

**SEVILLE TOWNSHIP
ORDINANCE NO. ____**

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE
OF THE TOWNSHIP OF SEVILLE TO PROVIDE FOR
THE SITING, CONSTRUCTION AND OPERATION OF
WIND ENERGY FACILITIES AS A SPECIAL USE**

The Township of Seville ordains:

SECTION 1.

Chapter XI of the zoning ordinance is amended by the addition of Section 11.7 to read as follows:

SECTION 11.7 WIND ENERGY FACILITY SPECIAL USE

A. INTENT AND REGULATORY FRAMEWORK

1. Wind Energy Facility Special Use Purpose and Intent

The purpose of this Article is to provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of Wind Energy Conversion Facilities (Wind Energy Facilities) within the Township, in an effort to protect the health, welfare, safety, and quality of life of the general public, and to ensure compatible land uses in the vicinity of the areas affected by wind energy facilities. A Wind Energy Facility may be permitted as a special use within the Agricultural, Residential District A upon site plan review and approval subject to provisions and standards of the Seville Township Zoning Ordinance, Wind Energy Facility Special Use Site Plan Review and other necessary federal, state and local approvals.

B. DEFINITIONS

Alternative Energy – Renewable energy sources, such as wind, flowing water, solar energy and biomass, which create less environmental damage and pollution than fossil fuels, and offer an alternative to nonrenewable resources.

Ambient – Ambient is defined as the sound pressure level exceeded 90t of the time or L90.

ANSI – American National Standards Institute.

Construction: Construction to include but not limited to installation and preparatory work of:

- Substations;
- All electrical connection systems and lines from the WECS;
- Bulldozing and installation of roads or drives- bulldozing/digging for the installation of wind turbine reinforced concrete bases; or
- Bulldozing/digging/for a material/supply “laydown yard”

db(A) – The sound pressure level in decibels. Refers to the "a" weighted scale.

Db(C) – The sound pressure level in decibels. Refers to the "c" weighted scale.

LMax – The maximum dB(A) or DB(C) sound level measured using the “fast response” setting of the sound meter (equivalent to 0.125 second exponential averaging time).

Decibel – The unit of measure used to express the magnitude of sound pressure and sound intensity.

FAA – The Federal Aviation Administration.

Habitable Structure – Any structure usable for living or business purposes, which includes but is not limited to working, sleeping, eating, cooking, recreation, office, office storage, or any combination thereof. An area used only for storage incidental to a residential use, is not included in this definition.

Hub Height – When referring to a Wind Energy System, the distance measured from ground level to the center of the turbine hub.

IEC – International Electro Technical Commission. The IEC is the leading global organization that prepares and publishes international standards for all electrical, electronic and related technologies.

ISO – International Organization for Standardization. ISO is a network of the National Standards Institutes of 156 countries.

Legislative Body – The township board of the Township of Seville.

Met Tower – A meteorological tower used for the measurement of wind speed.

Michigan Tall Structure Act (M.C.L. 259.481 and following) - Governs the height of structures in proximity to airport related uses and is included as a standard in the Article by reference.

Non-Participating Parcel – Any parcel of property in the Township not within the Agricultural/Residential District A.

Non-Participating Landowner: A landowner who has not signed a contract or any legal document with the WECS Applicant and has not given up rights to their owned land to the WECS Applicant.

On Site Use Wind Energy Systems – This system is intended to primarily serve the needs of the consumer, and is considered an accessory building.

Participating Landowner: An individual or business that has signed a lease with WECS Applicant to allow WECS on owned land. Participating Landowner denotes a landowner who has leased land to the WECS Applicant, received financial remuneration from the WECS Applicant, recorded with the Gratiot county register of deeds said agreement, and has a contract with the WECS Applicant. Can also be called a WECS contract leaseholder. A Participating Landowner may or may not have turbines or infrastructure located on their property.

Participating Parcel - A parcel of land within the Township that is subject to a wind turbine lease or easement or other contractual agreement at the time an application is submitted for a Special Land Use Permit for the purposes of developing and constructing a wind energy system.

Planning Commission – The Seville Township Planning Commission.

Rotor – An element of a Wind Energy System that acts as a multi-bladed airfoil assembly, thereby extracting through rotation, kinetic energy directly from the wind.

SCADA Tower – A freestanding tower containing instrumentation such as anemometers that is designed to provide present moment wind data for use by the Supervisory Control and Data Acquisition (SCADA) System.

