory criteria set forth in I.C. 36-7-4-603, have determined that the adoption of the proposal of the LaGrange County Plan Commission is appropriate and in the best interests of the welfare of the community;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE, INDIANA, THAT THE ZONING ORDINANCE PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE, INDIANA, ON THE 17th DAY OF NOVEMBER, 2005, AND AS AMENDED THEREAFTER, BE HEREBY AMENDED AS FOLLOWS:

ITEM I

That **ARTICLE 3: USE REGULATIONS**, should be amended as follows:

Section (A) Agricultural Use Table – Table 3-A-1: That the specific use of Commercial Solar Facilities should be added to the Agricultural Use Table to read as follows:

Use Category	Specific Use	Zoning District A-1	Additional Regulations
Agricultural	Commercial Solar Facilities	P	Art. 3 – Sec. J

Section (J) Commercial Solar Facilities: That a section entitled “Commercial Solar Facilities” should be added to a new Section (J) and all further subsections in this Section shall be renumbered accordingly. That new Section (J) shall read as follows:

(J) Commercial Solar Facilities

The standards in this section apply to all development of Commercial Solar Facilities. The underlying district zoning regulations apply, however, where conflicts exist between the underlying district regulations and those contained in this section, this section shall apply

- (1) **Scope.** This section only applies to a Commercial Solar Facility.
- (2) **Definitions.** Whenever the following terms are used in this section, they shall have such meanings herein ascribed to them unless the context clearly indicates or requires a different meaning.

- (a) **“Applicant”** means the person who signs and submits an application for a Permit on behalf of an Owner.
- (b) **“Bond”** includes a performance bond, surety bond, irrevocable letter of credit, or other form of financial assurance in an amount that is sufficient to meet Owner’s financial responsibilities under the Permit.
- (c) **“Building Department”** refers to the LaGrange County Building Department.
- (d) **“Facility”** when capitalized, refers to a Commercial Solar Facility.
- (e) **“Owner”** means each person who owns a respective Facility. The term also includes, as applicable, Owner’s legal representatives, successors, and assigns. If a provision of this ordinance imposes a duty on an “owner,” the duty is satisfied when the duty is performed by an agent of the owner.
- (f) **“Permit”** means a commercial solar facility improvement location permit.
- (g) **“Site Plan”** means the series of plans, as may be further described in this ordinance, that are used by Applicant and Owner to obtain a Permit.

(3) **Prohibition.** No Facility shall be constructed or operated unless within a zone designated as A-1, and then only if in conformity with this section.

(4) **Required information.** An interested party to a planned Facility may apply for the Facility by obtaining a Permit from the Building Department prior to on-site construction of any Facility components. Applicant shall provide the following information to the Building Department on a Site Plan, which may be in narrative form:

- (a) Number, location and spacing of solar panels/arrays.
- (b) Planned location of underground or overhead electric lines.
- (c) Project development timeline.
- (d) Operation and maintenance plan.
- (e) Vegetation management and landscaping plan, including grading.
- (f) Decommissioning plan.

(5) **Application Requirements.**

- (a) An Applicant who is acting in an agency capacity must show authorization to apply on behalf of Owner.
- (b) The Applicant must provide a list of landowners who authorized placement of solar facilities on their properties.

(6) **Site and Structure Requirements.**

- (a) **Setbacks.** Setbacks for all structures (including solar arrays) must adhere to

the minimum principal setback standards for the A-1 zoning district. Additionally, solar panels shall be installed at least two hundred (200) feet from any non-participating residences. Except with respect to applicable provisions of Section O of Article 3 (“Towers and Similar Structures”), a Facility shall be exempt from zoning district bulk and height requirements.

