

HEGINS TOWNSHIP

ORDINANCE NO. 6 Book 4

Wind Energy Safety Ordinance

AN ORDINANCE OF THE TOWNSHIP OF HEGINS, SCHUYLKILL COUNTY REQUIRING AN APPLICATION AND PERMIT FOR WIND ENERGY FACILITIES; DEFINING WIND ENERGY FACILITIES; REQUIRING COMPLIANCE WITH APPLICABLE CONSTRUCTION CODE, REGULATORY AND MANUFACTURER'S REQUIREMENTS; REQUIRING CERTAIN SAFETY PROVISIONS; REQUIRING IDENTIFICATION OF ROADS AND PROVISIONS RELATED TO DAMAGE TO TOWNSHIP ROADS; REQUIRING INFORMATION AVAILABLE FOR LOCAL EMERGENCY SERVICE PROVIDERS; ADOPTING STANDARDS FOR NOISE AND SHADOW FLICKER; SETTING FORTH PROVISIONS FOR DECOMMISSIONING AT END OF USE OR USEFUL LIFE; REQUIRING DECOMMISSIONING FUNDS FOR DECOMMISSIONING COSTS; REQUIRING A DEVELOPMENT AGREEMENT; REQUIRING NOTICES TO PROPERTY OWNERS AND OCCUPANTS; REQUIRING NOTICE AND RESPONSE FROM REGULATORY AGENCIES; REQUIRING COPIES OF REPORTS REQUIRED BY OTHER AGENCIES; PROVIDING FOR APPEAL RIGHTS, REMEDIES AND FINES AND COSTS FOR VIOLATIONS; PROVIDING WAIVER PROVISIONS; REQUIRING GOOD UTILITY PRACTICE; INCLUDING SAFETY SETBACKS; FEE PROVISIONS AND INSPECTION PROVISIONS; INCLUDING FINDINGS OF FACT; REQUIRING A STUDY OF IMPACT ON WATER SOURCES.

WHEREAS, the Board of Supervisors are vested with responsibility for protecting the public health, safety, and welfare under provisions of the Second Class Township Code; and

WHEREAS, the Township is authorized pursuant to the Second Class Township Code to prohibit nuisances and the carrying on of offensive businesses; and

WHEREAS, the Township is concerned that the placement of unregulated Wind Energy Facilities create a potential danger to the public health, safety, and welfare, and endanger the watershed; and

WHEREAS, the Supervisors have determined, that under certain circumstances, the operation and construction of large Wind Energy Facilities can be fairly characterized as an offensive business and a nuisance to the general public and persons living in close proximity thereto.

NOW THEREFORE, BE IT ORDAINED AND IT IS HEREBY ORDAINED AND ENACTED AS FOLLOWS:

Section 1: Title. Wind Energy Safety Ordinance.

Section 2: Purpose. The purpose of this Ordinance is to require an application and a permit for Wind Energy Facilities and to set forth reasonable conditions to protect the public, health, safety and welfare of persons and property in Hegins Township. This Ordinance shall not apply to stand-alone wind turbines constructed primarily for residential or farm use on the property on which the Wind Turbines are located. The Supervisors make the following findings with respect to Wind Energy Facilities:

A. The construction, maintenance and operation of Wind Energy Facilities which fail to comply with the provisions set forth in this Ordinance and the provisions included in Exhibit “A” of this Ordinance, which is attached hereto and incorporated herein by reference, present tangible and immediate dangers to the public and neighboring landowners in the nature of ejection of projectiles (ice or injured birds), continuous generation of noise during night time hours and glare from sunlight continually flashing off of rotating blades;

B. The construction, maintenance and operation of Wind Energy Facilities presents a danger following the useful life of the Wind Turbine Generators from deteriorating structures if provisions for decommissioning are not made as required this Ordinance and Exhibit “A”;

C. The construction, maintenance and operation of Wind Energy Facilities, which fail to comply with provisions of this Ordinance and Exhibit “A”, including, but not limited to, the repetitive noise and glare, flickering reflections and/or shadows, constitute an unreasonable use of property which causes injury, damage, harm, inconvenience, annoyance, and discomfort to the property owners and residents in the legitimate enjoyment of their reasonable rights and use of their property and rights, and constitute a danger to migratory birds, bats and the watershed.

D. The Supervisors hereby declare that the construction and maintenance of Wind Energy Facilities will endanger the health, safety and welfare of the Occupant’s properties in the vicinity of the Wind Energy Facility and constitute an offensive nuisance and offensive business if the Wind Energy Facilities are not constructed and maintained in accordance with the provisions set forth in this Ordinance and the Development Agreement which is incorporated herein by reference.

Section 3:

“Applicant” is the person or entity filing an application under this Ordinance, including their respective heirs, successors and permitted assigns.

“Facility Owner” means the entity or entities owning or having an equity interest in the Wind Energy Facility, including their respective heirs, successors and permitted assigns.

“Hub Height” means the distance measured from the surface of the tower

foundation to the height of the Wind Turbine hub, to which the blade is attached.

“Occupied Building” means a residence, school, hospital, church, public library or other building used for public gathering that is occupied or in use when the permit application is submitted.

“Operator” means the entity responsible for the day-to-day operation and maintenance of the Wind Energy Facility.

“Turbine Height” means the distance measured from the surface of the tower foundation to the highest point of the turbine rotor (aka blade) tip in the highest point of its rotation.