Shadow Flicker – Alternating changes in light intensity caused by the moving blade of a Wind Energy System casting shadows on the ground and stationary objects, such as a window in a dwelling.

Sound Pressure – Average rate at which sound energy is transmitted through a unit area in a specified direction. The pressure of the sound measured at a receiver.

Sound Pressure Level – The sound pressure mapped to a logarithmic scale and reported in decibels (dB).

Tip Height – When referring to a Wind Energy System, the distance measured from ground level to the furthest vertical extension of the rotor.

Utility Grid Wind Energy Systems – This system is designed and built to provide electricity to the electric utility grid.

Wind Energy Conversion Facility, (WECS) or Wind Energy Facility – An electricity generating facility consisting of one or more wind turbines under common ownership or operation control, and includes substations, MET Towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity to off-site customers.

Wind Energy Facility Site Permit – A permit issued upon compliance with the standards enunciated in this section.

Wind Energy System – A Wind Energy Conversion System which converts wind energy into electricity through the use of a wind turbine generator and includes the turbine, blades, and tower as well as related electrical equipment. This does not include wiring to connect the Wind Energy System to the grid.

Wind Site Assessment – An assessment to determine the wind speeds at a specific site and the feasibility of using that site for construction of a Wind Energy System.

C. APPLICATION REQUIREMENTS.

Prior to the installation of a wind energy facility, an application for a Special Land Use permit and site plan must be reviewed and approved by the Planning Commission pursuant to the standards set forth in this Ordinance. The application shall be filed with the local government and shall include the following:

1. Written explanation of the design characteristics and the ability of the structure(s) and attendant facilities to withstand winds, ice and other naturally occurring hazards as well as information regarding health, welfare and safety in areas including, but not limited to, noise, vibration, shadow flicker, and blade ice deposits. This information shall also address the potential for the WECS to structurally fail or collapse, and what results should be expected in such an event. Wind Energy Conversion Facilities shall not be located, constructed, erected, altered, or used without first obtaining a Wind Energy Facilities Site Permit pursuant to this Section.
2. Company contact information (telephone numbers and e-mail addresses), including name of company, name of project, key company contacts with titles and EIN (Employer Identification Number).
3. A narrative describing the proposed Wind Energy Facility, including an overview of the project.
4. Site Plan (GIS shape file overlay, electronic file and paper copy) of the property showing existing and proposed features such as buildings, structures, roads (right of ways), applicable utility easements, county drains, land use, zoning district, ownership of property, location of proposed turbine towers (with required setbacks, exclusion zones and Non-Participating Parcels), underground and overhead wiring (including depth underground), access roads (including width), substations and accessory structures.
5. Details or drawings shall show features in the design of a typical tower and its base, that upon removal of said tower will allow restoration of the soil at the site to a depth of 4 feet.
6. Anticipated construction date and anticipated completion date.
7. The applicant must acknowledge the fact in writing that the decommissioning process poses some risk of the concrete bases remaining in place, if the responsible party (lessee) was unable to properly remove the bases as required in this ordinance. This acknowledgement is to be submitted with the application package and can be in the form of the actual lease language that has been signed by the lessor or an "Acknowledgement Letter" that documents this understanding and has been signed by the lessor.
8. Access Driveways: GIS location of WECS and Testing Facility access driveways together with details regarding dimensions, composition, and maintenance of the proposed driveways. The site plan shall include traffic routes, time of the year use, staging areas, and any other physical sites related to WECS. Construction of the Access Driveway that serves a WECS or Testing Facility is required to protect the public health, safety, and welfare by offering an adequate means by which governmental agencies may readily access the site in the event of an emergency. All such roads shall be constructed to allow access at all times by any emergency service vehicles, such as fire, police, and

repair. Access driveways shall be no closer than 300' to adjacent property unless Applicant provides documentation in the form of a signed approval by affected participating and Non-Participating Landowners. Such approval shall be recorded with Gratiot County Register of Deeds.