- (b) **Screening.** Applicant shall submit a landscaping plan outlining proposed screening for the project, including existing vegetation, as may be suitable. Emphasis will be placed on screening adjacent residences. Blooming shrubs may be used in buffer areas as appropriate for visual screening. With respect to a residence from which the Facility cannot be easily seen, the Facility does not require screening.
 - (c) **Utility Connections.** All medium voltage cables between inverter locations and project substations shall be located and maintained underground. Other solar infrastructure, such as module-to-module collection cables, CAB cables, transmission lines, substations, junction boxes, and other typical aboveground infrastructure may be located and maintained aboveground.
 - (d) **Glare Minimization.** All solar panels must be constructed to minimize glare or reflection onto adjacent properties and adjacent roadways and must not interfere with traffic, including air traffic, or create a safety hazard. In appropriate cases, the Department may require anti-reflective coatings.
 - (e) **Compliance with local, state and federal regulations.** Each Facility must comply with applicable local, state and federal laws and regulations.
 - (f) **Signage.** Appropriate warning signs shall be posted at the Facility. No other signs, except standard identification signage related to Facility installation, manufacturing, and operations, shall be displayed.
 - (g) **Fencing/Security.** A security fence must be installed along all exterior sides of the Facility and be equipped with a minimum of one gate and locking mechanism on the primary access side. Security fences, gates and warning signs must be maintained in good condition until the utility scale solar installation is dismantled and removed from the site. The fence must be a minimum of 6 feet tall. The use of a deer fence to secure the panels will be encouraged.
 - (h) **Site Access/Emergency Response.** Access to the site for emergency responders shall be provided on the site plan detailing response guidance and disconnection locations as may be necessary. Owner’s contact information shall be conspicuously posted on site at the primary access point.
 - (i) **Concentrating Solar Power Facilities.** Concentrating solar power facilities are prohibited.
- (7) **Operation and Maintenance Plan.** Applicant shall submit a plan for the operation and maintenance of the Facility, which shall include measures for maintaining safe access to the Facility, stormwater and erosion controls, as well as general procedures for operation and maintenance of the installation.

- (a) **Soil and Erosion and sediment Control Considerations.** Owner shall conduct all roadwork and other site development work in compliance with a NPDES Permit as may be required by the Indiana Department of Natural Resources and comply with requirements as detailed by local jurisdictional authorities during the plan submittal. The Building Department may refer the Site Plan to the LaGrange County Soil & Water Conservation District for review and potentially further development of a sediment control plan.
- (b) **Ground Cover and Buffer Areas.** Ground around and under solar arrays and in project site buffer areas shall be planted and maintained in perennial vegetated ground cover, and meet the following standards:
 - (i) Topsoil shall not be removed during development, unless part of a remediation effort.
 - (ii) Perennial vegetation shall be planted and maintained in a density sufficient to prevent erosion, manage runoff and build soil. Seeds should include a mix of grasses and forbs, when feasible native to the region of the project site.
 - (iii) Maintenance practices shall be consistent with recommendations made by qualified natural resource professionals such as those from the Indiana Department of Natural Resources, the County Soil and Water Conservation District, or the USDA Natural Resource Conservation Service.
- (c) **Maintenance, Repair or Replacement of Facility.** Owner shall maintain the Facility in accord with the Site Plan, Permit, and this ordinance. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Any retrofit, replacement or refurbishment of equipment shall adhere to all applicable local, state and federal requirements.

(8) Decommissioning and Site Reclamation Plan.

- (a) **Plan – General Contents.** Applicant shall provide a decommissioning plan to the Building Department that describes the anticipated life of the Facility; the anticipated manner in which the project will be decommissioned; the anticipated site restoration actions and the estimated decommissioning costs in current dollars (decommissioning costs less salvage value).
- (b) **Plan – Financial Requirements.** The decommissioning plan shall describe the mechanism for the posting a satisfactory bond. The decommissioning plan and bond shall be updated by Owner every five (5) years and adjusted as necessary to ensure sufficient funds are available to decommission the project over its life.
- (c) **Plan – Restoration Activities.** Restoration or reclamation activities shall include, but not be limited to, the following:
 - (i) Restoration of the pre-construction surface grade and soil profile

after removal of structures, equipment, graveled areas and access roads.

- (ii) Re-vegetation of restored soil areas with native crops, seed mixes, and/or plant species suitable to the area.
- (iii) For any part of the Facility on leased property, the plan may incorporate agreements with the landowner regarding leaving access roads, fences, gates or repurposed buildings in place or regarding restoration of agricultural crops or forest resource land to the extent such an agreement complies with this ordinance. Any use of remaining structures must be in conformance with the regulations in effect at that time, including any grandfathered allowances for such structures.

(d) Decommissioning. Following a continuous one-year period in which no electricity is generated, or if substantial action on the project is discontinued for a period of one year, Owner shall have one year to complete decommissioning of the Facility. Decommissioning shall be completed in accordance with the approved decommissioning plan. Owner shall notify the Building Department in writing when decommissioning is complete.

