

Chapter Five

Development Standards

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5.1 Introduction

All structures, buildings, land uses, land use changes, structural alterations, structural relocations, structural additions, and structural enlargements that are constructed, created, established, or occur after the Effective Date of this ordinance (except as may otherwise be provided within this ordinance) shall be subject to all Development Standards and regulations for the applicable Zoning District.

5.2 Development Standards that Apply

Under the sections below are development standards arranged by category. The relevant four digit codes listed below (eg, LY-01) are referred to in the "Development Standards that Apply" section for each Zoning District.

5.3 Lot/Yard Standards (LY)

LY-01: All existing conflicts with the lot/yard regulations at the Effective Date of this Ordinance shall be considered a Legal Non-Conforming Lot.

Except hereinafter provided, no building or structure shall be erected unless such building or structure conforms: and no building or structure shall be altered, enlarged or reconstructed unless such alteration, enlargement, or reconstruction conforms with the lot/yard regulations of the district in which it is located, as follows:

- A. Front Yard Setbacks: The minimum Front Yard setbacks are designated for each Zoning District in Chapter 3.
- B. Side Yard Setbacks: The minimum Side Yard setbacks are designated for each Zoning District in Chapter 3.
- C. Rear Yard Setbacks: The minimum Rear Yard setbacks are designated for each Zoning District in Chapter 3.
- D. Lake Front Setbacks: In the LR District where a lot adjoins both a lake or lake channel and road right-of-way and where twenty-five (25) percent or more of the lots for a distance within three hundred fifty (350) feet of the proposed building on the same side of the road are occupied by existing buildings, the lake side shall be considered the front yard and the road side may be considered the rear yard. In this case, the lake side shall comply with the normal front yard setback regulations, but in no case shall the rear yard be less than fifteen (15) feet for either the principle or accessory structures. If less than twenty-five (25) percent of the lots are occupied by existing buildings, both the lake side and road side shall be considered front yards and shall comply with normal front yard setback requirements.

Where twenty-five (25) percent or more of the lots for a distance within three hundred fifty (350) feet of the proposed building on the same side of the road are occupied by existing buildings, the average setback of those buildings shall determine the front yard setback.

5.3.1 Lake Access Development Standards (LAD)

LAD-01: Lakeshore Frontage Requirements – The intent of this provision is to minimize the impact of Lake Access Developments and lake front developments on the shoreline and to (1) limit the funneling of lake access for multiple residences located on non-waterfront lots through waterfront lots, (2) establish a balanced and orderly relationship between Lake Access Developments and the amount of shoreline available for use by the owners of non-waterfront lots, and (3) to protect the natural lake assets of Whitley County from overburdening Lake Access Developments. This provision limits the practice of funneling numerous lake users through a waterfront lot intended for residential use. Funneling promotes very high density use of limited lakeshore property. It often results in undesirable overcrowding, access conflicts, sanitation, noise, parking and public safety problems.

Lake Access Developments in all zoning districts shall provide shoreline in compliance with the following linear footage requirements:

First Residential Unit	50 Feet of Shoreline
Second Residential Unit	25 Feet of Shoreline
Each Additional Residential Unit	15 Feet of Shoreline

The Developer of any Lake Access Development shall submit, with its exception, preliminary plat or development plan application, a certificate of survey depicting the waterfront lot shoreline and calculating the shoreline length. Such application may be granted only after submission of the required waterfront lot certificate of survey. In addition, the zoning administrator shall independently confirm the accuracy of the shoreline length calculation prior to the public hearing, or other determination required, for approval of the application.

This Amendment shall apply to modification of legal, non-conforming uses unless the change or alteration of the legal, non-conforming use maintains the same number of waterfront users or fewer waterfront users that the use had on the date of this Amendment, as calculated under this section of the ordinance. This number shall be supported through historical documentation and is subject to the requirements of all federal, state, and local regulations and requirements.

5.4 Height Standards (HT)

HT-01: No structure may be erected or changed so as to make its height greater than specified in its applicable Zoning District, except as noted below. Exceptions to height standards include:

- A. These specified height exceptions may exceed the permitted height regulations by twofold (x2) or seventy-five (75) feet: whichever is less.
 - 1. Church steeples
 - 2. Water Towers, and
 - 3. Transmission towers
- B. These specified height exceptions may exceed the permitted height standards by up to fifteen (15) feet.
 - 1. Necessary mechanical appurtenances, and
 - 2. Elevator bulkheads
- C. Telecommunication towers height standards shall be governed by Section 5.16 Telecommunication Facilities Standards of this Article.
- D. The following structures may exceed normal height requirements if their total height does not exceed their distance from the nearest lot line.

1. Agricultural structures such as: barns, silos, tanks, bins and windmills.
2. Industrial uses such as gas and liquid fertilizer tanks, power generating plants, substations, smokestacks, grain elevators, and other agricultural product processing and storage facilities, and industries requiring a vertical production procedure, such as flour mills, steel mills and refineries.
3. Special structures such as monuments, fire towers and flag poles.

5.5 Accessory Structures Standards (AS)

AS-01: The following Accessory Structure/Buildings Standards apply to the residential district(s). Accessory Structures/Buildings shall comply with all Development Standards for the Zoning District.

- A. The following Accessory Structures/Buildings are permitted, but must abide by all applicable Standards:
 - Antennas or satellite dishes,
 - Bath houses or saunas,
 - Decks,
 - Detached garages,
 - Gazebos,
 - Greenhouses,
 - Hot tubs,
 - Pole barns,
 - Mini barns,
 - Sheds,
 - Sport courts,
 - Storage buildings, and
 - Swimming pools.
- B. Accessory Structure/Buildings are not deemed to include: fences/screening, walks, driveways, decorative highway entrance features, curbs, retaining walls, utility installations for local service, such as pole lines and hydrants, landscaping, mailboxes, lamp posts, recreational equipment, bus hut, dog houses, and other such incidentals except as otherwise stated in this Ordinance.
- C. No mobile home or manufactured home may be used as an accessory structure in any district.
- D. No Accessory Structure/Buildings shall encroach on any platted easement unless written consent is granted by the agency, which utilizes the easement.

AS-02: The following Accessory Structure/Buildings Standards apply to the agricultural district(s). Accessory Structures/Buildings shall comply with all Development Standards for the Zoning District.

- A. The following Accessory Structures/Buildings are permitted, but must abide by all applicable Standards:
 - Agricultural buildings,
 - Antennas or satellite dishes,
 - Bath houses or saunas,
 - Decks,
 - Detached garages,
 - Gazebos,
 - Greenhouses,
 - Hot tubs,
 - Mini barns,

- Pole barns,
- Sheds,
- Sport courts,
- Storage buildings, and
- Swimming pools.

B. Dumpsters are permitted.

C. Accessory Structure/Buildings are not deemed to include: fences/screening, walks, driveways, decorative highway entrance features, curbs, retaining walls, utility installations for local service, such as pole lines and hydrants, landscaping, mailboxes, lamp posts, recreational equipment, bus hut, dog houses, and other such incidentals except as otherwise stated in this Ordinance.

D. No Accessory Structures/Buildings shall encroach on any platted easement unless written consent is granted by the agency, which utilizes the easement.

E. No mobile home or manufactured home may be used as an accessory structure in any district.

AS-03: The following Accessory Structure/Buildings Standards apply to the commercial district(s). Accessory Structures/Buildings shall comply with all Development Standards for the Zoning District.

A. The following Accessory Structure/Buildings are permitted, but must abide by all applicable Standards:

- Antennas or satellite dishes,
- Decks,
- Gazebos,
- Sheds,
- Storage buildings,
- Dumpsters, and
- Similar structures related to the primary use.

B. No Accessory Structures/Buildings shall encroach on any platted easement unless written consent is granted by the agency, which utilizes the easement.

C. No mobile home or manufactured home may be used as an accessory structure in any district.

AS-04: Manufactured Home Park Accessory Structure/Use standards are as follows:

A. Management offices, storage, mini-warehouses, laundry, dry cleaning facilities, and other structures customarily incidental to manufactured home parks shall be permitted, provided that the following criteria are met:

1. They are subordinate to the residential character of the park.
2. They are located, designed and intended to serve only the needs of the park.
3. The establishments shall present no visible evidence of their business nature to areas outside the park.
4. Parking shall be regulated in Section PK-01, PK-02, PK-03 and PK-05.

B. Each manufactured home lot is entitled to one (1) accessory structure in addition to a carport or garage. Attached or detached garages, mini-barns, barns, etc. are to be counted toward the total accessory building area. Unenclosed structures such as carports and gazebos are not to be

counted. The total area of all accessory structures shall not exceed 20% of the dwelling site. Permitted accessory structures are as follows:

- Carports,
- Decks,
- Garages
- Gazebos,
- Hot tubs,
- Mini barns,
- Patios,
- Sheds,
- Dog houses, and
- Swing sets.

C. Model manufactured homes as sales units are permitted provided the number of model homes is limited to 10% of the authorized units in the park.

D. No mobile home or manufactured home may be used as an accessory structure in any district.

5.6 Buffer Yard Standards (BY)

BY-01: A buffer yard provides transitional space and visual protection for differing land uses. Buffer Yard Standards include the following:

- A. If a property in an IPM or IN District is adjacent to AG, RR, LR, VC, or GC, a buffer shall be installed on the property located in the IPM or IN district. The following buffer standards shall apply:
1. The developer or owner of the subject property is responsible for installing the Buffer Yard.
 2. The adjacent property owner shall not have to participate in installing the Buffer Yard.
 3. An additional ten (10) feet of setback shall be required in addition to the normal setback on the yard(s) abutting the other zoning district.
 4. One (1) deciduous canopy tree planted a minimum of every thirty (30) feet, or coniferous every twenty (20) feet.
 5. All trees must be planted within five (5) to fifteen (15) feet from the property line and on the subject property.
 6. All trees must have at least a one and one-half (1 1/2") caliper, be properly maintained, and be replaced if the tree dies, is diseased, or is damaged from natural causes.
- B. In addition, a structure in an IN district must be a minimum of two-hundred (200) feet from any residential district. A buffer yard must be depicted on the development plan and installed prior to the issuance of an occupancy permit.
- C. If a property in a commercial district is adjacent to AG, RR, or LR, an additional ten (10) feet of setback shall be required in addition to the normal setback on the yard(s) abutting the other zoning district.

5.7 Performance Standards (PS)

PS-01: All uses established or placed into operation after the effective date of this Ordinance shall comply with the following performance standards in the interests of protecting public health, safety, and general welfare and lessening damage to property. No use on a property shall exhibit obnoxious characteristics to the extent that it constitutes a public nuisance or interferes with reasonable enjoyment of neighboring properties. No use in existence on the effective date of this Ordinance shall be altered or modified to conflict with these standards. The Right to Farm laws per current Indiana Code may supercede these regulations as they pertain to farming/agricultural uses.

- A. Air Pollution: No use on a property shall release fly ash, dust, smoke, vapors, noxious, toxic or corrosive matter or other air pollutants in such concentration as to be detrimental to health, animals, vegetation or property, or conflict with public air quality standards.
- B. Electrical Disturbance: No use on a property shall cause electrical disturbance adversely affecting radio, television or other equipment in the vicinity.
- C. Fire Protection: Fire fighting equipment and prevention measures acceptable to the local Fire Departments shall be readily available and apparent when any activity involving the handling and storage of flammable or explosive materials is conducted.
- D. Noise: No use on a property shall produce noise in such a manner as to be objectionable because of volume, frequency, intermittence, beat, shrillness, or vibration. Such noise shall be muffled or otherwise controlled so as not to become detrimental. Public safety sirens and related apparatus used solely for public purposes shall be exempt from this standard.
- E. Odor: No use on a property shall emit across lot lines any gas or matter with a bad odor in such quantity as to be readily detectable at any point along such lines.
- F. Vibration: No use on a property shall cause vibrations detectable beyond lot lines without the aid of instruments.
- G. Heat and Glare: No use on a property shall produce heat and glare in such a manner as to create a hazard to neighboring property, or transportation function.
- H. Waste Matter: No use on a property shall accumulate within the lot or discharge waste matter beyond the lot lines.
- I. Water Pollution: No use on a property shall produce erosion or other pollutants in such a quantity as to be detrimental to adjacent properties or to conflict with public water quality standards.

5.8 Environmental Standards (EN)

EN-01: The following standards pertain to environmental concerns in Whitley County, some of which are state regulated. This is not to imply that the county is enforcing state regulations, but to make the petitioner aware of them.

- A. Land Suitability: No land shall be used or structure erected where the land is unsuitable for such use or structure due to slopes greater than ten percent (10%), adverse soil or rock formation, erosion susceptibility, low percolation rate or bearing strength, or any other feature likely to be harmful to the health, safety, prosperity, aesthetics, and general welfare of the community.
- B. Drainage: Drainage swales (ditches) along dedicated roadways and within the right-of-way or on dedicated drainage easements are not to be altered, except for maintenance as originally constructed and as approved by Whitley County Highway Department, the Whitley County Drainage Board, or Indiana Department of Transportation. Driveways may be constructed over these or other approved structures as permitted by the appropriate agency.
- C. Permanent Structures: No permanent structures other than a fence may be erected within seventy-five (75) feet of the center line of any regulated tile ditch, or within seventy-five (75) feet of the existing top edge of any regulated open ditch or tile, or within any platted regulated subdivision easement, unless approved by the Whitley County Drainage Board.

- D. Code Compliance/Hazardous Waste: All development must be in compliance with Title 7 of the Indiana Code, as amended, as it relates to hazardous waste, low level nuclear waste, underground storage tanks, waste tires, and other applicable chapters of said Title.
- E. Code Compliance/Environmental Quality: All development must be in compliance with Title 13 of the Indiana Code, as amended, as it relates to air pollution control, water pollution control, solid waste management, and other applicable chapters of said Title.
- F. Waste Disposal: No waste materials such as garbage, rubbish, gasoline, oil, flammables, soils, tars, chemicals, greases, industrial or agricultural waste, or any other material of such nature, quantity, obnoxiousness, toxicity, or temperature so as to contaminate, pollute, or harm the waters shall be deposited, located stored, or discharged on any lot in a way that would be likely to runoff, seep, or wash into surface or ground water.
- G. Fuel Storage: No highly flammable or explosive liquids, solids, or gases specified by the State Fire Marshal shall be stored in bulk above ground, except tanks or drums of fuel connected directly with energy devices or heating appliances located and operated on the same lot as the tanks or drums of fuel.
- H. Projects Affecting Regulated Drains: Regulated drains are under the jurisdiction of the Whitley County Drainage Board. The Whitley County Drainage Board or Whitley County Surveyor shall review and approve all development or projects directly affecting a regulated open ditch or tile per IC 36-9-27, the Indiana Drainage Code.

EN-02: It shall be the responsibility of the owner of any lot or parcel of land developed for any use other than for agriculture to provide for adequate surface water drainage. Existing natural surface drainage should be utilized. Whenever the evidence available indicates that the natural surface drainage is inadequate the owner shall provide the parcel with an adequate water drainage system which shall be integrated into the drainage pattern of surrounding properties. All drainage plans shall be reviewed and approved by the Whitley County Drainage Board.

5.9 Floodplain Standards (FP)

FP-01: Statutory Authorization, Findings of Fact, Purpose, and Objectives.

Section A. Statutory Authorization.

The Indiana Legislature has in IC 36-7-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Board of Commissioners of Whitley County does hereby adopt the following floodplain management regulations.

Section B. Findings of Fact.

- (1) The flood hazard areas of Whitley County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, inadequately flood-proofed, or otherwise unprotected from flood damages.

Section C. Statement of Purpose.

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities.
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.
- (4) Control filling, grading, dredging, and other development which may increase erosion or flood damage.
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- (6) Make federal flood insurance available for structures and their contents in the County by fulfilling the requirements of the National Flood Insurance Program.