9. Facility Security: Security measures shall be sufficient to prevent unauthorized trespass and to protect health, welfare and safety.
10. Maintenance Program and Resolution Program: The Applicant shall provide to the Township a written description of the problem and failure program to be used to resolve the WECS and WECS Testing Facility issue, including procedures and schedules for removal when determined to be obsolete or abandoned.
11. Site Lighting: A lighting plan for each WECS and Testing Facility. Such plan must describe all lighting that will be utilized and documentation that FAA requirements are met. RADAR activated lighting shall be utilized if allowed by FAA. Such a plan shall include but is not limited to, the planned number and location of lights, light color, activation methods, effect on township residents and whether any lights blink. Due to complexity in describing lighting effects for health, welfare and safety, Applicant shall, if available, provide example locations, with product descriptions, where similar, or proposed, lighting solutions are currently deployed. Lighting shall be fully shielded from ground, FAA compliant and be of most current design, to minimize lighting, blinking and brightness nuisance.
12. Site Insurance: The Applicant shall provide proof of insurance at all times for at least \$2,000,000 for liability, property damage, livestock damage, and future earnings loss. Applicant shall provide yearly proof of insurance to Township that confirms active coverage for the Applicant, Township, Participating Landowners, and Non-Participating Landowners. Aggregate policies are allowed if minimum coverage per WECS is satisfied and coverage is provided for every site where Applicant's equipment is located.
13. Repair Policy Documentation: Applicant shall provide a detailed policy and process book for the repair, replacement, and removal of malfunctioning, defective, worn, or non-compliant WECS. Sections of the process book should consider any ordinance requirement or WECS performance deficiency.
14. Noise: Applicant shall provide an initial sound modeling report and post-construction report for the project with a schedule and documentation which adhere to the following:
 - i. Chart outlining ordinance requirements and a description of compliance or non-compliance.
 - ii. Declaration whether submitted data is modeled or measured.
 - iii. Declaration of values, test methods, data sources, and similar for all modeled or measured data.

- iv. Estimated timeline for project including ordinance requirements completed, construction, post construction, and validation testing.
 - v. Applicant measured data shall be accompanied by SCADA data confirming full power during testing. Unless otherwise requested, minimum SCADA data format shall be grouped in 24hr periods and 1 second intervals including wind vector, wind speed, temperature, humidity, time-of-day, WECS power output, WECS amps, WECS volts, WECS nacelle vector, WECS blade RPM, WECS blade pitch.
 - vi. Permitting data may be submitted based on WECS manufacturer data. However, measured data from active and similar WECS facilities shall be simultaneously submitted.
 - vii. It is acknowledged that WECS units sustain wear over time. Applicant is to submit data from existing and similar WECS installations showing aged sound measurements (to demonstrate compliance potential over the life of WECS) in accordance with this ordinance for 5, 10, and 15-year-old units.
 - viii. Modeling factors shall be set for the worst-case environment, such as high humidity, frozen ground (non-porous), atmospheric variances (atmospheric profile Pasquill Stability Class E or F preferred), elevated noise source and no ground cover. Use of modeling methods (standards) shall have deficiencies (limitations) fully disclosed and shall include known error margins. Non-disclosure of modeling method deficiencies shall require resubmission of SLUP in its entirety with complete modeling deficiencies disclosed.
15. Transportation: Submit a copy of a proposed transportation plan to be used by construction and delivery vehicles. Approval of appropriate authorities required prior to construction.
16. Application Fee: An application for a Wind Energy Facility shall remit a fee in the amount specified in the approved schedule adopted by resolution of the legislative body. This schedule shall be based on the cost to the Township of the review, which may be adjusted from time to time.
17. Applicant shall show evidence of compliance with applicable statutes and County ordinances including, but not limited to:
- i. Part 31 Water Resources Protection (M.C.L. 324.3101 et seq.),
 - ii. Part 91 Soil Erosion and Sedimentation Control (M.C.L. 324.9101 et seq.), and the corresponding County ordinance.
 - iii. Part 301 Inland Lakes and Streams (M.C.L. 324.30101 et seq.),
 - iv. Part 303 Wetland Protection (M.C.L. 324.30301 et seq.),
 - v. All other applicable laws and rules in force at the time of Application.
18. Decommissioning: The applicant shall submit a plan describing the intended disposition of the alternative energy project at the end of its useful life and shall describe any

agreement with the landowner regarding equipment removal upon termination of the lease. Within 12 months of any tower or turbine not operating, the applicant/owner must submit a plan to the Township Board concerning the status of the wind power project and steps that shall be taken to either decommission the tower or turbine, or to achieve renewed Commercial Operation. Any tower/turbine left unused or inoperable for over 24 months would be deemed to be disposed of by developer/applicant. The land must be returned to its original state. Concrete bases will be removed four feet below ground level with appropriate drainage and filled with like soil that was removed.