(9) Bond. Upon approval of the Site Plan, and before the Facility is in operation, Owner shall provide a bond that complies with the Site Plan and Permit. The bond shall either automatically renew each year or have no expiration, if possible; otherwise, Owner shall provide proof of bond renewal at the end of the bond's scheduled term. The other terms of the bond shall be reasonably satisfactory to the Building Department. The bond shall be returned upon satisfactory decommissioning of the Facility; provided, however, that the County shall be entitled to recuperate from the bond the costs that it incurs to the extent the County takes part in decommissioning the Facility.

Section (C)(2)(a)(iv): That the regulations found in Section (C)(2)(a)(iv) shall be amended to read as follows:

(iv) Except as allowed in Article 3 Temporary Uses, Section (O), in the event that the home does not meet the above width criteria, the unit shall only be considered in the A-1 zoning district and adjoining property owners within 300' of the perimeter of the property must be notified and unanimously agree to the placement of the unit by signed affidavit. In the event that the above unanimous agreement is not obtained, the applicant must apply for BZA approval before placing the home.

Section (K)(2)(d): That the regulations found in Section (K)(2)(d) shall be amended to read as follows:

(d) Accessory uses shall not be established prior to the primary use, unless a temporary permit is obtained in accordance with Article 3, Section M.

Section (M)(3)(a)(i) Table 3-K-1: Permitted Accessory Uses Agricultural and Residential Districts: The specific use of Solar Panel Array shall be amended to the Permitted Accessory Uses Agricultural and Residential Districts Table 3-K-1 to read as follows:

PERMITTED ACCESSORY USES AGRICULTURAL AND RESIDENTIAL DISTRICTS P = Permitted				
Specific Use	Zoning Districts			
	A-1	S-1	U-1	L-1
Solar Panel Array (Residential)	P			

ITEM II

That **ARTICLE 9: DEFINITIONS AND RULES OF INTERPRETATION**, should be amended as follows:

Section (M)(40): That the definition of “Commercial Solar Facility” should be added to a new Section (M)(40) and all further subsections in this Section shall be renumbered accordingly.

That new Section (M)(40) shall read as follows:

(40) Commercial Solar Facility means a group of interconnected solar panels/arrays that convert sunlight into electricity for the primary purpose of wholesale or retail sales of generated electricity, including all on-site equipment and facilities necessary for the proper operation of the facility, such as electrical collection and transmission lines, transformers, substations and operations and maintenance facilities. This definition excludes Solar Panel Arrays (Residential) that are constructed primarily to provide energy for use on-site. This definition does not include concentrating solar power

facilities.

Section (M)(66): That the definition of “Fence” provided in Section (M)(66) should be amended to read as follows:

(66) Fence means an upright, freestanding structure made of wood, masonry, vinyl, or similar material and designed to enclose, screen, or separate areas. Fences may not be made from trash, inoperable or junk vehicles, barrels, or any other material not designed to be used as fencing. A security fence called for by a provision of this ordinance may be made of chain-link metal.

Section (M)(109): That the definition of “Owner” provided in Section (M)(109) should be amended to read as follows:

(109) Owner, with respect to a sign, means a person owning a sign.

- i) Parcel in Incorporated Area: Contiguous real estate taxed as a single parcel on one side of a public road.
- ii) Parcel in Unincorporated Area: A tax parcel as established by the LaGrange County property tax database.

Section (M)(115): That the definition of “Permit” provided in Section (M)(115) should be amended to read as follows:

(115) Permit means a non-expired written authorization pursuant to this ordinance, as signed and issued by competent authority.

Section (M)(140): That the definition of “Solar Panel Array” provided in Section (M)(140) should be amended to read as follows:

(140) Solar Panel Array (Residential) means a freestanding configuration of solar panels for residential or light commercial use, which configuration shall not exceed nine hundred (900) square feet in area.

ITEM III

No part of this Ordinance shall be interpreted to conflict with any local, state or federal laws, and all reasonable efforts should be made to harmonize same. Should any section or part

thereof of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Ordinance as a whole, or any other portion thereof other than that portion so declared to be invalid, and for this purpose the provisions of this Ordinance are hereby declared to be severable. All other terms and conditions of the LaGrange County Zoning Ordinance which are not modified and amended herein, including all Sections and Subsections thereof that have not been amended or set forth within these amendments, shall remain in effect and shall be renumbered to account for the amendments set forth herein.