Section D. Objectives.

The objectives of this ordinance are:

- (1) To protect human life and health.
- (2) To minimize expenditure of public money for costly flood control projects.
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- (4) To minimize prolonged business interruptions.
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains.
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas.

FP-02: Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

A zone means portions of the SFHA in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-A30, Zone AO, Zone AH, Zone AR and Zone A99 on a FIRM. The definitions are presented below:

Zone A: Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown.

Zone AE and A1-A30: Areas subject to inundation by the one-percent annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. (Zone AE is on new and revised maps in place of Zones A1-A30.)

Zone AO: Areas subject to inundation by one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

Zone AH: Areas subject to inundation by one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

Zone AR: Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.

Zone A99: Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon completion of an under-construction Federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown.

Accessory structure (appurtenant structure) means a structure with a floor area 400 square feet or less that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

Addition (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

Area of shallow flooding means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) means the elevation of the one-percent annual chance flood.

Basement means that portion of a structure having its floor sub-grade (below ground level) on all sides.

Boundary River means the part of the Ohio River that forms the boundary between Kentucky and Indiana.

Boundary River Floodway means the floodway of a boundary river.

Building - see "Structure."

Community means a political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

Community Rating System (CRS) means a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

Critical facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

D Zone means unstudied areas where flood hazards are undetermined, but flooding is possible. Flood insurance is available in participating communities but is not required by regulation in this zone.

Development means any man-made change to improved or unimproved real estate including but not limited to:

- (1) construction, reconstruction, or placement of a structure or any addition to a structure;
- (2) installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;
- (3) installing utilities, erection of walls and fences, construction of roads, or similar projects;
- (4) construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
- (5) mining, dredging, filling, grading, excavation, or drilling operations;
- (6) construction and/or reconstruction of bridges or culverts;
- (7) storage of materials; or
- (8) any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" does not include activities such as the maintenance of existing structures and facilities such as painting, re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

Elevated structure means a non-basement structure built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, filled stem wall foundations (also called chain walls), pilings, or columns (posts and piers).

Elevation Certificate is a certified statement that verifies a structure's elevation information.

Emergency Program means the first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community's first floodplain ordinance.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency.

Flood means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM) means an official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) is the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FBFM (where applicable), and the water surface elevation of the base flood.

Flood Prone Area means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See "Flood")

Flood Protection Grade (FPG) is the elevation of the regulatory flood plus two feet at any given location in the SFHA. (see "Freeboard")

Floodplain means the channel proper and the areas adjoining any wetland, lake, or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the fringe districts.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage. Floodplain management regulations are also referred to as floodplain regulations, floodplain ordinance, flood damage prevention ordinance, and floodplain management requirements.

Floodproofing (dry floodproofing) is a method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.

Floodproofing certificate is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG. This certification must be by a Registered Professional Engineer or Architect.

Floodway is the channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

Freeboard means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

Fringe is those portions of the floodplain lying outside the floodway.

Hardship (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The Whitley County Board of Zoning Appeals requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic structures means any structures individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

Increased Cost of Compliance (ICC) means the cost to repair a substantially damaged structure that exceeds the minimal repair cost and that is required to bring a substantially damaged structure into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business flood insurance policies with effective dates on or after June 1, 1997, will include ICC coverage.

Letter of Final Determination (LFD) means a letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period unless the community has previously incorporated an automatic adoption clause.

Letter of Map Change (LOMC) is a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They include Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), and Letter of Map Revision based on Fill (LOMR-F). The definitions are presented below:

Letter of Map Amendment (LOMA) means an amendment by letter to the currently effective FEMA map that establishes that a property is not located in a SFHA through the submittal of property specific elevation data. A LOMA is only issued by FEMA.

Letter of Map Revision (LOMR) means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

Letter of Map Revision Based on Fill (LOMR-F) means an official revision by letter to an effective NFIP map. A LOMR-F provides FEMA's determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

Lowest adjacent grade means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means the lowest elevation described among the following:

- (1) The top of the lowest level of the structure.
- (2) The top of the basement floor.

- (3) The top of the garage floor, if the garage is the lowest level of the structure.
- (4) The top of the first floor of a structure elevated on pilings or pillars.
- (5) The top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:
 - a) the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters by providing a minimum of two openings (in addition to doorways and windows) in a minimum of two exterior walls; if a structure has more than one enclosed area, each shall have openings on exterior walls;
 - b) the total net area of all openings shall be at least one (1) square inch for every one square foot of enclosed area; the bottom of all such openings shall be no higher than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and,
 - c) such enclosed space shall be usable solely for the parking of vehicles and building access.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value), or adjusted assessed values.

Mitigation means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the cost of disaster response and recovery.

National Flood Insurance Program (NFIP) is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

National Geodetic Vertical Datum (NGVD) of 1929 as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means any structure for which the "start of construction" commenced after the effective date of the community's first floodplain ordinance.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community's first floodplain ordinance.

Non-boundary river floodway means the floodway of any river or stream other than a boundary river.

North American Vertical Datum of 1988 (NAVD 88) as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

Obstruction includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

One-percent annual chance flood is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See “Regulatory Flood”.

Physical Map Revision (PMR) is an official republication of a community’s FEMA map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

Public safety and nuisance means anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational vehicle means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

Regular program means the phase of the community’s participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.

Regulatory flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in FP-03 (B) of this ordinance. The "Regulatory Flood" is also known by the term "Base Flood", "One-Percent Annual Chance Flood", and "100-Year Flood".

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the structure before the damage occurred.

Section 1316 is that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

Special Flood Hazard Area (SFHA) means those lands within the jurisdiction of the County subject to inundation by the regulatory flood. The SFHAs of Whitley County are generally identified as such on the Whitley County, Indiana and Incorporated Areas Flood Insurance Rate Map dated May 4, 2015 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. (These areas are shown on a FIRM as Zone A, AE, A1- A30, AH, AR, A99, or AO).

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the

pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements or any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure".

Suspension means the removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

Variance is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

Violation means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

X zone means the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2 percent chance of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

Zone means a geographical area shown on a FIRM that reflects the severity or type of flooding in the area.

Zone A (see definition for A zone)

Zone B, C, and X means areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (Zone X is used on new and revised maps in place of Zones B and C.)

FP-03: General Provisions.

Section A. Lands to Which This Ordinance Applies.

This ordinance shall apply to all SFHAs and known flood prone areas within the jurisdiction of Whitley County.

Section B. Basis for Establishing Regulatory Flood Data.

This ordinance's protection standard is the regulatory flood. The best available regulatory flood data is listed below.

- (1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of Whitley County shall be as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of Whitley County, Indiana and Incorporated Areas dated May 4, 2015 and the corresponding Flood Insurance Rate Map dated May 4, 2015 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date.
- (2) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of Whitley County, delineated as an "A Zone" on the Whitley County, Indiana and Incorporated Areas Flood Insurance Rate Map dated May 4, 2015 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.
- (3) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.
- (4) Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA.

Section C. Establishment of Floodplain Development Permit.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities in areas of special flood hazard.

Section D. Compliance.

No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

Section E. Abrogation and Greater Restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section F. Discrepancy between Mapped Floodplain and Actual Ground Elevations.

- (1) In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles shall govern.
- (2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.
- (3) If the elevation (natural grade) of the site in question is above the base flood elevation and not located within the floodway, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner shall be advised to apply for a LOMA.

Section G. Interpretation.

In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements.
- (2) Liberally construed in favor of the governing body.
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Section H. Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of Whitley County, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance or any administrative decision made lawfully thereunder.

Section I. Penalties for Violation.

Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for Whitley County. All violations shall be punishable by a fine not exceeding \$50.00 for each offense.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The Whitley County Commissioners shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (3) Nothing herein shall prevent the County from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

FP-04: Administration.

Section A. Designation of Administrator.

The County Commissioners of Whitley County hereby appoints the Executive Director of the Whitley County Joint Planning and Building Department to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

Section B. Permit Procedures.

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically the following information is required:

(1) Application Stage.

- a) A description of the proposed development.
- b) Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams.
- c) A legal description of the property site.
- d) A site development plan showing existing and proposed development locations and existing and proposed land grades.
- e) Elevation of the top of the planned lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD.
- f) Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed.
- g) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering study is required and any watercourse changes submitted to DNR for approval and then to FEMA as a Letter of Map Revision. (See FP-04, Section C. (6) for additional information.)

(2) Construction Stage.

Upon establishment of the lowest floor of an elevated structure or structure constructed on fill, it shall be the duty of the applicant to submit to the Floodplain Administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. The Floodplain Administrator shall review the lowest floor elevation survey data submitted. The applicant shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project. Any work undertaken prior to submission of the elevation certification shall be at the applicant's risk.

Upon establishment of the floodproofed elevation of a floodproofed structure, it shall be the duty of the applicant to submit to the Floodplain Administrator a floodproofing certificate. Certification shall be prepared by or under the direct supervision of a registered professional engineer and certified by same. (The Floodplain Administrator shall review the floodproofing certification submitted.) The applicant shall correct any deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the floodproofing certification or failure to make correction required shall be cause to issue a stop-work order for the project.

(3) Finished Construction.

Upon completion of construction, an elevation certification which depicts the "as-built" lowest floor

elevation is required to be submitted to the Floodplain Administrator. If the project includes a floodproofing measure, a floodproofing certification is required to be submitted by the applicant to the Floodplain Administrator.

Section C. Duties and Responsibilities of the Floodplain Administrator.

The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.

Duties and Responsibilities of the Floodplain Administrator shall include, but are not limited to:

- (1) Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied.
- (2) Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations.
- (3) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to FP-05, Section E and G (1) of this ordinance, and maintain a record of such authorization (either copy of actual permit/authorization or floodplain analysis/regulatory assessment).
- (4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits/authorizations are to be maintained on file with the floodplain development permit.
- (5) Maintain and track permit records involving additions and improvements to residences located in the floodway.
- (6) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (7) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this ordinance.
- (8) Utilize and enforce all Letters of Map Change (LOMC) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.
- (9) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (10) Review certified plans and specifications for compliance.
- (11) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with FP-04, Section B.
- (12) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with FP-04, Section B.
- (13) Perform a minimum of three inspections to ensure that all applicable ordinance and floodplain development requirements have been satisfied. The first upon the establishment of the Flood Protection Grade reference

mark at the development site; the second upon the establishment of the structure's footprint/establishment of the lowest floor; and the final inspection upon completion and submission of the required finished construction elevation certificate. Authorized County officials shall have the right to enter and inspect properties located in the SFHA.

(14) Stop Work Orders

- a) Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease.
- b) Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

(15) Revocation of Permits

- a) The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
- b) The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.

FP-05: Provisions for Flood Hazard Reduction.

Section A. General Standards.

In all SFHAs and known flood prone areas the following provisions are required:

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (9) Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance.
- (10) Parking lots, driveways, and sidewalks within the SFHA shall be constructed with permeable materials.
- (11) Whenever any portion of the SFHA is authorized for use, the volume of space which will be occupied by the authorized fill or structure below the BFE shall be compensated for and balanced by an equivalent volume of excavation taken below the BFE. The excavation volume shall be at least equal to the volume of storage lost (replacement ratio of 1 to 1) due to the fill or structure.
 - a) The excavation shall take place in the floodplain and in the same property in which the authorized fill or structure is located.
 - b) Under certain circumstances, the excavation may be allowed to take place outside of but adjacent to the floodplain provided that the excavated volume will be below the regulatory flood elevation, will be in the same property in which the authorized fill or structure is located, will be accessible to the regulatory flood water, will not be subject to ponding when not inundated by flood water, and that it shall not be refilled.
 - c) The excavation shall provide for true storage of floodwater but shall not be subject to ponding when not inundated by flood water.
 - d) The fill or structure shall not obstruct a drainage way leading to the floodplain.
 - e) The grading around the excavation shall be such that the excavated area is accessible to the regulatory flood water.
 - f) The fill or structure shall be of a material deemed stable enough to remain firm and in place during periods of flooding and shall include provisions to protect adjacent property owners against any increased runoff or drainage resulting from its placement.
 - g) Plans depicting the areas to be excavated and filled shall be submitted prior to the actual start of construction or any site work; once site work is complete, but before the actual start of construction, the applicant shall provide to the Floodplain Administrator a certified survey of the excavation and fill sites demonstrating the fill and excavation comply with this article.

Section B. Specific Standards.

In all SFHAs, the following provisions are required:

- (1) In addition to the requirements of FP-05, Section A, all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:
 - a) Construction or placement of any structure having a floor area greater than 400 square feet.
 - b) Addition or improvement made to any existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land).
 - c) Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to it's before damaged condition equals or exceeds 50% of the market value of the structure (excluding the

value of the land) before damage occurred.

- d) Installing a travel trailer or recreational vehicle on a site for more than 180 days.
 - e) Installing a manufactured home on a new site or a new manufactured home on an existing site. This ordinance does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage.
 - f) Reconstruction or repairs made to a repetitive loss structure.
 - g) Addition or improvement made to any existing structure with a previous addition or improvement constructed since the community's first floodplain ordinance.
- (2) **Residential Structures.** New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of FP-05, Section B (4).
- (3) **Non-Residential Structures.** New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of FP-05, Section B (4). Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:
- a) A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the official as set forth in FP-04, Section C (12).
 - b) Floodproofing measures shall be operable without human intervention and without an outside source of electricity.
- (4) **Elevated Structures.** New construction or substantial improvements of elevated structures shall have the lowest floor at or above the FPG.

Elevated structures with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs must meet the following minimum criteria:

- a) Provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).
- b) The bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher.
- c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

- d) Access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
 - e) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
 - f) The interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade.
 - g) Openings are to be not less than 3 inches in any direction in the plane of the wall. This requirement applies to the hole in the wall, excluding any device that may be inserted such as typical foundation air vent device.
 - h) Property owners shall be required to execute a flood openings/venting affidavit acknowledging that all openings will be maintained as flood vents, and that the elimination or alteration of the openings in any way will violate the requirements of FP-05, B. (4). Periodic inspections will be conducted by the Floodplain Administrator to ensure compliance. The affidavit shall be recorded in the office of the Whitley County Recorder.
 - i) Property owners shall be required to execute and record with the structure's deed a non-conversion agreement declaring that the area below the lowest floor (where the interior height of the enclosure exceeds 6 feet) shall not be improved, finished or otherwise converted; the community will have the right to inspect the enclosed area. The non-conversion agreement shall be recorded in the office of the Whitley County Recorder.
- (5) **Structures Constructed on Fill.** A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following:
- a) The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file.
 - b) The fill shall extend ten feet beyond the foundation of the structure before sloping below the BFE.
 - c) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.
 - d) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
 - e) The top of the lowest floor including basements shall be at or above the FPG.
 - f) Fill shall be composed of clean granular or earthen material.
- (6) **Standards for Manufactured Homes and Recreational Vehicles.** Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements:
- a) These requirements apply to all manufactured homes to be placed on a site outside a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood:
 - (i) The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist

flotation, collapse, and lateral movement.

(ii) Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in FP-05, Section B. 4.

(iii) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

b) These requirements apply to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood:

(i) The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(ii) Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in FP-05, Section B. 4.

(iii) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

c) Recreational vehicles placed on a site shall either:

(i) be on site for less than 180 days;

(ii) be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or

(iii) meet the requirements for “manufactured homes” as stated earlier in this section.

(7) **Accessory Structures.** Relief to the elevation or dry floodproofing standards may be granted for accessory structures. Such structures must meet the following standards:

a) Shall not be used for human habitation.

b) Shall be constructed of flood resistant materials.

c) Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.

d) Shall be firmly anchored to prevent flotation.

e) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.

f) Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in FP-05, Section B. 4.