To ensure proper removal of the structure when it is abandoned or non-operational, application shall include a proof of the financial security in effect before permit is approved. The security shall be in the form of: 1) cash deposit and 2) performance (surety) bond selected by the Planning Commission and bonded by a top institution from the Department of the Treasury's Listing of Approved Sureties -Department Circular 570, T-list. The duration of the security shall be termed to the removal of each WECS as stated in the ordinance. Additionally, security is to be backed with parent company assets, and lease holder assets approved by the Planning Commission. The amount of such security guarantee (surety) shall be at least \$800,000 per unit and has to be on file with board every time renewed. In addition to the surety bond, there will be at least \$400,000 in a cash savings account established per unit designated for the removal of each unit. Such financial guarantee shall be deposited or filed with the Township Clerk after a special use has been approved but before construction operations begin on the WECS project. Failure to keep such financial security in full force and effect at all times while the structure exists shall constitute a material and significant violation of a special use approval and this ordinance, and will subject the Applicant to all available remedies to the Township, including enforcement action, fines, revocation of the special use approval and WECS removal. The Applicant shall be responsible for the payment of all attorney fees and other costs incurred by the Township in the event that the structure is not voluntarily removed, and the Township has to enforce removal. In the event the WECS Owner or Operator defaults on any or all of the previously outlined decommissioning requirements, the Participating Landowner upon which each WECS is located shall be responsible and liable for the removal of each WECS.

19. Supplemental: Additional detail(s) and information as requested by the Planning Commission.

D. STANDARDS. The following shall be utilized as standards when reviewing an application for a Wind Energy Facility.

1. Visual Appearance, Lighting, Power Lines. The applicant shall use measures to reduce the visual impact of wind turbines to the extent possible, utilizing the following:
 - i. Wind turbines shall be mounted on tubular towers, painted a non-reflective, non-obtrusive color. The appearance of turbines, towers and buildings shall be maintained throughout the life of the wind energy facility (i.e., condition of paint, signs, landscaping, etc.).

- ii. Wind turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority, or otherwise necessary for the reasonable safety and security thereof such as motion censored lights when approved by the FAA. All tower lighting required by the FAA, shall be shielded to the extent possible to reduce glare and visibility from the ground.
 - iii. Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Wind Energy Facility.
 - iv. The electrical collection system shall be placed underground at a depth designed to accommodate the existing agricultural land use to the maximum extent practicable. The collection system may be placed overhead from substations to points of interconnection to the electric grid or in other areas as necessary.
 - v. All substations shall be aesthetically appealing and designed to prevent unauthorized access to electrical and mechanical components and shall have access doors that are kept securely locked at all times when service personnel are not present. A sign shall be posted near substation that will identify the station and contain emergency contact information.
 - vi. The appearance of turbines, towers and buildings shall be maintained throughout the life of the wind energy facility (i.e. conditions of exterior paint, signs & landscape)
2. Setbacks, Separation and Security. The following setbacks and separation requirements shall apply to all wind turbines within a Wind Energy Facility.
- i. Participating Occupied Buildings: Each wind turbine shall be set back from an occupied building of Participating parcels a distance no less than the greater of (a) two (2) times its Tip Height, or (b) one thousand (1,000) feet.
 - ii. Non Participating Parcel: Each wind turbine shall be set back from the property line of a Non-Participating parcels a distance no less than the greater of (a) three (3) times its Tip Height, or (b) one thousand six hundred forty (1,640) feet.
 - iii. Participating Shadow Flicker Minimization: Wind turbines shall be placed such that shadow flicker to any occupied buildings occurs no more than 30 hours per year.
 - iv. Non Participating Shadow Flicker: Under no circumstances shall a WECS or Testing Facility produce shadow flicker, or strobe-effect, on Non Participating properties without a signed release from affected Non-Participating Landowners. Such releases shall be recorded with Gratiot County Register of Deeds.
 - v. Wind turbines and access roads shall be located so as to minimize the disruption to agricultural activity; and, therefore, the location of towers and access routes is encouraged along internal property lines. Access roads shall be at least 300 feet from any property line.
 - vi. Public Roads: Each wind turbine shall be set back from the nearest public road a distance no less than the greater of 400 feet or 1.2 times its Tip Height, determined

at the nearest boundary of the underlying right-of-way for such public road. Access to wind turbines shall not be on class A roads as defined by the Gratiot County Road Commission.