ITEM IV

The lawful nonconforming use of a structure, land, or water existing at the time of the adoption of the amendments to the LaGrange County Zoning Ordinance as provided herein may be continued although the use does not conform with the provisions of this Ordinance. However, only the portion of the land or water in actual use may be so continued, and the structure or area within which the use is contained may not be extended, enlarged, reconstructed, substituted, moved, or structurally altered except when required to do so by law or official order, so as to comply with the provisions of the Zoning Ordinance as amended herein. If such nonconforming use is discontinued or terminated for a period of 12 months, any future use of the structure, land, or water shall conform to the provisions of this Ordinance as amended herein.

ITEM V

This Ordinance shall be effective upon promulgation according to law.

ALL OF WHICH IS ORDAINED THIS _____ DAY OF _____, 20_____.

LAGRANGE COUNTY PLAN COMMISSION

Tyler Young, President

Robbie Miller, Zoning Administrator

BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE, INDIANA

Larry Miller, President

Terry Martin, Vice President

Dennis Kratz

ATTEST:

Kathryn Hopper, Auditor

WAIVER OF SECOND READING

On motion duly made and seconded, the second reading of the foregoing Ordinance was unanimously waived and the Ordinance was deemed effective as of the date of passage.

BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE, INDIANA

Larry Miller, President

Terry Martin, Vice President

Dennis Kratz

ATTEST:

Kathryn Hopper, Auditor

television, telecommunication, communication on microwave transmissions, the Owner or Operator shall promptly resolve the complaint.

(I) Wind Energy Conversion Systems (WECS) - Overlay District

The standards in this section apply to all WECS development. The underlying district zoning regulations apply, however, where conflicts exist between the underlying district regulations and those contained in this section, this section shall apply

(1) A Commercial Wind Energy Conversion System (WECS) and WECS Overlay District within the County shall meet the following standards:

- (a)** An Application for Re-zoning to a WECS Overlay District must be submitted to the Advisory Plan Commission and may be a combined application provided all property owners where the WECS facilities are to be located are Co-Applicants. The application shall include the following items:
 - (i) A general description of the project including its approximate nameplate generating capacity, the potential equipment manufacturer, the type of WECS, the number of WECS Towers, the nameplate generating capacity of each WECS Tower, the maximum height of WECS Towers, the maximum diameter of the WECS rotors, the general means of interconnecting with the electrical grid and the general location of the project;
 - (ii) A description of the Applicant, Owner, and Operator, including their respective business structures;
 - (iii) A description of substations, maintenance structures, storage yards, permanent meteorological towers and equipment, and other buildings that are a direct functional part of the WECS. These structures, within the proposed overlay district, shall be considered accessory uses;
 - (iv) The names, addresses and phone numbers of the Applicants, Owners and Operators, and all Co-Applicants;
 - (v) A topographic map of the project site and surrounding area which shall encompass an area at least a quarter

mile radius from the proposed project site with contours of not more than ten (10') intervals.

(2) Following the creation of a WECS Overlay District, an applicant and property owner that desires to construct, install, operate, repair, and maintain WECS shall first file or submit to the Advisory Plan Commission a Development Plan as specified in Article 7 of the LaGrange County Zoning Ordinance. The Development Plan shall specifically include the following:

- (a)** A site plan at an appropriate scale showing (standard sheet of 36 inches by 24 inches and a typical individual tower site at not greater than 1 inch equals 20 feet) the proposed location of the Wind Energy Conversion System Facility (including locations of each WECS Tower, guy lines and anchor bases (if any); WECS access roads; substations; maintenance structures; storage yards; permanent Meteorological Towers; electrical cabling; ancillary equipment; and any other structures that are a direct functional part of the WECS. Each tower 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 a WECS; property lines, including identification of adjoining properties; setback lines; public roads; County regulated drains, open ditches, or tiles; location of all above-ground utility lines within a distance of two (2) times the WECS Tower Height of any WECS Tower; location of all existing underground utility lines associated with the WECS 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. This site plan must also be distributed to the Emergency Management Agency, any Fire Departments serving any part of the site, and to the County Sheriff.
- (b)** A Transportation Plan (as defined) recommended by the Highway Superintendent and approved by the LaGrange County Commissioners.
- (c)** A Drainage Plan approved by the LaGrange County Drainage Board. The Transportation Plan and/or the Drainage Plan shall establish that the proposed WECS, including access roads, shall not impede the flow of water and will comply with the County Drainage Ordinance. At the discretion of the Advisory Plan Commission, approval of the Drainage Plan by the LaGrange County Drainage Board may be a condition of Development Plan Approval, which condition must be satisfied prior to application for an Improvement Location Permit.
- (d)** Projected Sound Emissions Study (as defined) for the proposed WECS.