- (8) **Above Ground Gas or Liquid Storage Tanks.** All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement.

Section C. Standards for Subdivision Proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty (50) lots or five (5) acres.
- (5) All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA.
- (6) All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders).

Section D. Critical Facility.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

Section E. Standards for Identified Floodways.

Located within SFHAs, established in FP-03, Section B, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of a non-substantial addition/improvement to a residence in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval for the fill is required from the Indiana Department of Natural Resources.)

No action shall be taken by the Floodplain Administrator until a permit or letter of authorization (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway or letter of authorization has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in FP-05 of this ordinance have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources.

However, a community's more restrictive regulations (if any) shall take precedence.

No development shall be allowed, which acting alone or in combination with existing or future development, that will adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse effect is defined as an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.

For all projects involving channel modifications or fill (including levees) the County shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12.

Section F. Standards for Identified Fringe.

If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in FP-05 of this ordinance have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG.

Section G. Standards for SFHAs without Established Base Flood Elevation and/or Floodways/Fringes.

- (1) Drainage area upstream of the site is greater than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway (including letters of authorization) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

Once the Floodplain Administrator has received the proper permit for construction in a floodway (including letters of authorization) or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in FP-05 of this ordinance have been met.

- (2) Drainage area upstream of the site is less than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in FP-05 of this ordinance have been met.

- (3) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not increase the regulatory flood more than 0.14 of one foot and shall not increase flood damages or potential flood damages.

Section H. Standards for Flood Prone Areas.

All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet applicable standards as required per FP-05.

FP-06: Variance Procedures.

Section A. Designation of Variance and Appeals Board.

The Whitley County Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this ordinance.

Section B. Duties of Variance and Appeals Board.

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Whitley County Circuit Court.

Section C. Variance Procedures.

In passing upon such applications, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and;

- (1) The danger of life and property due to flooding or erosion damage.
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (3) The importance of the services provided by the proposed facility to the community.
- (4) The necessity of the facility to a waterfront location, where applicable.
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
- (6) The compatibility of the proposed use with existing and anticipated development,
- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site.
- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Section D. Conditions for Variances.

- (1) Variances shall only be issued when there is:
 - a) A showing of good and sufficient cause.
 - b) A determination that failure to grant the variance would result in exceptional hardship.

- c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- (2) No variance for a residential use within a floodway subject to FP-05, Section E or Section G (1) of this ordinance may be granted.
- (3) Any variance granted in a floodway subject to FP-05, Section E or Section G (1) of this ordinance will require a permit from the Indiana Department of Natural Resources.
- (4) Variances to the Provisions for Flood Hazard Reduction of FP-05, Section B, may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (6) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Flood Protection Grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (See FP-06, Section E).
- (8) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (See FP-06, Section E).

Section E. Variance Notification.

Any applicant to whom a variance is granted that allows the lowest floor of a structure to be built below the flood protection grade shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the flood protection grade will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and;
- (2) Such construction below the flood protection grade increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance.

Section F. Historic Structure.

Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an “historic structure” and the variance is the minimum to preserve the historic character and design of the structure.

Section G. Special Conditions.

Upon the consideration of the factors listed in FP-06, and the purposes of this ordinance, the Whitley County Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the

purposes of this ordinance.

FP:07: Severability.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

FP:08: Effective Date.

This ordinance (2015-03) shall be in full force and effect on May 4, 2015.

5.10 Parking Standards (PK)

PK-01: This section applies to multi-family residential uses and manufactured home parks. A minimum of two (2) off-street parking spaces are required per dwelling unit. Off-street parking is not permitted in a public right-of-way. Each space must be at least nine (9) feet wide and eighteen (18) feet long.

PK-02: All parking lots for commercial and industrial uses must be paved with asphalt or concrete, provided, however, that any parking lot that is located in the Agricultural Districts and is used in connection with a use that is designated as a permitted use, (under Sections 3.1 and 3.2), shall not be required to be paved with asphalt or concrete, but such parking lot shall be surfaced with a dust free and durable material. In addition, these parking lots must also conform to all the following requirements:

- A. All ingress/egress into parking areas must be paved with asphalt, concrete or other dust free and durable material.
- B. Parking areas must be constructed to allow proper drainage.
- C. Parking area must be designed as to prevent vehicles from having to back into public streets.
- D. Parking lots shall have a minimum front yard setback of ten (10) feet and a minimum side and rear yard setback of five (5) feet.
- E. Parking spaces required in this standard must be located either on the premises or on a lot approved by the Plan Commission. All required off-street parking spaces, however, must be located within six-hundred (600) feet of the respective lot.
- F. Parking spaces shall be a minimum of 9' X 18'. Indoor retail uses and food markets shall provide parking spaces a minimum of 10' X 18'. Parking aisle widths shall be as follows:
 - 90 degree angle space - 24' wide parking aisle
 - 60 degree angle space - 18' wide parking aisle
 - 45 degree angle space - 14' wide parking aisle
- G. A group of adjacent uses, within a development, may provide a joint parking area. The number of required parking spaces for each use within a development may be combined and then reduced by twenty (20) percent. A permanent written agreement signed by all property owners involved which shall include but is not limited to the following items: maintenance, snow removal, ownership, and liability. The agreement shall be reviewed/approved by the Zoning Administrator and/or Plan Commission Attorney, and then recorded in the office of the Whitley County Recorder with all properties involved in the agreement.

PK-03: To reduce traffic congestion and hazards along roadways, off-street parking shall be required for business and industrial uses. The following is a schedule of required parking spaces:

A. Residential and Lodging Uses:

1. Dwellings (one-family, two-family, multi-family, mobile home, or city authorized emergency dwelling) – Two (2) spaces per dwelling unit, excluding garages.
2. Dormitories, congregate housing or group homes – One (1) space for every two (2) beds, plus one (1) space for every 1,000 square feet of floor area.
3. Motel/Hotel – One (1) space per guest room plus one (1) space per every two (2) employees on the maximum shift.
4. Rooming or Boarding House – One (1) space for each guest room, but no less than two (2) total spaces in any event.

B. Commercial Uses:

1. Indoor Retail Uses – Five (5) spaces for each 1,000 square feet of floor area, except as otherwise herein noted.
2. Personal Service Uses – Five (5) spaces per 1,000 square feet of floor area except as otherwise herein noted.
3. General Offices – Five (5) spaces per 1,000 square feet of floor area.
4. Financial Institutions – Five (5) spaces per 1,000 square feet of floor area, plus one (1) space for each automatic teller unit. In addition, where the use involves drive-up banking, five (5) stacking spaces shall be provided for each drive-up window or delivery station.
5. Automobile, Truck, Recreational Vehicle, and Equipment Sales and Service Facility – One (1) parking space per 3,000 square feet of open sales lot area devoted to the sale, display, or rental of said vehicles or equipment; or four (4) spaces for every 1,000 square feet of interior showroom, whichever is greater; plus three (3) spaces for every service bay in garage repair areas, as well as one (1) space for every two employees on the maximum shift.
6. Automobile Service Station – One (1) space for each fuel dispenser nozzle, plus three (3) spaces for each service bay, or similar facility plus one (1) space for each vehicle used directly in conduct of the business or stored on the premises, as well as one (1) space for every two employees on the maximum shift.
7. Automobile, Truck, Recreational Vehicle Quick Repair Facility – Three (3) spaces for each service bay, or similar facility plus one (1) space for each vehicle used directly in conduct of the business or stored on the premises. Parking for employees is to be one (1) space for every two employees on the maximum work shift. There shall also be five (5) stacking spaces for each service bay.
8. Car Wash – Mechanical – Ten (10) customer parking spaces, plus stacking area five (5) times the capacity of the car wash.
9. Car Wash – Self Service – Three (3) stacking spaces for each car washing stall and two (2) drying spaces for each car washing stall.
10. Clubs, Lodges – Spaces equivalent to the combined requirements of the uses being conducted, such as hotel, restaurant, auditorium, etc.

11. Food Markets – Six (6) spaces for every 1,000 square feet of floor area. In those instances where the use involves a drive-up window, five (5) stacking spaces shall be provided for each window or delivery station.
12. Funeral Homes, Mortuaries – One (1) space for every 4 seats in the auditorium or chapel with ten (10) total spaces provided minimum.
13. General Contracting Services – Four (4) spaces for every 1,000 square feet of floor area, plus two (2) spaces for every three employees on the maximum shift, plus one (1) space for every vehicle customarily used in operation of the use or stored upon the property.
14. Research Facilities and Laboratories – Four (4) spaces for every 1,000 square feet of floor area up to 50,000 square feet, plus two (2) spaces for every 1,000 square feet of floor area over 50,000 square feet.
15. Restaurants, Bars, Taverns without drive-through or carry-out facilities – Sixteen (16) spaces per 1,000 square feet of seating area, plus two (2) spaces for every three employees on the maximum shift.
16. Restaurants, Bars, Taverns with drive-through or carry-out facilities – Thirty (30) spaces for every 1,000 square feet, of seating area plus two (2) spaces for every three employees on the maximum shift. There will be ten (10) stacking spaces for each drive-in window or delivery station.
17. Vehicle Storage Lots – Two (2) spaces for every 3 employees on the maximum shift, plus one (1) space for every vehicle customarily used in the conduct of the business or stored upon the premises.
18. Veterinary Clinics and Animal Hospitals – Four (4) spaces for every doctor plus one (1) space for every additional employee.

C. Industrial and Transportation Related Uses:

1. Manufacturing Plants – One (1) space for every employee on the maximum shift, plus one (1) space for every 400 square feet of office floor area.
2. Storage Warehouses – One (1) space for every 1,000 square feet of floor area within the warehouse, plus four (4) spaces for every 1,000 square feet of floor area in office use.
3. Terminal (air, bus, railroad, truck, and heliport) – One (1) space for every 200 square feet of lobby area, plus two (2) spaces for every three employees on the maximum shift, plus one (1) space for every vehicle used in the operation of the use or stored on the premises.
4. Storage or Extraction of Raw Materials – Two (2) spaces for every three employees on the maximum shift, plus one (1) space for every vehicle used in the operation of the use, or stored on the premises.

D. Cultural and Recreational Uses:

1. Amusement Parks – One (1) square foot of parking for each square foot of public activity area.
2. Athletic Fields – Thirty (30) spaces for every diamond or athletic field, or one (1) space for

every 8 seats, whichever is greater. (One seat is equal to 2 feet of bench length.)

3. Auditoriums, Theaters, Meeting Rooms and Places for Public Assembly (except as noted herein) – One (1) space for every 4 seats or one (1) space for every 50 square feet gross floor area when there is no fixed seating.
4. Bowling Alleys – Five (5) spaces for every alley.
5. Camping – One (1) dust free 10 X 30 space for every campsite.
6. Community Centers and Private, Not-for-Profit Recreation Centers, including Gymnasiums and Indoor Swimming Pools – Four (4) spaces for every 1,000 square feet of gross floor area.
7. Fairgrounds – Sufficient open land to accommodate all parking needs.
8. Golf Courses – Space Equivalent to one (1) percent of the total land area. Parking areas along roads or private drives internal to the use may be used to fulfill this requirement.
9. Miniature Golf Courses – Two (2) spaces per hole, plus one (1) space for each two employees on the maximum work shift.
10. Golf Driving Ranges – Two (2) spaces for every tee.
11. Gymnasium without bleachers or fixed seating (except as noted herein) – One (1) space for every 100 square feet gross floor area.
12. Handball, Racquetball Courts – Three (3) spaces for every court.
13. Ice and Roller Rinks – One (1) space for every 100 square feet of skating area or playing surface.
14. Indoor Soccer – Fifty (50) spaces for every playing field, plus one (1) space for every three seats of spectator seating (one seat equals two feet of bench length), plus two (2) spaces for every three employees on the maximum shift, but in no case less than one hundred (100) spaces.
15. Parks, Playgrounds, Picnic Grounds – Space equivalent to one percent of the total land area. Parking area available along park roads or private drives integral to the use may be used to fulfill this requirement.
16. Racetracks – One (1) space for every 4 seats. (One seat is equal to 2 feet of bench length.)
17. Retreats, having dormitories – One (1) space for every dormitory dwelling unit, plus two (2) spaces for every three employees on the maximum shift, plus one (1) space for every vehicle customarily used in operation of the use or stored on the premises.
18. Retreats, without dormitories – Sufficient parking area such that no vehicle need be parked on any street.
19. Stadiums, Sports Arenas, and Gymnasiums with spectator facilities – One (1) space for every 4 seats. (One seat is equal to 2 feet of bench length.)

20. Swimming Pools – Two (2) spaces for every 100 square feet of water area.

21. Tennis Courts – Four (4) spaces for every court.

E. Institutional Uses:

1. Churches – One (1) space for every 4 seats, (one seat equals 2 feet of bench length) plus one (1) space for every vehicle customarily used in operation of the use or stored on the premises.

2. Fire Stations – One (1) space for every employee on the maximum shift.

3. Group Homes – One (1) space for every 3 beds, plus one (1) space for every 2 employee on the maximum shift.

4. Hospitals – Two (2) spaces for every 3 beds, plus one (1) space for every staff doctor and employee on the maximum shift.

5. Libraries, Reading Rooms – Five (5) spaces for every 1,000 square feet of gross floor area, one (1) space for every 6 seats in an accessory auditorium, and two (2) spaces for every 3 employees on the maximum shift.

6. Nursing Homes – One (1) space for every 5 beds, one (1) space for every self-care unit, and one (1) space for every 2 employees on the maximum shift.

7. Police Stations – One (1) space for every 1 employee on the maximum shift, plus one (1) space for every vehicle customarily used in operation of the use or stored on the premises, one (1) visitor space per 1,000 square feet.

8. Postal Stations – Four (4) spaces for every customer service station, two (2) spaces for every 3 employees on the maximum shift, plus one (1) space for every vehicle customarily used in operation of the use or stored on the premises.

9. Schools, Public and Private, all Grades and Vocational – One (1) space for every employee, and one (1) space for every 3 students over 16 years of age plus one (1) space per bus stored at the facility.

10. Schools, Special – One (1) space for every employee.

PK-04: The following shall apply to the Village Commercial District.

A. Off-street parking is not required.

B. If the property owner chooses to have off-street parking the following will apply:

- a. All ingress/egress into parking areas must be paved with asphalt, concrete or other durable material.
- b. Parking areas must be constructed to allow proper drainage.
- c. Parking areas must be designed as to prevent vehicles from having to back into public streets.
- d. Parking lots shall have a minimum five (5) foot setback from the property.
- e. Parking spaces shall be a minimum of 9' X 18'. Indoor retail uses and food markets shall provide parking spaces a minimum of 10' X 18'. Parking aisle widths shall be as follows:
 - 90 degree angle space - 24' wide parking aisle

- 60 degree angle space - 18' wide parking aisle
- 45 degree angle space - 14' wide parking aisle

PK-05: No vehicle or tractor/trailer of any type may be used for the purpose of permanent storage.

5.11 Loading Standards (LD)

LD-01: There shall be provided off-street loading berths not less than the minimum requirements specified in this section in connection with any building or structure which is to be erected or substantially altered, and which requires the receipt or distribution of materials or merchandise by trucks or similar vehicles.