- vii. Railroads & "Rail Trails": Each wind turbine shall be set back from the nearest Railroad or "Rail Trail" (a railroad or railway that has been converted to a public trail) a distance no less than the greater of 400 feet or 1.5 times its Tip Height, determined at the nearest boundary of the underlying right-of-way for such Railroad & "Rail Trails".

- 3. Road Damage: Any damages to a public road located within the Township resulting from the construction, maintenance, or operation of a WECS or Testing Facility shall be repaired at the Applicant's expense pursuant to Gratiot County Road Commission requirements within 90 days of project completion, but shall not exceed 365 days from project commencement.
- 4. Coating/Color: A WECS shall be painted a non-obtrusive (light environmental color such as beige, gray or off-white) color that is non-reflective. The wind turbine base and blades shall be of a color consistent with all other turbines in the area. No striping of color or advertisement shall be visible on the blades or tower
- 5. Wind Turbine/Tower Height: The applicant shall demonstrate compliance with the Michigan Tall Structure Act (M.C.L. 259.481 and following), FAA guidelines, local airport zoning as part of the approval process, and not to exceed five hundred (500) feet Tip Height.
- 6. Noise: Wind Energy Facilities shall not exceed 55 db(A) at the habitable structure closest to the Wind Energy System. This Sound Pressure Level may be exceeded during short-term events such as utility outages and/or severe wind storms. If the Ambient Sound Pressure Level exceeds 55 db(A), the standard shall be ambient db(A) plus 5 db(A).
 - i. db(A) LMAX
 - 1. Non participating member
 - a. Day time 55 LMax
 - b. Night period of 10 pm to 6 am
 - i. 45 LMax during night period
 - c. Non participating sound measured at the property line
 - 2. Participating
 - a. Day & nighttime 55 LMax
 - b. Measured at occupied building
 - ii. Db(C) LMax
 - 1. Non participating member
 - a. Daytime 65 LMax
 - b. Night period 55 LMax
 - 2. Participating member
 - a. No restrictions

7. Minimum Ground Clearance: The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than seventy-five (75) feet.
8. Signal Interference: No large-scale Wind Energy Facility shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antennas for television, radio or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. In the event that verified interference is experienced and confirmed by a licensed engineer, the Applicant must produce confirmation that said interference has been resolved to residents' satisfaction within ninety (90) days of receipt of the complaint. Any such complaints shall follow the process stated in Sections C.26 and C27.
9. Signage. Sign at tower entrance to include company name and contact information, tower number, security information, Participating Land owner's name, WECS owner's name and operator's name, emergency telephone numbers and web address. If more than one WECS on access drive, each unit shall have further identification such that first responders can positively identify them. Warning signs shall also be placed on wind turbine towers, electrical equipment, and facility entrances.
10. Operational, Maintenance, and Issue Resolution: Each WECS and Testing Facility must be kept and maintained in good repair and condition at all times. If a WECS is not maintained in operational and reasonable condition or poses a potential safety hazard, the Applicant shall take expeditious action to correct the situation, including WECS removal. The Applicant shall keep a maintenance log on each WECS and must provide to the Township within 30 days of request.
11. Infrastructure Wiring: All electrical connection systems and lines from the WECS to the electrical grid connection shall be located and maintained underground. Burial depth shall be at a depth that causes no known environmental, land use, or safety issues. Depth shall be a minimum of 5ft below grade, be deeper than drain tile, and be in compliance with NEC 2014 or newer Code standards. The Planning Commission may waive the burial requirement and allow above-ground structures in limited circumstances, such as geography precludes, or a demonstrated benefit to the township. The waiver shall not be granted solely on cost savings to Applicant. Request for variation shall consider aesthetics, future use of land, and effect on nearby landowners. All Collection system wiring shall comply with all applicable safety and stray voltage standards.
12. Wind turbine towers shall not be climbable on the exterior.
13. All access doors to wind turbine towers and electrical equipment shall be lockable.

E. MISCELLANEOUS.

1. The applicant's maintenance and inspection records, complaint issues and non-redacted safety manual/log shall be generated annually, and submitted to the Township by July 1 of each year. Said records shall be subject to audit by the Township. Records should

contain current contact information and be updated whenever the contact information changes.