- (e) The applicant shall solicit input from the Indiana Department of Natural Resources on bird and bat migration, nesting, and habitat studies and shall follow any required protocols established, adopted, or promulgated, by the Department. The Applicant shall submit any response received from the Department of Natural Resources to the Advisory Plan Commission.
- (f) A Decommissioning Plan formulated by the Applicant, Owner and/or Operator and accepted by the Advisory Plan Commission designed to ensure that the WECS Project is properly decommissioned. The Decommissioning Plan must be updated and approved by the Advisory Plan Commission every five (5) years after the approval of the initial Decommissioning Plan, in the same manner as the initial plan. The Decommissioning Plan shall include assurance that the facilities are properly decommissioned upon the end of the project life or facility abandonment. The Applicants' obligations with the Plan shall include:

 - (i) Removal of all physical material (with the exception of Subsurface Collectors (as defined)), pertaining to the project improvements to a depth of not less than 48" beneath the soil surface;
 - (ii) Restoration of the area occupied by the project improvements such that the area is suitable for an equivalent land use to what existed immediately before construction of such improvements;
 - (iii) A cost estimate for demolition and removal of the WECS facility prepared by a reputable and licensed professional engineer approved by the Advisory Plan Commission. Financial assurance of decommission shall be provided as required by Section K, Paragraph 10, "post-construction and continued maintenance requirements".
- (g) A Security and Safety Plan that must include adequate provisions for site security and safety during pre-construction, construction, and post-construction. If the plan includes using County Services, then it should include signatures indicating those parties are aware of their role and capable of performing it.
- (h) Adequate assurance of the completion and continued operation of the WECS project from the date of the commencement of construction through the 10th year of operation of the WECS. The Owner/Applicant/Operator shall demonstrate such adequate assurance of completion and continued operation of the WECS project by providing evidence of (1) adequate funding of one hundred percent (100%) of the estimated cost of construction of the WECS; (2) performance and payment bonds or other sureties from the Owner Applicant/Operator and/or major equipment suppliers and contractors;

(3) the existence of written warranties from contractors and/or major equipment suppliers and contractors; (4) 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 (5) adequate casualty, builders risk, business interruption, and liability insurance for the replacement of the WECS and the individual components thereof, and the funding of an ongoing basis, and the payment of all liabilities occurring during, arising from, or related to a casualty loss. The Applicant/Owner/Operator may provide such cost estimates, bids, contracts, warranties, feasibility studies, engineering studies and reports, insurance certificates, loan and other financing commitments at the discretion of the Advisory Plan Commission.

- (i) An Economic Development Agreement (as defined) approved by the LaGrange County Commissioners. This agreement must be developed in conjunction with the LaGrange County Economic Development Corporation and LaGrange County Council. At the discretion of the Advisory Plan Commission, the approval of the Economic Development Plan by the LaGrange County Commissioners may be a condition of Development Plan Approval, which condition must be satisfied prior to application for an Improvement Location Permit.
- (j) Any and all other information deemed necessary by the LaGrange County Plan Commission for the administration and enforcement of this Ordinance.

(3) After the Development Plan approval is obtained, but before any construction commences or Improvement Location Permits may be acquired, all applicable state and federal permits, approvals and licenses must be obtained and all state and federal statutes and regulations must be compiled with and the following requirements satisfied:

- (a) The Owner or Operator of the WECS shall have obtained and maintained during construction and operation of the WECS facility a current general liability policy covering bodily injury and property damage that names the Property Owner(s) and LaGrange County as additional insured parties with limits of at least \$2 million per occurrence and \$5 million in the aggregate, with a deductible of no more than \$20,000.
- (b) The Applicant/Owner/Operator shall establish a 24-hour toll-free phone number for the registering of complaints and concerns during construction only. This number shall be posted at every road intersection 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 WECS Applicant according to the fee rate established by the Advisory Plan Commission.