- A. Location: All required off-street loading berths shall be located on the same lot as the use to be served, and no portion of the vehicle shall project into a street or alley. No permitted or required loading berth shall be located within twenty-five (25) feet of the nearest point of intersection of any two streets.
- B. Size: Off-street loading berths for over-the-road tractor-trailers shall be one hundred and twenty (120) feet including the apron. For local pick-up and delivery trucks, off-street loading berths shall be at least sixty (60) feet total including the apron.
- C. Access: Each required off-street loading berth shall be designed with appropriate means of vehicular access to a street or alley in a manner which will not interfere with traffic movements. There shall be no maneuvering within the right-of-way.
- D. Surfacing: All open off-street loading berths shall be improved with a compacted base asphalt, concrete or some comparable all-weather, dustless material.
- E. Space Allowed: Space allowed to any off-street loading berth shall not, while so allocated, be used to satisfy the space requirements of any off-street parking areas or portions thereof.
- F. Waiver: In situations where the structure clearly does not need loading docks, the Plan Commission shall reduce the number required or eliminate the requirement.

5.12 Sight Triangle Clearance Standard (STC)

STC-01: The intent of the Sight Triangle Clearance Standard is to provide for visibility at intersections, driveways, curb cuts, and entrances for the safe movement of vehicles and pedestrians. Sight Triangle Clearance Standards apply to all intersections, drives, curb cuts and entrances and are determined by the Whitley County Highway Superintendent and specified in the County subdivision ordinance.

All intersections must maintain an area (Sight Triangle) where primary or accessory structures, trees, vegetation (other than agriculture crops), or signs (other than road signs) are not allowed to be placed or to project into the area. The Clear Sight Triangle is illustrated below.

The following triangle segment lengths will apply to the determination of a clear sight triangle:

- | | |
|------------------------------|---------|
| 1. along Principal Arterials | 40 feet |
| 2. along Minor Arterials | 40 feet |
| 3. along Collectors | 20 feet |
| 4. along Local Roads | 20 feet |

5.13 Open Space Standard (OS)

OS-01: The intent of the Open Space Standard is to allow adequate open space in the MP, Manufactured Home Parks District and the MR Multi-Family Residential District:

A minimum of 400 square feet per dwelling site, or a ¼ acre whichever is greater, shall be dedicated to open space, and a portion of which shall be an active recreational area. Open space shall be configured for the activity for which it is designed.

5.14 Home Occupation Standards (HO)

HO:01: Home Occupation: The intent of the Home Occupation provisions is to allow minimal commercial and professional activity within the residentially and agriculturally zoned districts, and which is clearly incidental and secondary to the use of the principal structure for dwelling purposes.

- A. General Restrictions and Limitations: Home occupations shall be permitted as an accessory use to a permitted residential use in any residentially or agriculturally zoned district subject to the requirements of this Section.
1. Permitted home occupations (non-traffic generating) shall be limited to those occupations conducted entirely by, internet, mail or telephone, those occupations in which the offered goods or services are delivered directly to a location other than the property where the home occupation is located, or those occupations where items are picked up from the customer at a location other than the property where the home occupation is located, the work performed, and then returned to the customer at the customer's location.

Note: Home occupations (traffic generating) requiring customer visits to the location of the home occupation for the purpose of receiving the goods or services offered may only be permitted by the Board of Zoning Appeals as a Special Exception.
 2. Home occupations shall be entirely operated from an enclosed, four-walled structure, provided that all doors (including garage doors greater than four (4) feet in width) shall be kept closed during use of the structure for a home occupation, except during incidental use for ingress and egress.
 3. Such use shall not occupy a total floor area greater than the amount of square footage represented by twenty percent (20%) of the total square footage of the principal structure whether operated from within the dwelling or in an accessory structure. For the purposes of this section, "total floor area of the dwelling" may include habitable basements, but shall not include cellars, garages (whether attached or detached), attics, or other non-habitable portions of the residence. For the purposes of this section, the total floor area occupied by the home occupation activity shall include the total floor area of any room or rooms, where the home occupation is conducted or supplies, material, inventory, or equipment is stored.
 4. The use of the property for an accessory home occupation shall be clearly incidental and subordinate to its principal use as a residence by its occupants, and shall not dominate or cause variations in the residential character of the property, principal structure, or surrounding neighborhood.
 5. There shall be no visible evidence of the home occupation, including but not limited to alterations to the exterior of the residence which changes the character thereof as a residence, exterior displays, or the outdoor storage of materials or equipment used in the home occupation. For the purpose of this section, "outdoor storage" shall include not only equipment or materials generally used in the occupation, but also the accumulation of used, discarded, or worn-out materials or manufactured products, any of which may or may not be reusable or saleable.
 6. Parking generated by the conduct of the home occupation shall be provided off-street and in

conformance with the Zoning Ordinance. The conducting of the home occupation shall in no way result in the parking of any motorized vehicle, other than those owned and registered in the name of the residents, either upon the lot upon which the home occupation is conducted, or the adjoining public or private street, overnight or longer.

7. The home occupation shall comply with the requirements of the General Performance Standards of Chapter 2. In no case shall any equipment or process be used which creates visual or audible interference in any radio or television receiver located off the lot which such home occupation is conducted, or which causes fluctuation in line voltage beyond the property line of the lot upon which the home occupation is conducted.
 8. The use of any tool or equipment powered by electricity, gasoline or diesel engine, or high pressure gas shall not be used before 8:00 A.M. or after 8:00 p.m. on any day.
 9. Persons who are not residents of the dwelling where the home occupation is being conducted, and who are engaged either as employees, subcontractors, independent contractors, or otherwise in the home occupation, shall not exceed two (2).
 10. Signage: Non-illuminated home occupation wall sign not exceeding two (2) square feet wall-mounted on the dwelling; and, if allowed with the Special Exception, one (1) non-illuminated yard sign not exceeding six (6) square feet in size per face. Other restrictions may apply. See Chapter 8, Signs.
- B. Home Occupation Approvals Non-Transferable: All home occupation approvals shall be for the originating applicant for a specific location, and may not be transferred to any other location by that applicant. Should the property upon which the home occupation is conducted be sold or conveyed to a different ownership or resident, a new home occupation approval will be required.
- C. Revocation of Home Occupation Approval: Upon a finding that an approved home occupation has become unsuitable or incompatible with the residential nature of the property or neighborhood where it is located through non-compliance with any of the requirements of this Ordinance, the Board of Zoning Appeals reserves full authority to revoke the home occupation. The Board, or its designee, shall notify the property owner that such an action is imminent, that the property owner will have thirty (30) days in which to prepare a response to the violations specified in the letter-of-intent to revoke the home occupation, and that the Board shall schedule the matter for a public hearing at the next available regular meeting date following the thirty (30) day notice period, at which time, all interested citizens will be given the opportunity to be heard. Said notice to the property owner of the intent to revoke the home occupation shall be delivered by either the United States Mail or through personal service. The public hearing shall be advertised in accordance with State Law and the Rules and Procedures of the Board of Zoning Appeals.

5.15 Adult Uses Standards (AU)

AU-01: Sexually Oriented Businesses: A Sexually Oriented Business may be permitted only in accordance with this section. A Sexually Oriented Business may be permitted as a Special Exception, in the General Commercial District, if it complies with the requirements of this Section, in addition to all other requirements for special exceptions.

- A. The Sexually Oriented Business must be at least 1,000 feet from any church, school, public park or day care center. However, if the Sexually Oriented Business is located within an incorporated city or town, the Sexually Oriented Business must be at least 500 feet from any church, school, public park or day care center. Measurements shall be made from the nearest portion of any building or structure used as part of the premises of the Sexually Oriented

Business, to the nearest point on the property line boundary of the premises upon which is located a church, school, public park or day care center.

- B. The Sexually Oriented Business must be at least 1,000 feet from the boundary of any residential district (i.e., RR, MR, LR, or MP). However, if the Sexually Oriented Business is located within an incorporated city or town, the Sexually Oriented Business must be at least 50 feet from the boundary of any residential district. Measurements shall be made from the nearest portion of any building or structure used as part of the premises of the Sexually Oriented Business, to the nearest point on the boundary line of the residential district.
- C. The Sexually Oriented Business must be at least 1,000 feet from any residence that is not located within a residential district. However, if the Sexually Oriented Business is located within an incorporated city or town, the Sexually Oriented Business must be 50 feet from any residence that is not located within a residential district. Measurements shall be made from the nearest portion of any building or structure used as part of the premises of the Sexually Oriented Business, to the nearest portion of any building or structure used as a residence.
- D. The Sexually Oriented Business must be at least 1,000 feet from any other sexually oriented business. However, if the Sexually Oriented Business is located within an incorporated city or town, the Sexually Oriented Business must be 500 feet from any other Sexually Oriented Business. Measurements shall be made from the nearest portion of any building or structure used as part of the premises of the Sexually Oriented Business, to the nearest portion of any building or structure used as part of the premises of the other Sexually Oriented Business.
- E. For the purposes of this Section, all measurements shall be made in a straight line, without regard to intervening structures or objects.
- F. Definitions:
 - 1. Adult Arcade: Any place to which the public is permitted or invited where coin-operated or slug-operated, or electronic, or manual devices are maintained to show images to ten or less persons per machine at any one time, and where the images displayed are distinguished or characterized by the depicting or describing of “specific sexual activities” or “specified anatomical areas”.
 - 2. Adult Bookstore or Adult Video Store: A commercial establishment which, as one of its principle business purposes offers for sale or rental, for any form of consideration, any one or more of the following:
 - a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, or video reproductions, slides, or other visual representations which depict or describe “specific sexual activities” or “specified anatomical areas”, or
 - b. Instruments, devices or paraphernalia, which are designated for use in connection with “specified sexual activities”.

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specific sexual activities” or “specified anatomical area” and still be categorized as Adult Bookstores, or Adult Video Stores. Such other business purposes will not serve to exempt said commercial establishments from being categorized as an Adult Bookstore or Adult Video Store as long as one of its principal business purposes is the offering for sale or rental for consideration the specified material which depicts or describes “specified sexual activities” or “specified

anatomical areas”.

3. Adult Cabaret: A nightclub, bar, restaurant, or similar commercial establishment which regularly features:
 - a. Persons who appear in a state of nudity or semi-nudity; or
 - b. Live performances which are characterized by the exposure of “specific sexual activities” or “specified anatomical areas”; or
 - c. Films, motion pictures, videocassettes, slides, or other photographic reproductions, which are characterized by the depiction or description of “specific sexual activities” or “specified anatomical areas”.
4. Adult Entertainment Facilities: Any commercial establishment, business or service, or portion thereof, which offers sexually oriented material, devices, paraphernalia or specific sexual activities, services, performances or any combination thereof, or in any other form whether printed, filed, recorded or live. The term “adult entertainment facilities” shall include but not be limited to such activities as included in the definition of sexually oriented business.
5. Adult Motel: A hotel, motel, or similar commercial establishment which offers a sleeping room for rent, which can be rented by the hour for a time period less than 10 hours. This does not mean that someone cannot check in and out of a room in a time period that is less than 10 hours, only that the cost for the room cannot be at a rate that is for less than 10 hours.
6. Adult Theater: A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity, or live performances which are characterized by the exposure of “specific sexual activities” or “specified anatomical areas”.
7. Areola: A circular area of a different color, surrounding a central point, as such an area surrounding the nipple of the breast.
8. Buttock: One of the two masses of muscle and fat tissue, divided by a cleft, that is prominent at the lower back of the torso, with both masses forming the seat.
9. Massage Establishment: Any business or enterprise which offers, sells, or provides, or which holds itself out as offering, selling or providing, massages which include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating or other tactile stimulation of the human body, by either male or female employees or attendants, by hand or other physical means including but not limited to any electrical or mechanical device.
10. Nude Model Studio: Any place where, for money or any other form consideration, a person who appears in a state of nudity, or displays “specified anatomical areas”, is provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay such money or other form of consideration. A nude model studio does not include and an exemption shall be made if a person appearing in a state of nudity did so in a modeling class operated:
 - a. By a school (licensed by the State of Indiana), a college, junior college, or university supported entirely or partly by taxation.

- b. By a private college or university who maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.
 - c. In a structure: (I) which does not have a sign visible from the exterior of the structure and no other advertisement that indicates a nude person is available for viewing; and (ii) where in order to participate in a class a student must enroll at least three days in advance of the class; and (iii) where no more than one nude model is on the premises at any one time.
11. Nudity or a State of Nudity: Means the appearance or display of bare human buttocks, anus, male genitals, female genitals or female breast.
 12. Semi-Nude: A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
 13. Sexual Encounter Center: A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration:
 - a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - b. “Specified Sexual Activities” between male and female persons and or persons of the same sex when one or more of the persons are in a state of nudity or semi-nude.
 14. Sexually Oriented Business: Includes an adult arcade, adult bookstore or adult video store, adult cabaret, adult entertainment facility, adult motel, adult motion picture theater, adult theater, nude model studio, or sexual encounter center.
 15. Specified Anatomical Areas: Male genitals in a state of sexual arousal, and or the vulva or more intimate parts of the female genitals or a simulation thereof.
 16. Specified Sexual Activities: Means and includes any of the following:
 - a. The fondling or other erotic touching, actual or simulated, of human genitals, pubic region, buttocks, anus, or female breasts;
 - b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
 - c. Masturbation, actual or simulated; or
 - d. Excretory functions, actual or simulated, as a part of or in connection with any of the activities set forth in A through C above.

5.16 Telecommunication Facilities Standards (TF)

TF-01: Intent: The intent of the following standards is to provide sensible and reasonable use of land for wireless telecommunications facilities and services. It is also intended to encourage sharing of telecommunication towers to make the best use of every tower location. Lastly, these standards are intended to minimize adverse, undesirable visual effects of towers through careful design, siting, and vegetative screening.

Wireless Telecommunication Facilities shall be located only in the AG, GC, IPM and IN Districts, and only with a Special Exception approval from the Board of Zoning Appeals.

All Wireless Telecommunication Facilities shall meet the following provisions:

- A. It shall be fully automated and unattended on a daily basis, and shall be visited only for periodic maintenance and emergencies.
- B. A proposal for a new telecommunications tower shall only be approved if the applicant provides evidence that co-locating can not be done to provide the needed coverage. The applicant must submit coverage maps as if they are using the existing facilities/towers in the area. The applicant must demonstrate that adequate coverage can not be found by using other facilities/towers or other tall structures in the area. The applicant shall show the need for the tower and that all alternatives have been exhausted, including cost details. The applicant shall locate on other tall structures such as grain legs, water towers, and utility poles if available in the service area. The Board must approve the overall coverage plan before the tower is placed.
- C. A propagation study will accompany an application for a new telecommunications tower (if co-location cannot be achieved.)
- D. Any proposed telecommunication tower shall be designed, and engineered structurally, electrically and in all other respects to accommodate both the applicants height and at least three (3) additional users. Towers must be designed to allow for future rearrangement of antennas upon the tower and accept antennas mounted at varying heights. The lot where the tower if located (or lease area) shall be large enough to accommodate all future anticipated accessory structures needed by future antenna users.
- E. No part of any wireless telecommunications facility nor any lines, cables, equipment, wires or braces in connection with either shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk, trails or property line.
- F. All antennas, tower and accessory structure constructed within the Whitley County Plan Commission jurisdiction, shall comply with the following requirements:
 - 1. All applicable provisions of the Building Code of the State of Indiana and the Federal Communications Commission.
 - 2. Towers shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind loading requirements of the Uniform Building Code.
 - 3. Towers and antennas shall be designed to conform to accepted electrical engineering methods and practices and to comply with the provisions of the National Electrical Code.
 - 4. Towers shall be constructed to conform to the requirements of Occupational Safety and Health Administration.
 - 5. An engineers certification shall be submitted to document and verify the design specifications but not limited to, the foundation for the tower, and anchors for the guy wires if used, co-location, strength requirements, for natural forces: ice, wind, earth movements, etc.
 - 6. Towers and antennas shall be designed and constructed, at a minimum, to withstand wind gusts of at least eighty (80) miles per hour with one-half inch of ice and to accommodate any

co-location requirements.