2. **Compliance with Wind Energy Facility Site Permit:** Following the completion of construction, the applicant shall certify that all construction is completed pursuant to the Wind Energy Facility Site Permit. (GIS overlay)
3. **Voltage:** The Applicant shall be responsible for compensation to residents for property, including livestock, health or other damaged by stray voltage caused by a WECS. Demonstrate WECS prohibits stray voltage, surge voltage, and power from entering ground.
4. **Complaint Resolution:** A complaint resolution process shall be established by the township. The form shall include, but is not limited to:
 - i. **Receiving and forwarding of complaints:** contact zoning administrator, paid for by the Applicant or WECS or Testing Facility owner. The Planning Commission will select a complaint resolution process with a neutral mediator who reports to the Township and facility operator simultaneously.
 - ii. **Investigation of Complaints:** Township shall initiate an investigation into a complaint within 60 days utilizing escrow funds to hire the appropriate expert (s).
 - iii. **Hearing of Complaints:** Township Board shall set a hearing date within 60 days of completion of Investigation of Complaints where experts, residents and/or Applicant may present information before the Township Board. Notice of hearing will be via certified mail.
 - iv. **Decision of Complaints:** Township Board shall issue a decision and corrective actions within 45 days from Hearing of Complaints. The Applicant shall have 30 days to take such corrective actions to address the complaint. Until the corrective action is taken and the issue fully resolved, the WECS shall be turned off and not operated.
 - v. **Applicant shall be required as a condition of approval to fund an escrow account for investigation of complaints for, but not limited to, shadow flicker, stray voltage, noise, and signal interference to the amount of \$15000.00 to be used at the discretion of the Township Board. When escrow account balance is below \$5,000.00, Township will notify Applicant and Applicant shall replenish account in the amount of \$15,000.00.**
 - vi. **Complaints:** If the Township Board confirms and issues a corrective action, SCADA data from any turbine shall be required and delivered to Township within 20 days of notification. SCADA data format will be determined by Township, Township licensed engineers, or Township

professional acousticians. Fees for providing data are not to exceed \$200/request. Residents may also request SCADA data under same terms. Common SCADA formats shall include meteorological and performance data such as, but not limited to, temperature, humidity, power output, RPM, wind velocity, wind direction, and nacelle vector. Data format will be determined by Township and in file formats such as “csv” or “xlsx”.

5. Compliance:

- i. Non-compliance with ordinance requirements during the SLUP process shall result in denial of the permit.
- ii. Non-compliance with post-construction ordinance requirements shall result in fines of \$1,000 per day and WECS decommissioning.
- iii. In addition to any other remedies or complaint resolution procedures set forth in this Ordinance, violations of this Ordinance shall also constitute a municipal civil infraction. Each day on which any violation of this Ordinance continues shall constitute a separate offense. The Township may bring an action for an injunction to restrain, prevent or abate any violation of this Ordinance.

6. Sale or Transfer of WEC Lease: In the event of transfer of sale of lease of tower, the WECS company shall notify the township. The proposed new WECS owner/operator shall be required to register with the Township Clerk prior to the transfer of ownership or operation of the WECS. The original security guarantee bond shall remain held by the Township notwithstanding any change of ownership and all accounts, including any escrow, surety bonds and savings accounts shall continue to stay open and fully funded, notwithstanding the sale. The new WECS owner/operator shall conform to all requirements of this Ordinance and any special land use permit issued pursuant to this Section.

7. Waiver: In the event the WECS does not meet the minimum setback, shadow flicker or noise requirements, a waiver may be approved by the Township, providing documentation in the form of a signed agreement with the affected property owner(s) and Participating Landowner, Township Supervisor, Township Zoning Administrator, and Township Clerk that is recorded with the Gratiot County Register of Deeds. The agreement shall state that the affected property owner(s) are aware of the setback, shadow flicker and noise requirements of this Ordinance and that consent is granted to exceed setback, shadow flicker, and/or noise maximum limits otherwise allowed. If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent setback, shadow flicker and/or sound impact easement must be recorded in the Gratiot County Register of Deeds which describes the benefitted and burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those otherwise permitted by this Ordinance may exist on or at the burdened property. The easement shall be permanent and may not be revoked without the consent of the Township, which

consent shall be granted upon either the completion of decommissioning of the benefitted WECS in accordance with this Ordinance, or the acquisition of the burdened parcel by the owner of the benefitted parcel.

SECTION 2.

If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 3.

All ordinances and/or parts of ordinances inconsistent with this ordinance are hereby repealed.

SECTION 4.

This ordinance shall take effect and be in force 7 days after publication as provided by law.

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