- (c) The Applicant/Owner/Operator must attend a Pre-Construction Meeting between the Advisory Plan Commission Executive Director, Advisory Plan Commission President, LaGrange County Building Inspector, and any other public officer or official whose input is deemed appropriate and WECS Applicant to verify that all requirements in the Zoning Ordinance have been met. This meeting shall take place as the final step before construction and all other requirements have been met, whereby if all of the Zoning Ordinance requirements have been met, then the WECS Applicant may proceed to obtain Improvement Location Permits. If any requirements have not been met, then further preconstruction meetings will be held until it can be verified that the identified issues have been resolved.
- (d) Improvement Location permit fees must be paid for any proposed construction element of the WECS project before the applicable Improvement Location Permits will be issued.

(4) The Re-Zoning Application, Development Plan (including but not limited to Decommissioning Plan and each update thereof and the assurance of completion and continued operations), and Improvement Location Permit applications shall be reviewed by Advisory Plan Commission staff, counsel, an independent professional engineer, and any other professionals deemed necessary as selected or approved by the Advisory Plan Commission. Within 30 days of submission, the Owner/Applicant/Operator shall reimburse the Advisory Plan Commission for all costs and expenses associated with the initial or any subsequent review of the Development Plan including but not limited to the employment of a professional engineer, financial consultant, or other professional advisors consulted by the Advisory Plan Commission. A professional Engineer shall also certify, as part of the Improvement Location Permit application that the foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.

- (5) 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 LaGrange County Health Department and the Indiana Department of Public Health.

- (c) Repairing all damages to non-co-applicant or County regulated waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction or maintenance of the WECS. Damage 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 WECS 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 ten (10) days unless a waiver is obtained from the County Drainage Board.
- (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 Surveyor or agent designated by the 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 daily plan of work detailing where construction and transportation activities will occur to the Advisory Plan Commission, County Highway Superintendent, County Sheriff, County Surveyor, Soil and Water Conservation District, the Superintendent(s) of the School District(s) in areas 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, roads, drainage, or access roads.
- (g) The LaGrange County Highway Superintendent shall conduct a preconstruction baseline survey to determine existing road conditions for assessing potential future damage. The LaGrange County Highway Superintendent 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 the Applicant does not make repairs in a timely manner, the Superintendent 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 LaGrange County Highway Superintendent to insure the County that future repairs are completed to the satisfaction of the County. The cost of bonding is to be paid by the Applicant. A \$1,000 fine shall be assessed for each occurrence where WECS oversize or overweight construction and maintenance equipment utilizes any routes in violation of the approved Transportation Plan. If the Applicant/Owner/Operator 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. When all road repairs are completed to his satisfaction the LaGrange County Highway Superintendent will issue a County Highway Remediation Release Form.

- (h) Adhering to the approved Development Plan, any non-material proposed changes, modifications, or amendments to the Development Plan must be approved by the Executive Director of the Advisory Plan Commission. All material changes to the Plan must be approved by the Advisory Plan Commission. The Executive Director shall have the authority and discretion, considering all relevant factors, to determine whether the proposed Development Plan change is material.

(6) Design and installation shall conform with the following:

- (a) WECS Towers shall conform to applicable industry standards. Applicant shall submit certificates of design compliance that wind turbine manufacturers have obtained from Underwriters Laboratories, Det Norske Veritas, Geranishcher Lloyd Wind Energie, or an equivalent third party.
- (b) All WECS Towers shall be installed with a tubular, monopole type tower. Meteorological towers may be guyed. All structures 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 and Collectors (as defined) of the WECS shall conform to applicable local, state, and national codes, and relevant national and international standards. All WECS Collectors between WECS towers shall be located underground. Said electrical components and Collectors between each WECS and/or on-site substations may be located above ground where burial presents a technical or practical difficulty, such as a deep ravine or significant

waterway. Once the technical or practical difficulty is traversed, burial shall be required per the standards noted above.