7. Except as required by Federal Aviation Administration or Federal Communications Commission, the antenna support structure shall not be illuminated by any artificial means and shall not display strobe lights.
8. Applicant must submit evidence of a contract with at least one carrier/provider before an improvement location permit will be issued.

G. The following requirements shall apply:

1. Minimum front, side and rear property setbacks equal to the height of the tower plus fifty (50) feet.
2. Maximum height of tower; three hundred (300) feet
3. Maximum height of accessory structure; fifteen (15) feet
4. Tower shall be placed no closer than five hundred (500) feet from any residential zoning district or commercial zoning district.
5. An eight (8) foot high security fence shall completely surround the tower and equipment building.

H. The following buffer plantings shall be located around the perimeter of the security fence of a wireless communications facility:

1. An evergreen screen shall be planted around the entire facility.
 - a. If hedges are used they shall be a minimum of five (5) feet tall and planted a maximum of ten (10) feet on center.
 - b. If evergreens are used they shall be a minimum of five (5) feet tall and planted a maximum of ten (10) feet on center.
2. Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.

I. The following shall apply to Existing Antennas and Towers:

1. Existing towers and antennas may continue in use for their current purpose but may not be replaced or structurally altered without complying in all respects to the requirements in this Ordinance.
2. Any request submitted to the Whitley County Plan Commission to install an antenna to be located on an existing approved or "grandfathered" tower will only require a building permit and a copy of the contract between the applicant company and the owner of the tower.
3. If such towers are hereafter damaged or destroyed due to any reason or cause whatsoever, the tower may be repaired and restored to its former location, and physical dimensions upon obtaining a building permit. However, if the cost of repairing the tower to the former use, physical dimensions, and location would be ten percent (10%) more than the cost of a new tower of like kind and quality, then the tower may not be repaired or restored except in full compliance with all requirements in this Ordinance.

J. Any tower, whether existing or approved under these regulations, unused or left abandoned for

one hundred and eighty (180) consecutive days shall be removed by the tower owner or land owner at their expense.

5.17 Miscellaneous Standards (MS)

MS-01: Junkyards and Scrap Metal Yards shall have an eight (8) foot opaque fence enclosing the junkyard and/or scrap metal yard area.

MS-02: For farm animals located on any parcel in the RR District or on any parcel 80,000 square feet (1.837 acres) and less in the AG District, a maximum of 1.25 animal units is permitted per minimum parcel size of one (1) acre of parcel area (prorated) ~~is required per animal unit~~, as determined from the following chart. For parcels larger than 80,000 square feet in the AG District, no acreage standard for farm animals applies. A confined feeding operation must maintain not more than the number of animal units as prescribed for each use listed in the AG or AGP Districts as determined from the following chart. The number of animal units is cumulative over all applicable species at a location. The Zoning Administrator shall determine the required minimum acreage for farm animals listed and for any animals not listed, inclusive of any permitted non-farm animals.

Animal Type	Units
Calves (150-750 lbs.) _____	.5
Feeder cattle (750-1,200 lbs.) _____	.75
Cows _____	1.0
Nursery pigs (up to 15 lbs.) _____	.1
Nursery pigs (15-50 lbs.) _____	.2
Grower/feeder pigs (50-100 lbs.) _____	.3
Finishing hogs (100 lb.-market wt.) _____	.4
Sows _____	.5
Boars _____	.5
Turkeys and Geese _____	.10
Chickens _____	.05
Ducks _____	.05
Sheep and Goats _____	.3
Horses _____	1.0

5.18 Manufactured Home Standards (MHS)

MHS-01: The following standards pertain to manufactured homes and mobile homes, and are intended to define the various types and their uses. Type I, II and III Manufactured homes must meet the requirements and specifications of Manufactured Homes as defined under Chapter 14 of the Zoning Ordinance of Whitley County, as amended hereto. Recreational vehicles or any manufactured structure, including but not limited to Park Models, which must be titled through the Indiana Bureau of Motor Vehicles (BMV) are prohibited.

A. Type I - Manufactured Home:

1. shall have been constructed after January 1, 1981 and must exceed nine hundred and fifty (950) square feet of occupied space in a double section or larger multi-section unit,
2. be placed onto a permanent foundation, crawlspace or basement,
3. be anchored to the ground or foundation, in accordance with the Indiana Residential Code and to the manufacturer's specifications,
4. have wheels, axles, and hitch mechanisms removed,
5. have utilities connected, in accordance with the Indiana Residential Code

and to the manufacturer's specifications,

6. have siding material of a type customarily used on site-constructed residences, in accordance with the Indiana Residential Code,
7. have roofing material of a type customarily used on site-constructed residences, in accordance with the Indiana Residential Code.

B. Type II - Manufactured Home:

1. shall have been constructed after January 1, 1981 must exceed three hundred and twenty (320) square feet of occupied space in a single, double, expando, or multi-section unit (including those with add-a-room units), must be a minimum of eight feet or more in width and forty feet or more in length, and must bear a seal certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Standards Law, 42 U.S.C. 5410, et seq., as amended.
2. be placed onto a permanent foundation, piers or other approved support system in accordance with the Indiana Residential Code,
3. be enclosed with foundation siding/skirting in accordance to the manufacturer's specifications,
4. be anchored to the ground or foundation in accordance to the manufacturer's specifications,
5. have hitch mechanisms removed,
6. have utilities connected in accordance to the manufacturer's specifications.

C. Type III – Manufactured Home:

1. shall have been constructed after January 1, 1981 must exceed three hundred and twenty (320) square feet certifying that it was built in compliance with the Federal Manufactured Housing Construction and certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Standards Law, 42 U.S.C. 5410, et seq., as amended.
 1. be placed onto piers or an approved support system in accordance with the manufacturer's specifications,
 2. be enclosed with foundation siding/skirting in accordance to the manufacturer's specifications,
 3. be anchored to the ground or foundation in accordance to the manufacturer's specifications,
 4. have utilities connected in accordance to the manufacturer's specifications.
- Existing mobile homes, which were constructed prior to June 15, 1976, are considered to be legal non-conforming uses, and for the purpose of the provisions of this ordinance shall be considered Type III manufactured homes.

MHS-02: Non-Conforming Manufactured Homes: A manufactured home placed and maintained on a tract of land and deemed to be a legal non-conforming use prior to the adoption of this ordinance shall continue to be a legal non-conforming use. If the non-conforming use is discontinued for a period of one (1) year, the land thereafter shall be used in conformity with all provisions of this ordinance.

MHS-03: Replacement of a Non-Conforming Manufactured Homes: A manufactured home

deemed a legal non-conforming use, may be replaced by a manufactured home, provided the replacement is of an equal or higher type.

MHS-04: Placement of Type II and III Manufactured Homes on a Construction Site: A Type II or III manufactured home may be placed on a building lot during the course of the construction of a conventional dwelling unit. The permit for the manufactured home must be issued in conjunction with the conventional dwelling unit permit or thereafter, and will expire within one (1) year, at which time the manufactured home must be removed from the property.

MHS-05: A Type II and III Manufactured Home may be occupied by a relative of the family residing in the permanent dwelling unit, when situated upon at least four (4) acres of land, provided the district specifications and requirements are met.

MHS-06: No manufactured home, mobile home or recreational vehicle may be used as an accessory structure in any district.

MHS-07: Due to the integral design, any structural alteration or modification of a manufactured home after it is placed on the site shall be approved by the County Building Inspector.

MHS-08: No recreational vehicle, as defined in Chapter 14, may be used as a dwelling unit in any district. For purposes of this ordinance, recreational vehicles include, but are not limited to, Park Models, or any other manufactured unit which is titled through the Indiana Bureau of Motor Vehicles.

5.19 Pond Standards (PD)

PDS-01: The following standards pertain to the installation, expansion or alteration of ponds, and are intended to define the various types and their uses.

PDS-02: Definitions. For the purposes of this Section, the following terms shall have the following meanings:

- A. "Application" means all documents, forms and other information that the Department may require an Owner to complete or provide in order to assist the Department in determining whether a proposed pond complies with the terms of this Section or otherwise to assist the Department in the enforcement of this Section.
- B. "Department" means the Whitley County/Columbia City Joint Planning and Building Department. In performing its duties under this Section, the Department may consult with, and may rely on any opinions or conclusions of, the County Engineer.
- C. "Owner" means the owner(s) of the tract or parcel of land on which the pond is located or is to be located.
- D. "Site Plan" means all drawings, descriptions, plans and/or specifications for the proposed pond and the tract or property on which it is located that are requested by the Department in order to assist the Department in determining whether a proposed pond complies with the terms of this Section.

PDS-03: Permit Required. In any zoning district, no new pond shall be constructed and no existing pond shall be substantially altered or expanded without a permit issued by the Department. The Department shall issue a permit in accordance with the provisions of this Section only if:

- A. The owner (or its authorized agent) signs and files with the Department an Application, including a Site Plan, and pays the required fee to the Department.

- B. The Department determines that the pond will comply with the terms of this Section based on the completed Application and Site Plan, any inspections, and any other information available to the Department.

PDS-04: Expiration: Revocation of Permit. A permit shall be valid for one (1) year after the date of issuance. If no substantial work has occurred in connection with the permit after one (1) year, the permit shall be null and void and the Owner shall be required to apply for and obtain a new permit. A permit shall be subject to revocation by the Department as follows:

- A. In the event of a violation of this Section, as hereinafter provided.
- B. If the applicant makes any material misrepresentation in connection with the Application and the issuance of the permit.
- C. If (i) the permit was issued as the result of an error or oversight by the Department or the Department determines for any reason that, under the terms of this Section, the permit should not have been issued and (ii) no substantial work has occurred in connection with the permit.

PDS-05: Minimum Standards. All ponds, and all activity in connection with the construction, expansion and maintenance of any pond, shall comply with the following minimum standards and requirements:

- A. All ponds shall be constructed and maintained in compliance with the following set back requirements:
 - 1. No portion of the water constituting the pond shall encroach upon any area within fifty (50) feet from the right-of-way of any public road.
 - 2. No portion of the water constituting the pond shall encroach upon any area within twenty (20) feet from any boundary line of the Owner's property; provided, however, that this set back requirement shall not prevent a pond from being constructed on two or more tracts of property if: (A) the permit Application is signed by the owner(s) of all of the tracts of property on which the pond will be constructed or (B) the location of the pond, as shown on a subdivision plat, is approved by the Whitley County Plan Commission as part of the approval of a subdivision under the Whitley County Subdivision Ordinance.
 - 3. No fill shall be placed within the right-of-way of any public road. Within ten (10) feet of the right-of-way of any public road, no fill shall be placed above an elevation six (6) inches below the elevation at the edge of the road surface.
- B. No excavation shall occur and no fill shall be placed within seventy-five (75) feet of any regulated drain unless authorized by the Whitley County Drainage Board in accordance with the Indiana drainage statute.
- C. If the pond has an outlet, the outlet shall be subject to the following requirements:
 - 1. If the outlet opens into the Owner's property, the outlet opening must be located at least fifteen (15) feet from the Owner's property boundary line and at least twenty (20) feet away from the right-of-way of any public road. Compliance with this provision shall not relieve the Owner from any additional duties under Indiana law with respect to the discharge of such water onto an adjoining property.

2. If the outlet opens into or connects to a county drain, the owner must obtain the prior approval of the County Surveyor or County Engineer in accordance with Indiana drainage statute.
 3. If the outlet opens into or connects to an outlet on another tract or parcel, the Owner must prove to the satisfaction of the Department that the Owner has all easement rights necessary to access such outlet.
- D. The pond shall be constructed so as not to increase the volume of water that exits the tract under normal conditions. Fill areas shall not obstruct the flow of surface water onto the Owner's property from adjacent properties. The Owner shall be responsible for the repair, replacement or relocation of any tiles, open ditches or other drainage facilities to the extent necessary to maintain the amount of drainage through the parcel or tract that existed prior to the construction of the pond.
- E. All ponds shall be constructed and maintained so as to prevent any soil erosion or other condition that obstructs or damages or threatens to obstruct or damage any public drain or drainage related improvements. The Owner shall remove spoil and resurface and re-seed degraded open ditch banks.

PDS-06: Variances. The Board of Zoning Appeals may (but shall never be required to) grant a variance from the setback requirements set forth in this Section in accordance with and subject to the following limitations:

- A. A variance may only be granted with respect to the setback requirements set forth in this Section PDS-05 (A). No other standards set forth in this Section may be subject of a variance.
- B. The Board of Zoning Appeals shall approve a variance only if it finds: (i) the approval will not be injurious to the public health, safety or general welfare of the community; (II) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; (iii) the proposed pond cannot comply with the setback requirements due to unique feature(s) existing on the property and either natural or man-made features exist or could be provided which would allow the pond to achieve the purposes of the setback requirements; and (iv) the variance has been approved by the Whitley County Drainage Board.

PDS-07: Right of Entry. The Owner shall notify the Department when work commences on the construction of the pond. The Department (including any person acting on its behalf) may enter onto the property at any reasonable time for the purposes of inspecting the property and determining or enforcing compliance with the provisions of this Section. By applying for a permit as provided in this Section, an Owner consents to such entry.

PDS-08: Enforcement Official. The Executive Director (or the equivalent officer or employee) of the Department is hereby designated as the official authorized to make decisions and take action on behalf of the Department in connection with the enforcement of this Section.

PDS-09: Complaints. Any person who believes a violation of this Section has occurred may file a written complaint with the Department. The complaint shall describe the alleged violation sufficiently so that the Department can investigate the matter. The Department shall investigate and may take action upon such complaint as provided in this Section.

PDS-10: Common Nuisance. A violation of this Section is declared to be a common nuisance.

PDS-11: Notice of Violation. In the event of a violation of this Section, the Department shall send written notice to the Owner describing the nature of the violation and the action required to correct the violation ("Violation Notice"). The notice requirement shall be satisfied if the Department mails the Violation Notice by U.S. Certified Mail, Return Receipt Requested, to the address of the Owner as shown in the records of the office of the Whitley County Auditor. The Violation Notice shall state a date on or before which the violation must be corrected, which date shall not be earlier than ten (10) days from the date the notice is mailed.

PDS-12: Stop Work Orders. At the time of giving the Violation Notice, or at any time thereafter, the Department may issue a stop work order requiring the immediate cessation of all work in connection with the pond. The stop work order shall be mailed to the Owner in the same manner as the Violation Notice and may be included with the Violation Notice. Upon the issuance of a stop work order, all work in connection with the pond shall cease immediately (except any corrective work required in the Violation Notice) until the Department gives notice that the violation has been corrected and the stop work order is released. If the Owner fails to comply with the stop work order, the Department may proceed immediately with any enforcement remedy and the Owner shall be deemed to have waived any right to cure or correct the defect within the time stated in the Violation Notice.

PDS-13: Remedies and Penalties. At the time of giving the Violation Notice, or at any time thereafter, the Department may issue a stop work order requiring the immediate cessation of all work in connection with the pond. The stop work order shall be mailed to the Owner in the same manner as the Violation Notice and may be included with the Violation Notice. Upon the issuance of a stop work order, all work in connection with the pond shall cease immediately (except any corrective work required in the Violation Notice) until the Department gives notice that the violation has been corrected and the stop work order is released. If the Owner fails to comply with the stop work order, the Department may proceed immediately with any enforcement remedy and the Owner shall be deemed to have waived any right to cure or correct the defect within the time stated in the Violation Notice.

- A. Revocation of Permits. The Department may revoke any permit issued for work on the property, including the permit for the pond. If a pond permit is revoked under this section, the Owner shall forfeit the right to obtain a pond permit for a period of five (5) years from the date of the revocation of the permit.
- B. Civil Lawsuit. The Department may refer the matter to its attorney to file a lawsuit and to invoke any legal, equitable or special remedy for the enforcement of this Section, including the right to enjoin a person or entity from violating, or continuing to violate any provision of this Section and/or maintaining a common nuisance and the right to have the violation removed or abated.
- C. Civil Penalty. The County shall have the right to recover from the Owner, in a civil action, a penalty in the amount of \$2,500.00 for each violation.
- D. Other Remedies. The Department may pursue any other applicable remedy or penalty provided by the ordinances of Whitley County, or by Indiana law, for the enforcement of this Section or the prosecution of the violation.