- (e) Towers and blades shall be painted with non-reflective white 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 manufacturers 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 WECS Tower, and/or 3) locked WECS Tower doors.
 - (h) Red strobe lights are preferred during the night to reduce impacts on migrating birds and red pulsating incandescent lights and white lights should be avoided, if possible. All lighting shall also be in compliance with applicable Federal Aviation Administration regulations and further lighting requirements contained within this Ordinance. All lighting shall be shielded so that no glare extends substantially beyond the boundaries of the wind farm facilities.
- (7) At any non-Co-Applicant residentially used structure or residentially zoned lot, public school, or public library, 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 WECS shall not exceed either, the greater of 45 decibels or, 5 decibels above the Ambient Baseline Sound Pressure Level of the wind farm project area at Critical Wind Speeds. At any non-Co-Applicant residence on Industrial, or Business zoned land, 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 WECS shall not exceed either the greater of 51 decibels or, 5 decibels above the Ambient Baseline Sound Pressure Level, if used, shall be determined by a baseline acoustic emissions study conducted by the LaGrange County Advisory Plan Commission and funded by the Applicant. All methods for measuring precision described in the International Electrotechnical Commission IEC 61400-11 Standard; *Wind turbine generator systems – Part 11: acoustic noise measurement techniques*. Noise and vibration levels shall also be in compliance with all other applicable County, State and Federal regulations.**
- (8) The minimum distance between the ground and any protruding blade(s) utilized on a WECS shall be fifty (50) feet, as measured at the lowest point of 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.

(9) Setbacks shall be as follows:

- (a) No WECS shall be constructed in any setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the County.
- (b) Except as provided herein, installation of any WECS may not be nearer than 1.1 times the height of the WECS including the blade at its highest point, to any non-Co-Applicant property lines, dedicated roadway, Co-Applicant residences, railroad right-of-way or overhead electrical transmissions or distribution lines. Also, the minimum setback distances for all turbines, substations, maintenance structures, storage yards, permanent Meteorological Towers, and other buildings that are a direct functional part of the WECS shall not be less than 1000 feet from any non Co-Applicant residence or public building. Distance shall be measured at the time of application for Improvement Location Permit from the center of the foundation at the base of the tower. New structures built adjacent to wind power facilities shall maintain the same minimum setback requirements. The setback distance will be followed except in specific instances allowed by the Board of Zoning Appeals in a Variance Hearing.
- (c) The WECS Tower shall not be nearer than 1.1 times the height of the WECS Tower including the blade at its highest point from any other WECS Tower.

(10) Post Construction and continued maintenance requirements are as follows:

- (a) Commencing on January 1st of the first calendar year after the tenth (10th) year of operation of the WECS, the Owner/Applicant/Operator shall secure and provide to the Advisory Plan Commission a performance bond, surety bond, letter of credit, or other form of financial assurance that is acceptable to the Advisory Plan Commission (the "Decommissioning Security") equal to the estimated cost of decommissioning the WECS pursuant to the Decommission Plan. The Decommissioning Security, in computing the estimated cost of decommissioning, shall consider and deduct the Net Salvage Value (as defined) of the WECS. 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

Advisory Plan Commission. All Applicants/Owners/Operators shall provide and updated Decommissioning Plan every five (5) years commencing with the operation of the WECS which updated Decommissioning Plan shall be reviewed and approved by a licensed engineer approved by the Advisory Plan Commission and qualified to provide an estimate of the cost of decommissioning of the WECS and the Net Salvage Value of the WECS (the “Decommissioning Engineer”). A new Decommissioning Security in an amount equal to the cost of the estimated cost of decommissioning after deducting the Net Salvage Value of the WECS shall be provided within sixty (60) days of the approval of the updated Decommissioning Plan.

- (b) 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) The following operation, maintenance and inspection standards shall be met:

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

The LaGrange County Building Inspector, approved designees, along with licensed 3rd party engineers/professionals retained by the County for the specific purpose of conducting inspections of the WECS shall have the right, at any reasonable time and with sufficient prior notice, to accompany the Owner or Operator, or his agent, on the premises where a WECS has been constructed, to inspect all parts of said WECS installation and to require that repairs or alterations be made. The Owner or Operator of a WECS may retain a licensed 3rd party professional engineer familiar with WECS systems to prepare and submit to the LaGrange County Building Inspector 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 LaGrange County Building Inspector

that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The LaGrange 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 LaGrange County Building Inspector and the Owner or Operator, or a 3rd party professional engineer retained by them, as to the repairs or alterations which are required, the decision of the Building Inspector shall be final;

If, after construction, the Owner or Operator receives a written complaint related to interference with local broadcast residential television, telecommunication, communication or microwave transmissions, the Owner or Operator shall promptly resolve the complaint;

The WECS Applicant, Owner or Operator shall submit to all providers of emergency services serving the WECS Project area a copy of the as-built site map. Upon request by the local fire department, the Owner or Operator shall cooperate with the local fire department to develop the fire department's emergency response plan. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations;

On completion of construction the WECS Applicant, Owner or Operator shall submit to the County Surveyor a site map detailing all ground disturbed through construction activity, surface/subsurface structure/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;

For the period of three (3) years following the completion of construction the WECS Applicant, Owner or Operator shall be liable to the county for all costs or repair, as determined by the County Surveyor, to county for all costs of repair, as determined by the County Surveyor, 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, unless it can be reasonably demonstrated that such damage to said tiles, drains, ditches, and/or structures was not caused by activities associated with the WECS construction and/or operation.