5.20 WIND ENERGY CONVERSION SYSTEM (WECS) OVERLAY DISTRICT

WECS, Wind Energy Conversion System Overlay District: This district establishes special land use and

development requirements for Wind Energy Conversion Systems. Specifically, it creates a supplemental zone that lies on top of an existing zoning district and is intended to add additional design standards and restrictions beyond those of the underlying zoning district in which it is created. The purpose of this district is to protect the special public interests incident to industrial wind farming and may cover parts of several zones or only a portion of a single zone. The WECS overlay district is limited to the following zoning districts: Agricultural (AG), Agricultural Production (AGP), Industrial Park Manufacturing (IPM) and Intensive Use (IN).

WECS-01 Permitting and application requirements are as follows:

A) An application for re-zoning to a WECS Overlay District must be submitted to the 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:

1. A WECS Project Summary, including:

- a. A general description of the project including its approximate name plate generating capacity, the potential equipment manufacturer, the type of WECS, the number of WECS Towers, the name plate generating capacity of each WECS Tower, the maximum height of the WECS Towers, the maximum diameter of the WECS rotors and the general location of the project.
 - b. A description of the applicant, owner, and operator, including their respective business structures.
 - c. 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.
2. The names, addresses and phone numbers of the applicants, owners and operators, and a list of all co-applicants. Additional co-applicants may be added at a later date.
3. A topographic map of the project site and the surrounding area which shall encompass an area at least a quarter mile radius from the proposed project site with contours of not more than two (2) foot intervals.

B) Following the creation of a WECS Overlay District, a Development Plan together with a petition for Development Plan Review, as specified in Chapter 7 of the Zoning Ordinance, must be submitted to the Plan Commission.

1. The petition for Primary Development Plan Approval shall include:

- a. A site plan at an appropriate scale showing 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 any 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 WECS Transportation Committee (as defined) and approved by the Whitley County Commissioners.
- c. A Drainage Plan approved by the Whitley County Drainage Board. The Transportation Plan and/or the Drainage Plan shall establish that the newly constructed WECS access roads shall not impede the flow of water and will comply with the county drainage ordinance or standards and policies of the Engineer/Surveyors Office and Drainage Board, as applicable.
- d. A Projected Sound Emissions Study (as defined) for the proposed WECS.
- e. A decommissioning plan approved by the Board of Commissioners providing for the method and payment of the anticipated cost of removing a WECS at the end of its serviceable life or upon it's becoming a discontinued or abandoned use to ensure that the WECS is properly decommissioned.

1. Content

A decommissioning plan shall include, at a minimum, the following:

- a. Assurance
Written assurance that the WECS will be properly decommissioned upon the expiration of its serviceable life or in the event of its discontinuance or abandonment.
- b. Cost estimates
For all WECS except Micro WECS, an estimate of the costs of decommissioning and removing the WECS upon the expiration of its useful life, or in the event of its discontinuance or abandonment. The cost estimates shall be made by a professional engineer, contractor, or other person with expertise or experience in decommissioning and removal of WECS, and shall be updated every five (5) years for approval by the Board of Commissioners.
- c. Financial assurance
The cost of removal and site restoration is the full responsibility of the applicant and/or owner/operator. In order to provide the greatest possible financial assurance that there will be sufficient funds to remove the wind energy system and to restore the site, the following steps shall be followed:
 - 1). For each wind energy system, the applicant/owner/operator shall determine an amount of money equal to the estimated removal and restoration cost.
 - 2). The Planning Commission shall require independent verification of the adequacy of this amount.
 - 3). This money shall be deposited in an escrow account specified by Whitley County, which may be an interest-bearing account. There

shall be no alternative to such an account. A surety bond, letter of credit, or other financial promise shall not be accepted.

- d. Abandonment
Verification under penalties for perjury, that all easements and/or leases for the WECS contain terms that provide financial assurances to the property owners to ensure that the WECS are properly decommissioned within one (1) year of the expiration of its serviceable life or in the event of its discontinuance or abandonment.
- 2. Discontinuation and abandonment
 - a. Discontinuation
All WECS shall be considered abandoned and a discontinued use after six (6) months without energy production, unless a plan is developed by the owner/applicant and approved by the Building Inspector outlining the steps and schedule for returning the WECS to service.
 - b. Removal
An applicant's obligations shall include removal of all physical material pertaining to the project improvements to no less than a depth of four (4) feet below ground level within three hundred sixty-five (365) days of the discontinuation or abandonment of the WECS or WECS project, and restoration of the project area to as near as practicable the condition of the site immediately before construction of such improvements.
 - c. Written notices
Prior to implementing procedures to resolve any alleged failure to comply with the Decommissioning Plan, the appropriate County body shall first provide written notice to the owner and/or operator, setting forth the alleged default(s). Such written notice shall provide the owner and/or operator a reasonable time period, not to exceed sixty (60) days, to resolve the alleged default(s).
 - d. Costs incurred by the County
If the County removes a WECS Tower and appurtenant facilities, it may sell the salvage to defray the costs of removal. Each permittee, by virtue of the issuance of its construction permit or Inspection Certificate grants a license to Whitley County to enter the property and to remove all WECS Towers and appurtenant facilities pursuant to the terms of its approved decommissioning plan.
- 3. Declaration of public nuisance
Any WECS, structure or portion thereof declared to be unsafe by the Whitley County Building Inspector by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with the approved Decommissioning Plan.
- f. A detailed shadow flicker assessment model and plan prepared by a registered

professional regularly engaged in this type of work with not less than three years experience, which contains the following information and meets the following requirements:

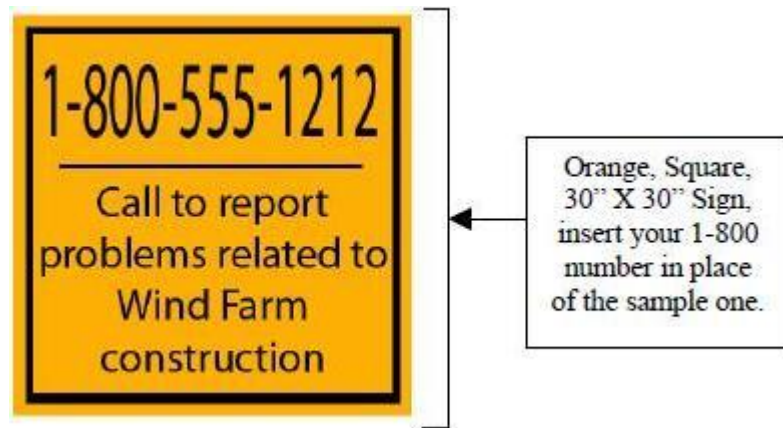
1. The study area will examine areas where shadow flicker will occur within a one mile radius of each wind turbine.
2. The study will include:
 - a. The location of each turbine.
 - b. The location of each receptor (dwelling or occupied structure, structure permitted for construction or intersections between any of the following road types: Interstate, Principal Arterial, Minor Arterial, Major Collector or Minor Collector) where the WECS may cause shadow flicker to occur.
 - c. Existing topography (elevation contours and vegetation)
 - d. Rotor diameter and hub height
 - e. Joint wind speed and direction distribution (wind rose table)
 - f. Hours of sunshine (long term monthly references)
3. The study may be prepared by use of current aerial photography, GIS, and topographical maps. A site visit by the preparer is required to identify receptors and verify the existing conditions.
4. The study shall calculate the locations and durations of shadow flicker caused by the proposed WECS within the study area, and model shall clearly indicate the duration of shadow flicker at each receptor and across the entire study area showing the total number of hours per year anticipated.
5. Wind Turbines shall be sited such that shadow flicker will not fall on a receptor, unless the owner of such dwelling or intersection as described in Section WECS 01 B.1.f.2.b. has agreed to in writing the allowance of shadow flicker. A waiver by an affected participating landowner or non-participating landowner or owner of a public building or intersection is an encumbrance on the real property, runs with the land until the wind energy system is decommissioned, and shall be recorded in the office of the Whitley County Recorder. Said waiver shall include the legal description of the property with a cross reference to the current deed's document number, and shall include verbiage to bind the grantees, their heirs, assigns, and successors in interest to the terms of the waiver.
6. Problem zones where shadow flicker will interfere with existing and future receptors shall be identified, and measures to mitigate problems shall be described, including but not limited to siting changes, operational procedures, grading or landscaping.
- g. A communications study verifying that the WECS Project will not interfere with any public or public serving utility microwave transmissions, and including any actions which may be required to mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS Project.
1. The petition for Secondary Development Plan Approval shall include:
 - a. A revised site plan as described in Section WECS-01(B)(1)(a).
 - b. A Security and Safety Plan which must include adequate provisions

for site security and safety. 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.

- c. Adequate Assurance of the Completion and Continued Operation of the WECS Project from the date of the commencement of construction through the tenth (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 manufacturers which have demonstrated financial ability to repair and/or replace defective work, materials, and equipment; and (4) adequate casualty, builders risk, business interruption, and liability insurance for the replacement of the WECS and the individual components thereof, and the funding of on an ongoing basis, and the payment of all liabilities occurring during, arising from, or related to a casualty loss. The applicant/owner/operator shall upon request provide such cost estimates, bids, contracts, warranties, feasibility studies, engineering studies and reports, insurance certificates, loan and other financing commitments to provide the requested information to provide adequate assurance of completion and continued operation.
 - d. An Economic Development Agreement (as defined) approved by the Whitley County Board of Commissioners. This agreement must be developed in conjunction with the Whitley County Economic Development Corporation and Whitley County Council.
- C) After Secondary 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 complied with and the following requirements satisfied:
- 1. The owner or operator of the WECS shall maintain liability policies covering (1) bodily injury and property damage and (2) environmental contamination arising from construction, operation, maintenance, and decommissioning of the WECS, with nationally recognized, well-capitalized insurance companies initially approved by the County Board of Commissioners and annually thereafter by the executive director of the Plan Commission and name Whitley County as an additional insured. Limits on the bodily injury and property damage policy shall be of at least \$2 million per occurrence and \$5 million in the aggregate with a deductible of no more than \$20,000 and on the environmental contamination policy shall be of at least \$1 million per occurrence and \$2 million in the aggregate with a deductible of no more than \$50,000.
 - 2. The applicant/owner/operator shall establish a 24-hour toll-free phone number for the registering of complaints and concerns. This number shall be posted at every road intersection identified on the Transportation Plan

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 as described in Section WECS-02(A)(7).

Required toll-free number sign example:



3. The applicant/owner/operator must attend a Pre-Construction Meeting between the Plan Commission Executive Director, Plan Commission President, Whitley 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 should already have been met. Once reviewed, if all requirements have been met, the WECS Applicant may then obtain Improvement Location Permits. If any requirements have not been met then further pre-construction meetings will be held until it can be verified that the identified issues have been resolved.
 4. All Improvement Location Permit fees must be paid for the entire WECS project before any Improvement Location Permits will be issued.
- D) The Rezoning Application, Development Plan (including but not limited to Decommission Plan and each update thereof and the assurance of completion and continued operations), and Improvement Location Permit applications shall be reviewed by Plan Commission staff, counsel, an independent professional engineer, and any other professionals deemed necessary as selected or approved by the Plan Commission. Within 30 days of submission, the owner/applicant/operator shall reimburse the 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 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.

WECS-02 Construction and Standards:

A) Prior to and during construction the applicant, owner and operator shall be responsible for:

1. Implementing reasonable dust control measures during construction as approved by an authorized county official.
2. Complying with existing septic and well regulation as required by the Whitley County Health Department and the Indiana Department of Public Health.
3. Repairing all damages to non-participating landowner or county regulated waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction, maintenance, or decommissioning of the WECS. Damages must be completely repaired to original or better condition, and so as not to impede the flow of water. All repairs must be completed in a timely manner and the 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 days of notification by the Surveyor/Engineer or his agent.
4. Unless otherwise approved with the drainage plan, all subsurface power transmission lines shall be located four (4) feet below tile drains and six (6) feet below open ditches. Additionally, 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/Engineer or his agent shall inspect every such crossing before backfilling. Concrete armoring techniques will not be required in cases where directional boring is used, but the depth requirements listed shall be met.
5. Installing permanent, visible markers where directional boring is used. Markers shall be placed within the line of sight indicating directional changes and borings.
6. Submitting a daily plan of work submitted at a time of day specified by the Plan Commission detailing where construction and transportation activities will occur to the Plan Commission Executive Director, County Highway Supervisor, County Sheriff, County Engineer, Soil & Water Conservation District, the Superintendent(s) of the School District(s) and County Board of Commissioners in which construction is occurring and to the emergency services with jurisdiction over the areas in which construction is occurring. This shall include notification of any oversize or overweight loads entering or exiting the project each day as well as any work on roads, drainage, or access roads.
7. Adhering to the approved Transportation Plan. The Whitley County Highway Supervisor shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage. The Whitley County Highway Supervisor 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 Supervisor 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 Whitley County Highway Supervisor 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 route(s) 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 Whitley County Highway Supervisor will issue a County Highway Remediation Release Form.

8. 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 Plan Commission. All material changes to the Plan must be approved by the 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.

B) Design and installation shall be as follows:

1. 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, Germanischer Lloyd Wind Energie, or an equivalent third party.
2. 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.
3. 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.
4. 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.
5. Towers and blades shall be painted with non-reflective white or gray color. The Applicant shall comply with all applicable Federal Aviation Administration color requirements. No advertising or signage shall be allowed on a WECS Tower, except for manufacturers name on the nacelle.
6. A visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
7. 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 8 feet high, 2) anti-climbing devices 15 feet vertically from the base of the WECS Tower, and/or 3) locked WECS Tower doors.
8. Red strobe lights are preferred during the night to reduce impacts on

migrating birds and red pulsating incandescent lights shall be avoided. White strobe lights at night are not allowed. If technology is available, lighting shall be "On Demand" utilizing the Obstacle Collision Avoidance System (OCAS) or equivalent. All lighting shall also be in compliance with applicable Federal Aviation Administration regulations. All lighting shall be shielded so that no direct light extends substantially beyond the boundaries of the wind farm facilities.

- C) NOISE: At any non-participating landowner residentially used structure, 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 45 decibels at Critical Wind Speeds. At any non-participating landowner property line 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 51 decibels at Critical Wind Speeds. All methods for measuring and reporting acoustic emissions shall be equal to or exceed the minimum standards for 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.
- D) 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 the arc of the blades. The minimum distance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel.
- E) Setbacks shall be as follows:
1. No WECS shall be constructed in any setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the county.
 2. 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 dedicated roadway, railroad right-of-way or overhead electrical transmission or distribution lines. A minimum setback of not less than 6.5 times the height of the WECS including the blade at its highest point, or 2,640 feet, whichever is greater, is required from a participating landowner residence. Also, the minimum setback distance for all turbines, substations, maintenance structures, storage yards, permanent Meteorological Towers, and other buildings that are a direct functional part of the WECS shall be not less than 2,640 feet or 6.5 times the height of the WECS including the blades at the highest point, whichever is greater, from any non-participating landowner property line, public building, or Municipal Jurisdictional Boundary. 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.
 3. A non-participating landowner or participating landowner may waive the applicable wind turbine setback distance from their respective property line or residence, however, the WECS shall maintain a minimum setback distance of 1.1 times the height of the WECS including the blade at its highest point. A waiver by an affected participating landowner or non-participating landowner or owner of a public building is an encumbrance on

the real property, runs with the land until the wind energy system is decommissioned, and shall be recorded in the office of the Whitley County Recorder. Said waiver shall include the legal description of the property with a cross reference to the current deed's document number, and shall include verbiage to bind the grantees, their heirs, assigns, and successors in interest to the terms of the waiver.

4. 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.

WECS-03 Post-construction and continued maintenance requirements are as follows:

A) 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.

B) The following operation, maintenance and inspection standards shall be met:

1. 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 a like-kind replacement), the Owner or Operator shall confer with the Building Inspector to determine whether the physical modification requires re-certification.
2. The Whitley 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 Whitley 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 fifteen (15) days after receiving notice from the Whitley County Building Inspector that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The Whitley 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 Whitley 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.
3. INTERFERENCE
Applicant, owner and/or operator shall take such actions as may be required to mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. In addition, the applicant, owner and/or operator shall comply with the following:
 - a. If a WECS Inspection Certificate has been issued, the owner or operator receives a

written complaint related to interference with the broadcast of residential television, telecommunication, communication or microwave transmissions, the owner of operator shall take reasonable steps to mitigate said interference. Interference with private telecommunications systems such as GPS shall be between the company and the complainant.

- b. Failure to remedy a complaint. If the Building Inspector determines that an owner or operator has unreasonably failed to remedy verified interference with the broadcast of residential television, telecommunication, communication or microwave transmissions within ninety (90) days after owner or operator received a written complaint related thereto, the Building Inspector may take appropriate action to rescind the owner's or operator's WECS Inspection Certificate. This does not apply to interference with private telecommunications systems.
 4. 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 in digital format, if requested. 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.
 5. On completion of construction the WECS applicant, owner or operator shall submit to the County Engineer/Surveyor a site map in digital format, preferably GIS 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 Engineer's specifications.
 6. For a period of five (5) years following the completion of construction the WECS applicant, owner or operator shall be liable to the county for all costs of repair, as determined by the County Surveyor/Engineer, 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 as described in Section WECS-03(B)(5).
- C) Any post-construction proposed non-material modifications, alterations, expansions, or changes of any type or size to the Development Plan must be approved by the Executive Director of the Plan Commission and all material post construction proposed changes must apply in the same way as a new WECS following the process in WECS 01. The Executive Director shall have the authority and discretion, considering all relevant factors, to determine whether the proposed post-construction change is material.

D) POST-CONSTRUCTION SOUND MEASUREMENTS

1. Within twelve (12) months after issuance of a WECS Inspection Certificate, and annually thereafter, the applicant, owner or operator of all WECS except private WECS shall submit a post-construction noise profile study prepared by a Qualified Independent Acoustical Consultant which includes sufficient information, including sound modeling and actual measurements, for the Building Inspector to verify, after consultation with a Qualified Independent Acoustical Consultant retained by the County, that the WECS continues to meet the requirements of WECS-02.C of this Chapter.
2. Post construction measurement methods will be based on good-engineering practices

and industry-recognized international standards for the measurement of WTG noise emissions, (IEC 61400-11) when applicable.

3. Post-construction sound measurements shall include measurements taken 1) at each non-participating landowner's dwelling or primary structure on a direct line between such dwelling or primary structure and the nearest WECS Tower, and 2) at the point on each non-participating landowner's property line which is closest to the nearest WECS Tower.
4. Post-construction sound measurements shall be collected during meteorological conditions which result in full electrical output of the WECS.
5. If post-construction sound measurements of ambient noise (WECS noise plus all non-WECS related noise) are less than or equal to the WECS-only noise limits specified in WECS-02.C, the WECS will be in conformance with noise limitations of this Chapter. Otherwise, WECS-only noise levels may be determined using practical acoustical measurement and/or analysis techniques including but not limited to: 1) conducting measurements with all WTGs locked-out, to estimate WECS-only noise levels, 2) use of spectral analysis techniques to estimate WECS-only noise levels, 3) use of acoustical models to propagate 'close-in' WECS measurements to 'far-field' receiver locations, etc.
6. If the Building Inspector determines, after consultation with a Qualified Independent Acoustical Consultant retained by the County, that the post-construction noise profile study fails to demonstrate continued compliance with the requirements of WECS-02.C of this Chapter, the Building Inspector shall notify the owner or operator of such failure in writing, and the owner or operator shall have ninety (90) days to cure such failure and provide written documentation of compliance to the Building Inspector. If the Building Inspector determines that an owner or operator of the WECS has failed to take reasonable steps to remedy such non-compliance within ninety (90) days, the Building Inspector may order the owner or operator of the WECS to take such actions as may be required to cure such failure, including, but not limited to, curtailing operation of the WECS, or components thereof, under the specific meteorological conditions which were in existence at the time the actual measurements contained in the report were taken, until the owner or operator has demonstrated to the satisfaction of the Building Inspector that it is in compliance with the standards set out in WECS-02.C and WECS-03 regarding the issues raised in the post-construction noise profile study. Any curtailment order shall specify the 1) hub height wind speed as measured at the WTG nearest to the complainant 2) wind direction as measured at the WTG nearest to the complainant 3) specific hour of the day (ranging from 7am to 10 pm) or specific hour of the night (from 10pm to 7am) and (4) days of the year for which curtailment applies. If curtailment does not return the WECS to compliance, the Building Inspector may revoke the owner or operator's WECS Inspection Certificate upon 15 days prior written notice thereof. An owner or operator whose WECS Inspection Certificate has been revoked may apply for reinstatement of its WECS Inspection Certificate after curing any compliance issues.

E) COMPLAINT RESOLUTION

1. After a WECS Inspection Certificate has been issued, a person aggrieved by an alleged failure of the owner or operator of the WECS to comply with the Construction Design and Installation Standards set out in WECS-02 or the Operation and Maintenance Standards set out in WECS-03 (the Standards) may file a written complaint with the Building Inspector specifying the factual basis for the alleged failure. If the Building Inspector determines that the facts alleged, if true, would constitute a

violation of the Standards, or otherwise has reason to believe that a violation has occurred, the Building Inspector shall notify the owner or operator of the alleged violation in writing, and deliver a copy of the complaint, if any, to the owner or operator.

The owner or operator shall:

- a. log the complaint,
- b. log the WECS operating and meteorological conditions for the reported time of the complaint,
- c. take reasonable steps to remedy such complaint,
- d. provide a written response to the complainant, and
- e. submit a copy of the complaint, the response, the operating and meteorological condition log, and documentation of compliance to the Building Inspector within 10 business days after receiving a copy of the written complaint.

2. Complaint resolution shall be deemed satisfactory when the owner or operator has demonstrated to the satisfaction of the Building Inspector that it has complied with the standards set out in WECS-02 and WECS-03 with respect to the issues raised in such written complaint.
3. If the Building Inspector determines that an owner or operator of the WECS has failed to take reasonable steps to remedy a complaint as set out in Subsection 2. above within ninety (90) days after receipt thereof, the Building Inspector may order the owner or operator of the WECS to take such actions as may be required to cure such failure, including, but not limited to, curtailing operation of the WECS, or components thereof, under the specific meteorological conditions which were in existence at the reported time of the complaint until the owner or operator has demonstrated to the satisfaction of the Building Inspector that it is in compliance with the standards set out in WECS-02 and WECS-03 regarding the issues raised in such written complaint. Any curtailment order shall specify the 1) hub height wind speed as measured at the WTG nearest to the complainant 2) wind direction as measured at the WTG nearest to the complainant 3) specific hour of the day (ranging from 7am to 10pm) or specific hour of the night (from 10pm to 7am) and (4) days of the year for which curtailment applies. If curtailment does not return the WECS to compliance, the Building Inspector may revoke the owner or operator's WECS Inspection Certificate upon 15 days prior to written notice thereof; provided however the Building Inspector's decision may be appealed to the Board of County Commissioners within thirty (30) days. An owner or operator whose WECS Inspection Certificate has been revoked may apply for reinstatement of its WECS Inspection Certificate after curing any compliance issues.

- F) Nothing in this Ordinance is intended to preempt other applicable state and federal laws and regulations.

WECS-04 All owners of 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 remonstrate nor file suit against any Wind Energy Conversion System or Whitley County so long as it follows industry accepted wind farming operation, construction, and maintenance standards and complies with the Whitley County Zoning Ordinance. Such agreement language shall be approved by the Commission Attorney.

Non-Commercial, Private, & MET Towers:

WIND ENERGY CONVERSION SYSTEM (WECS) – NON-COMMERCIAL

A Non-Commercial Wind Energy Conversion System shall meet the following standards:

WECS-05 Permitting and application requirements are as follows:

A) An application for Special Exception approval must be submitted to the Board of Zoning Appeals and may be a combined application provided all property owners where the WECS facilities are to be located are co-applicants. The applicant may also submit a joint application for any Variances that are needed for the project area. The application shall include the following items, in addition to the regular Special Exception Requirements:

1. A WECS project summary, including:

a. A general description of the project, including its approximate name plate generating capacity, the potential WECS equipment manufacturer, type of WECS, number of WECS, the name plate generating capacity of each WECS, the maximum height of the WECS Towers, the maximum diameter of the WECS rotors, and the general location of the project

b. A description of the applicant, owner, and operator, including their respective business structures.

2. The names, addresses and phone numbers of the applicants, owners and operators, and all co-applicants with WECS on their properties.

3. A map of the project area, encompassing an area at least a quarter mile radius from the project site.

B) After Special Exception 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 complied with and the following requirements satisfied:

1. A site plan at an appropriate scale showing the proposed location of the wind energy facility (including planned locations of each WECS Tower, guy lines and anchor bases (if any); electrical cabling; ancillary equipment; and any structures that are a direct functional part of the WECS). In addition, the site plan shall show: primary structures within one quarter of one mile of any WECS; property lines, including identification of adjoining properties; setback lines; public roads; county regulated drains, open ditches, or tiles; private septic systems, tiles, and wells; 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; floodplains; and any wetlands based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines.

2. If any oversize or overweight vehicles will be utilizing public county roads for construction or maintenance activities the WECS applicant, owner, or operator must contact the County Highway Supervisor to develop a Transportation Plan.

3. Written Whitley County Drainage Board and Whitley County Health Department Approval must be submitted with the application for Development Plan Review.

4. A copy of a recorded agreement between all applicants detailing provisions for maintenance and decommissioning shall be submitted with the application for Development Plan Review.

C) Design and installation standards shall be as follows:

1. Turbines of 50 kW name plate generating capacity or greater must be installed with a tubular, monopole type tower.
2. The minimum distance between the ground and any protruding blades for turbines of 50 kW name plate generating capacity or greater is twenty-five (25) feet. The minimum distance between the ground and any protruding blades for turbines of less than 50 kW name plate generating capacity is fifteen (15) feet.
3. No WECS Turbine or Tower may be attached to any residence or dwelling structure, either as freestanding or by guy wires.
4. For all guyed towers install either (A) visible reflective colored objects such as flags, reflectors, or tape on the anchor points of guy wires and along the guy wires up to a height of not less than 15 feet from the ground or (B) a single visible fence to a height of not less than four (4) feet such that it surrounds the tower and all anchors points of the guy wires.
5. 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.
6. All WECS turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Stall regulation shall not be considered a sufficient braking system for over-speed protection.
7. Towers and blades shall be painted with non-reflective white or gray color. The Applicant shall comply with all applicable Federal Aviation Administration color requirements. No advertising or signage shall be allowed on a WECS Tower, except for manufacturers name on the nacelle.
8. All blades shall utilize stick-free surface coatings to minimize ice buildup.
9. A visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
10. 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 8 feet high, 2) anti-climbing devices 15 feet vertically from the base of the WECS Tower, and/or 3) locked WECS Tower doors.
11. At any non-participating landowner residentially used structure, 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 45 decibels at Critical Wind Speeds. At any non-participating landowner property line 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 51 decibels at Critical Wind Speeds. All methods for measuring and reporting acoustic emissions shall be equal to or exceed the minimum standards for 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.

12. Red strobe lights are preferred during the night to reduce impacts on migrating birds and red pulsating incandescent lights shall be avoided. White strobe lights at night are not allowed. All lighting shall also be in compliance with applicable Federal Aviation Administration regulations and the lighting requirements in of the Zoning Ordinance. All lighting shall be shielded so that no glare extends substantially beyond the boundaries of the wind farm facilities.
13. Electricity generated from the WECS may not be sold to a utility. Net metering is permitted.
14. 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 dedicated roadway, participating landowner residences, non-participating landowner property lines, railroad right-of-way or overhead electrical transmission or distribution lines. Also, the minimum setback distance for all turbines, substations, maintenance structures, storage yards, permanent Meteorological Towers, and other buildings that are a direct functional part of the WECS shall be not less than 3.1 times the height of the WECS including the blade at its highest point from any non-participating landowner residences, public building, or Municipal Jurisdictional Boundary. 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.
 - c. A non-participating landowner may waive the applicable wind turbine setback distance from their respective residence, however, any residence or public building on a non-participating landowner property shall maintain a minimum setback distance of 1.1 times the height of the WECS including the blade at its highest point. A waiver by an affected non-participating landowner or owner of a public building is an encumbrance on the real property, runs with the land until the wind energy system is decommissioned, and shall be recorded in the office of the Whitley County Recorder. Said waiver shall include the legal description of the property with a cross reference to the current deed's document number, and shall include verbiage to bind the grantees, their heirs, assigns, and successors in interest to the terms of the waiver.
 - d. 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.

WECS-06 WIND ENERGY CONVERSION SYSTEM (WECS) – PRIVATE

A Private Wind Energy Conversion System shall meet the following standards:

WECS-06 Permitting and application requirements are as follows:

- A) Prior to receiving an Improvement Location Permit the applicant must provide a map of the project area, including distances of the proposed WECS Turbine from all property lines, public easements and right-of-ways, wells and septic systems, county-regulated drains, open ditches or tiles, and overhead transmission or distribution lines or dwellings.
- B) The applicant must submit turbine technical specifications with the application. At a minimum, the specifications must include; rated power generating capacity, rotor diameter, swept area, and the level of sound generated. If manufacturer's specifications are not available the Applicant may submit results from a reliable testing entity such as the National Renewable Energy Laboratory or the Small Wind Certification Council. If no specifications are available the Applicant must submit a report from a qualified engineer.
- C) The applicant must submit tower specifications with the application including type and height of tower (guyed, lattice, monopole, etc.) and combined height of the tower and turbine with vertically extended blade.
- D) Design and installation standards shall be as follows:
 - 1. The minimum distance between the ground and any protruding turbine blades is fifteen (15) feet.
 - 2. Installation of any WECS Tower may not be nearer than 1.1 times the height of the Tower including the blade at its highest point, to any property lines, dedicated roadway, railroad right-of-way or overhead electrical transmission or distribution lines. Distance shall be measured from the center of the foundation at the base of the tower.
 - 3. No WECS Turbine may be attached to any dwelling structure, including by guy wires.
 - 4. For all guyed towers install either (A) visible reflective colored objects such as flags, reflectors, or tape on the anchor points of guy wires and along the guy wires up to a height of not less than 15 feet from the ground or (B) a single visible fence to a height of not less than four (4) feet such that it surrounds the tower and all anchor points of the guy wires.
 - 5. All electrical components of the WECS shall conform to applicable local, state, and national codes, and relevant national and international standards.
 - 6. All WECS turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Stall regulation shall not be considered a sufficient braking system for over-speed protection.
 - 7. Towers and blades shall be painted with non-reflective white or gray color. The Applicant shall comply with all applicable Federal Aviation Administration color requirements. No advertising or signage shall be allowed on a WECS, except for manufacturers name on the nacelle.