- (d) A WECS or any individual wind turbine constituting a portion of the WECS is presumed at the end of its useful life and/or abandoned if the WECS or the individual turbine generates no electricity for continuing period of (12) months. This presumption may be rebutted by submitting to the Advisory Plan Commission for approval and within (90) days of submission obtaining approval thereof of a plan outlining the steps and schedules for returning the WECS or the individual wind turbine to service. Any WECS or individual turbine 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.
- (e) Any WECS, WECS Tower, or structure thereof declared to be unsafe by the LaGrange County Building Inspector by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair or rehabilitation within 12 months or be deemed abandoned and at the end of its useful life as provided in this Section.
- (f) Any post-construction proposed non-material modifications, alterations, expansion, or changes of any type or size to the Development Plan must be approved by the Executive Director of the Advisory Plan Commission and all material post construction proposed changes must apply in the same way as a new WECS following the process set forth herein. The Executive Director shall have the authority and discretion, considering all relevant factors, to determine whether the proposed post-construction change is material.
- (g) Nothing in this section of this Ordinance is intended to preempt other applicable state and federal laws and regulations.
- (11) All new building lots and new dwellings approved in the Wind Energy Conversion System Overlay district shall submit and record a signed agreement in the office of the County Recorder. Such written agreement shall recognize that the current owner and all subsequent owners of such building site (lot) shall not object to, nor file suit against any Wind Energy Conversion System so long as it follows industry accepted wind farming operation, construction, and maintenance standards. Such agreement language shall be approved by the Board Attorney and shall be comparable to the following: “In accepting this deed, grantees do hereby acknowledge that the surrounding land is designated for a Commercial Wind Energy System and subject to intense wind farming practices; and grantees, and their heirs, assigns, and successors in interest, are precluded from complaining, seeking damages and/or attempting to enjoin the use of the property (land) for Wind Energy Conversion Systems as long as industry accepted wind farming operation,**

construction and maintenance standards are followed. It is further recognized that Wind Energy Conversion Systems may include disruptive noise/traffic throughout the year. This condition and agreement shall run with the land.

(J) Commercial Solar Facilities

The standards in this section apply to all development of Commercial Solar Facilities. The underlying district zoning regulations apply, however, where conflicts exist between the underlying district regulations and those contained in this section, this section shall apply

- (1) **Scope.** This section only applies to a Commercial Solar Facility.
- (2) **Definitions.** Whenever the following terms are used in this section, they shall have such meanings herein ascribed to them unless the context clearly indicates or requires a different meaning.
 - (a) **“Applicant”** means the person who signs and submits an application for a Permit on behalf of an Owner.
 - (b) **“Bond”** includes a performance bond, surety bond, irrevocable letter of credit, or other form of financial assurance in an amount that is sufficient to meet Owner’s financial responsibilities under the Permit.
 - (c) **“Building Department”** refers to the LaGrange County Building Department.
 - (d) **“Facility”** when capitalized, refers to a Commercial Solar Facility.
 - (e) **“Owner”** means each person who owns a respective Facility. The term also includes, as applicable, Owner’s legal representatives, successors, and assigns. If a provision of this ordinance imposes a duty on an “owner,” the duty is satisfied when the duty is performed by an agent of the owner.
 - (f) **“Permit”** means a commercial solar facility improvement location permit.
 - (g) **“Site Plan”** means the series of plans, as may be further described in this ordinance, that are used by Applicant and Owner to obtain a Permit.
- (3) **Prohibition.** No Facility shall be constructed or operated unless within a zone designated as A-1, and then only if in conformity with this section.
- (4) **Required information.** An interested party to a planned Facility may apply for the Facility by obtaining a Permit from the Building Department prior to on-site construction of any Facility components. Applicant shall provide the following information to the Building Department on a Site Plan, which may be in narrative form:
 - (a) Number, location and spacing of solar panels/arrays.
 - (b) Planned location of underground or overhead electric lines.