8. All blades shall utilize stick-free surface coatings to minimize ice buildup.
9. Sound pressure levels may not exceed 45 decibels at six (6) feet in height at any adjacent lot line.
10. Electricity generated from the WECS may not be sold to a utility. Net metering is permitted.
11. Minimal lighting should be used. All lighting shall be in compliance with applicable Federal Aviation Administration regulations and the lighting requirements in the Zoning Ordinance. Red strobe lights are preferred during the night to reduce impacts on migrating birds and red pulsating incandescent lights should be avoided. White strobe lights at night are not allowed. All lighting shall be shielded so that no glare extends substantially beyond the WECS Tower.

WECS-07 METEOROLOGICAL TEST TOWERS Meteorological Test Towers must comply with the following standard:

- A) The structure shall not be nearer than 1.1 times the height of the structure from the nearest property line or right-of-way.
- B) The structure shall not be installed for a period of more than two (2) years, with up to two (2) renewals by the Plan Commission Executive Director, for no more than a total of six (6) years.
- C) A financial assurance in an amount of 125% of the estimated cost of said demolition and removal shall be filed in the form of a bond, letter of credit or other security acceptable to the county prior to Improvement Location Permit issuance.
- D) The structure shall comply with all Federal Aviation Administration and other federal and state regulations and all building codes.
- E) Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor point of guy wires and along the guy wires up to a height of not less than 15 feet from the ground.

Wind Related Definitions:

ADEQUATE ASSURANCE OF COMPLETION AND CONTINUED OPERATIONS OF THE WECS PROJECT: The term “Adequate Assurance of Completion and Continued Operations of the WECS Project” shall mean the financial commitments, insurance certificates, warranties, and all other information and data provided pursuant to Section WECS-01(B)(2)(c).

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

APPLICANT: The term “Applicant” when used in connection with or in respect of a WECS shall mean the person(s) and/or entity(ies) which is/are the developer and/or promoter of the WECS Project which prepares and files the initial application with the Plan Commission for a WECS Project, and the term shall include all successors and assigns of the initial Applicant. The term “Applicant” shall not include any person or entity which signs the application solely in the capacity as an Owner of an interest in real property in which the WECS shall be located.

CO-APPLICANT: The term “Co-Applicant” when used in connection with or in respect of a WECS shall mean a

person or entity which executes an application for a WECS solely because of an ownership interest in real property to be used in connection with the WECS.

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

CRITICAL WIND SPEED: The wind speed at which WECS turbine sound pressure levels are at greatest variance with ambient background sound pressure levels.

DECOMMISSIONING PLAN: The term “Decommissioning Plan” with regards to a WECS shall have the meaning and include the requirements set forth at WECS-01(B)(1)(e).

DEVELOPMENT PLAN (WECS): The term “Development Plan” with regards to a WECS shall have the meaning and content and meet the requirements set forth in WECS-01(B).

DRAINAGE PLAN: The term “Drainage Plan” with regards to a WECS shall mean the storm water management plan approved by Whitley County Drainage Board for the WECS Project as required by WECS-01(B)(1)(c).

ECONOMIC DEVELOPMENT AGREEMENT (WECS): With regards to WECS-01(B)(2)(d), an agreement between the WECS Applicant, Owner and/or Operator and the county setting forth the applicant, owner and/or operator’s financial commitment to support economic development and/or provide other financial assistance to the county, or any portion thereof.

NON-PARTICIPATING LANDOWNER: The person, firm, corporation, trust or other entity or entities with an equity interest in property contiguous to a WECS Project which is not a Participating Landowner.

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

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

PARTICIPATING LANDOWNER: A landowner upon whose land a WECS is constructed, or who has contractually granted rights to an Owner or Developer with respect to a WECS.

PRIMARY STRUCTURE: The building or structure in which the primary or principal use of the premises is located or conducted, with respect to residential uses, the primary building or structure shall be the main dwelling.

PROJECTED SOUND EMISSIONS STUDY: A study predicting the sound pressure levels that will be produced by a WECS Project. This study shall include a brief summary of the study methodology and a sound contour map in five (5) decibel increments displayed as an overlay on an aerial photograph of the project area to a minimum of 40 decibels. The study shall be done at the maximum turbine sound level as provided by the manufacturer.

QUALIFIED INDEPENDENT ACOUSTICAL CONSULTANT: A specialist with demonstrated competence in the area of environmental acoustics obtained through academic training or work experience with full membership in the Institute of Noise Control Engineering (INCE), Acoustical Society of America (ASA), or National Council of Acoustical Consultants, or equivalent credentials.

SHADOW FLICKER: The condition which occurs when the blades of a Wind Turbine pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his or her immediate environment.

SHADOW FLICKER RECEPTOR: Any occupied structure, structure permitted for construction, or roadway where

the WECS may cause shadow flicker to occur.

TRANSPORTATION PLAN: Detailed route plan recommended by the WECS Transportation Committee and approved by the Whitley County Commissioners used for construction and maintenance by a WECS including plans for temporary road closures and traffic re-routing, plans for the repairs, replacement and/or reconstruction of all damage to roads, bridges, signage, vehicles, drainage structures, and other public or private improvements damaged by the WECS construction and maintenance, and the posting of repair, replacement, and maintenance bonds and such other matters as may be determined to be necessary and appropriate to protect the health and safety of motorists and to preserve and maintain the affected roads, bridges, and other public and private improvements.

SECURITY AND SAFETY PLAN: The WECS Project site security and safety plan as provided by WECS-01(B)(2)(b).

WECS INSPECTION CERTIFICATE: The Certificate issued by the Building Inspector to verify continued compliance with all requirements of this Chapter which were in effect when the original Improvement Location Permit for the WECS or WECS project was issued.

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

WECS PROJECT: The collection of WECS - Commercial (as defined) as specified in the Development Plan (alternatively “the WECS Overlay Application”) pursuant to this ordinance.

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

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

WECS TRANSPORTATION COMMITTEE: A committee chaired by the County Highway Supervisor and including the County Sheriff or designee, School Superintendent(s) of the district(s) the WECS will be constructed in or designee(s), Fire Chief(s) with jurisdiction over the WECS Project Area or designee(s), Whitley County Engineer or designee(s), Soil & Water Conservation District Board Representative or designee(s), and other identified individuals which will review and recommend to the County Commissioners the proposed Transportation Plan submitted by a WECS Applicant.

WIND ENERGY CONVERSION SYSTEM (WECS) – COMMERCIAL: All necessary devices referred to in Chapter 5.20, WECS that together convert wind energy into electricity and deliver that electricity to a utility’s transmission lines, including but not limited to the rotor, nacelle, generator, WECS Tower, electrical components, WECS foundation, transformer, and electrical cabling from the WECS Tower, the substations, switching stations, meteorological towers, communications facilities and other required facilities and equipment, as related to the WECS Project.

WIND ENERGY CONVERSION SYSTEM (WECS) - NON-COMMERCIAL: A WECS facility referred to in WECS-05 of one or more turbines with a total name plate generating capacity of greater than 20 Kilowatts (kW) but no more than one Megawatt (MW) for the purpose of producing electricity on one or more contiguous parcels and not for resale or distribution by interconnection with a utility.

WIND ENERGY CONVERSION SYSTEM (WECS) – PRIVATE: A WECS facility referred to in WECS-06 consisting of not more than one turbine and with a total name plate generating capacity of no more than 20 Kilowatts (kW) for the purpose of generating supplemental electricity for the parcel on which the facility is located.

5.21 Confined Feeding Operations (CF)

CF-01: These standards apply to any Confined Feeding Operation (CFO). A CFO is defined by 327 IAC 19-2-7, as may be amended.

CF-02: Classes of CFO. For purposes of this Ordinance, the following classes are established to describe CFOs. Animal units are as defined in Section 5.17, MS-02.

A. Class 1 CFO. The proposed animal count meets the definition of a CFO, and the number of animal units is up to and including 1,200.

B. Class 2 CFO. The proposed number of animal units is 1,201 to 3,000.

C. Class 3 CFO. The proposed number of animal units is 3,001 to 12,000.

D. Class 4 CFO. The proposed number of animal units is more than 12,000.

CF-03: Development Standards.

A. For Class 1, 2, and 3 CFOs, the following are minimum distances from CFO barns and manure storage facilities to:

1. Natural lakes of 40 acres in area or more2,640'

2. Recorded major residential subdivisions.....1,320'

3. Off-site residences.....660'

4. Open waterways, storm drain inlets300'

B. If the owner of an off-site residence or adjacent property records a deed restriction acknowledging the presence of a Confined Feeding Operation and waiving the required separation in (A) above, then the separation will not be required for that residence.

C. For Class 2 CFOs proposed to be located within 2,640' of RR, MR, or LR zoning districts, the BZA during the Special Exception process shall consider and may impose conditions necessary for construction or installation of one or more buffering measures in order to mitigate potentially adverse effects from the CFO, as appropriate for the site and surrounding area.

D. For Class 3 CFOs proposed to be located within 2,640' of RR, MR, or LR zoning districts, the BZA during the Special Exception process shall impose conditions for construction or installation of one or more buffering measures in order to mitigate potentially adverse effects from the CFO, as appropriate for the site and surrounding area.

E. For Class 4 CFOs, these standards apply:

1. Minimum parcel size to construct a Class 4 CFO shall be 80 acres.

2. The minimum distance from Class 4 CFO barns and manure storage facilities to:

a. Natural lake of 40 acres in area or more5,280'

b. Recorded major residential subdivisions2,640'

c. Off-site residence.....1,320'

d. Property and right-of-way lines600'

e. Open waterways, storm drain inlets.....300'

3. The BZA during the Special Exception process shall impose conditions for construction or installation of one or more buffering measures from the following list, as it deems most applicable to mitigate adverse effects from the CFO:

a. Existing natural buffers

b. Windbreaks, per NRCS 3 row guidelines

c. Odor control measures

d. Other measures of comparable ability to mitigate adverse effects

F. The BZA shall require a traffic study and/or management plan for all Class 4 CFOs, and may require one for Class 2 or 3 CFOs.

G. An approved IDEM permit shall be required prior to issuance of a building permit/improvement location permit for a CFO.

CF-04: Expansions of existing CFOs.

A. Notwithstanding the provisions of Section 9.3(A), any legally established CFO as of [date of ordinance adoption] shall be permitted to expand or increase in animal unit count even if the CFO would be nonconforming with the development standards set forth above.

B. The expansion shall not increase the nonconformity.

C. Applicable Special Exception and Rezoning requirements shall still apply.

5.22 Major Residential Subdivision Standards (RS)

RS-01: For purposes of this Ordinance, “Major Residential Subdivision” shall be defined as:

- A. An existing residential subdivision of three (3) lots or more; or
- B. A total of three (3) platted lots or more split from one parcel in existence as of [date of ordinance adoption] (cumulative) intended for residential use; or
- C. Subdivisions intended for residential use that include new streets (public or private)

RS-02: Development standards

- A. The minimum distance, as measured from the nearest boundary of the subdivision plat at the property line, from a new major residential subdivision to:
 - 1. Class 1 or 2 CFOs1,320’
 - 2. Class 3 or 4 CFOs.....2,640’
- B. If the owner of a CFO records a deed restriction acknowledging the presence of a subdivision within the above separations, then the separation shall not be required for that subdivision.
- C. Major residential subdivisions shall access to a paved public road.
- D. For major residential subdivisions proposed to be located within 2,640’ of an existing Class 2, 3, or 4 CFO, the Plan Commission during the Preliminary Plat process shall impose conditions for construction or installation of one or more buffering measures in order to mitigate potentially adverse effects to or from the subdivision, as appropriate for the site and surrounding area.
- E. A stormwater management plan shall be required for major residential subdivisions. Discharge of stormwater directly to drains without a water quality measure shall be avoided.
- F. A traffic study and/or management plan may be required by the Plan Commission.

RS-03: AGP Standards. All new residential subdivisions within 300 feet of an AGP zoned property must address as part of the Primary Plat the following [this is existing text moved from Section 3.3]:

- A. Off site surface drainage impacts
- B. Subsurface tiling system impacts
- C. Security of AGP zoned property from residential uses.
- D. Subdivision plat notes and restrictive covenants on the property deeds holding harmless agricultural production in the AGP district when operating under normal practices.

5.23 Residential Development Overlay (RD)

The Residential Development Overlay is an overlay zoning district that may be applied to areas of the county that are expected to be developed and subdivided for residential uses within a reasonable timeframe, as may be determined by the availability or proximity of public sewer and water, developed transportation networks, lower suitability of the land for agriculture, character of current structures and uses, and proximity to other developed areas or municipalities. It is the intent of the RD district to encourage consistent quality residential development in these areas by providing additional minimum requirements.

RD-01: Uses. The permitted and special exception uses of the underlying zoning districts, except that the establishment of new Confined Feeding Operations or industrial uses shall not be permitted. For new Animal Feeding Operations (AFOs) in the RD district to be located on the same parcel or same parent parcel (being defined as the parcel in existence as of five (5) years prior to permit application), the number of animal units shall be calculated cumulatively.

RD-02: Roadside Strip Subdivisions. To minimize driveway cuts and to maintain access to tracts of land to be used for development, the following shall apply:

- A. A 100 feet wide public road frontage (minimum) to access the parent tract shall be maintained per three (3) new parcels (platted or unplatted) that directly access an existing county road.
- B. Subdivisions of ten (10) lots or more shall utilize internal streets for the majority of the lots.

RD-03: Landscaping. Landscaping as stated below shall be required for all residential subdivision development prior to the issuance of a certificate of occupancy. Extensions of up to 180 days may be granted to take advantage of optimal planting conditions.

- A. Perimeter plant material. Perimeter plant material shall be provided on the perimeter of subdivision development when adjacent to a public way as follows:
 - 1. A 20-foot landscaping area adjacent to the road or right-of-way. The landscaping shall be

located in an area designated as a landscaping easement or common area. All attempts should be made to avoid conflicts with drainage and utility easements that would prevent the installation of landscape materials in accordance with the ordinance.

2. Trees shall be provided at a minimum rate of six trees per 100 lineal feet of perimeter planting. Perimeter plantings shall be a roughly equal mix of deciduous canopy trees and evergreen trees.
 3. Tree calculations shall be prorated and rounded up to the nearest whole number for every foot over the initial 100 feet. Existing trees located within 50 feet of the perimeter road may count toward the requirement.
- B. Individual lots. For single-family lots, a minimum of three deciduous shade trees shall be planted in the front or side yards of the lot. Existing trees retained in the front or side yards may count toward this requirement.
- C. For the purposes of this subsection, deciduous trees shall be a minimum of 1.5" caliper in size and evergreen trees a minimum of 6 feet in height at the time of planting. In order for existing trees to count toward the minimum requirement, deciduous trees must be a minimum size of two-inch caliper and evergreens must be at least 7' in height.

RD-04: Street interconnectivity. To provide linkages between developments, in all subdivisions there shall be a plan for vehicular connections into undeveloped tracts or parcels of land submitted as part of a subdivision primary approval. Streets designed for future extensions shall be have public right-of-way platted to the subdivision property line so as not to create future right-of-way takings or purchases upon extension. A barricade shall be installed on the extension to prevent accidental passage into undeveloped areas.

RD-05: Pedestrian access. To encourage a pedestrian network in the county, subdivisions shall include trails and/or sidewalks.

- A. For major residential subdivisions, public sidewalks shall be constructed by the builder/lot owner at the time of construction of the residence. All sidewalk design and construction shall comply with the Americans with Disabilities Act (ADA), as amended, and the Whitley County Highway Specifications. Maintenance and repair of the sidewalks shall be the responsibility of the lot owner or homeowners association.
- ~~A.~~B. For major residential subdivisions with average lot areas of 80,000 sq. ft. or greater, a trail network that serves the lots in the subdivision may be proposed in lieu of sidewalks.