“Wind Turbine” means a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any.

“Wind Energy Facility” means an electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind Turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

“Non-Participating Landowner” means any landowner except those on whose property all or a portion of a Wind Energy Facility is located pursuant to an agreement with the Facility Owner or Operator.

Section 4. Permit; Application Procedure.

(1) No Wind Energy Facility, or addition or modification thereto, shall be constructed or located within Hegins Township unless and until a permit has been issued pursuant to this Ordinance to the Applicant and the Facility Owner and the landowner have entered into a Development Agreement as provided in this Ordinance and any conditions set forth therein have been satisfied. All applicants for a permit for Wind Energy Facilities or any alteration or modification of a Wind Energy Facility shall comply with the requirements set forth in this Ordinance. The Hegins Township Code Enforcement Officer or other person or entity designated by the Supervisors by resolution as the person or entity to review analyze, and make decisions with respect to granting or not granting, recertifying, or revoking permits for Wind Energy Facilities (the “Permit Officer”). A permit shall not be granted or be valid until the Facility Owner and the Landowner have executed a Development Agreement pursuant to this Ordinance. If more than one entity owns or has an equity interest in the Wind Energy Facility, all such Facility Owners shall execute the Development Agreement and be collectively referred to herein and in the Development Agreement as the Facility Owner and the obligations of the Facility Owners and the Operator shall be joint and several.

(a) A pre-application meeting may be conducted in order to determine the sufficiency of the application prior to acceptance for filing purposes but this discretionary review shall not limit the rights and duties of the Permit Officer or person or entity designated by the Supervisors to receive applications for the Wind Energy Facilities.

(b) The Board of Supervisors may hire any consultant and/or expert necessary to assist the Permit Officer in reviewing and evaluating the application. An applicant shall deposit with the Township funds sufficient to reimburse the Township for all reasonable costs of consultant and expert evaluation and consultation to the Permit Officer in connection with the review of any application. The initial deposit shall be a base amount of \$1,500.00 for each application plus \$500.00 for each Wind Turbine. The Township Supervisors may modify this fee by resolution from time to time in keeping with the Township's experience with the cost of administering the provisions of this Ordinance. These funds shall accompany the submission of an application and the Township will maintain separate accounting for all such funds to be used for such costs. The Township's consultants/experts shall bill or invoice the Township for their services in reviewing the application and performing its duties. In the event that the amount paid to the Township is more than the amount of the actual billing or invoicing at the conclusion of the review process, the difference shall be promptly refunded to the applicant. The total amount of the funds set forth in subsection (b) of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed by Permit Officer to complete the necessary review and analysis. Additional escrow funds, as required and requested by the Township, shall be paid by the Applicant. Permit issued pursuant to this Ordinance shall be valid for a period of thirty (30) years, unless and subject to any shorter period specified in the Development Agreement. Any application for renewal shall satisfy all of the provisions set forth in this Ordinance or set forth in the Development Agreement which are incorporated herein by reference as Exhibit "A".

(c) At the time that an application for a permit for a Wind Energy Facility is accepted for filing purposes such person shall pay a non-refundable application fee the amount of which shall be determined by the Supervisors from time to time by resolution.

(2) An application for a permit for Wind Energy Facility shall be signed by the Applicant, by an officer of the Applicant which shall be the Facility Owner, with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the Applicant, shall also sign the application. The Operator, if different than the Applicant, shall also sign the application. Applications not meeting the requirements stated herein, or which are otherwise incomplete, may be rejected by the Permit Officer.

(3) The Applicant must provide written notice of the filing of an application to all property owners (and tenants occupying the property) who own property within 1,500 feet of each Wind Turbine. Proof of service of such notice by certified mail or notarized affidavit of hand delivery must be provided with the application when filed.

(4) The applicant shall include a statement in writing:

(a) That the applicant's proposed Wind Energy Facility shall be maintained in compliance with all conditions of this Ordinance, without exception, unless specifically granted relief by the Supervisors in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Township, County, State and Federal laws, ordinances, rules and regulations; and

(b) That the construction of the Wind Energy Facility is legally permissible including, but not limited to, the fact that the applicant is authorized to do business in the Commonwealth of Pennsylvania.

(5) No Wind Energy Facility shall be installed or constructed except as permitted under the applicable provisions of the Hegins Township Zoning and Subdivision and Land Development Ordinances.

(6) All applications for the use, construction or installation of new Wind Energy Facility shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the Commonwealth of Pennsylvania. Where this section calls for certification, such certifications shall be by a qualified Pennsylvania State licensed Professional Engineer. The application shall include the following information:

(a) A narrative describing the proposed Wind Energy Facility, including an overview of the project; the project location; the approximate generating capacity of each Wind Turbine or other Wind Energy Facility; the approximate number, representative types and height or range of heights of Wind Turbines to be constructed, including their generating capacity, dimensions, materials, color, lighting and respective manufacturers, and a description of ancillary facilities.

(b) A copy of the signed Lease, Agreement of Sale or other agreement which evidences the agreement between the property owner and the Facility Owner or Operator demonstrating that the Facility Owner or Operator has the permission of the property owner to apply for the permit and the necessary permits for construction and operation of the Wind Energy Facility and to own, operate and decommission the Wind Energy Facility.

(c) Identification of the properties on which the proposed Wind Energy Facility will be located, and the properties adjacent to where the Wind Energy Facility will be located.

(d) A site plan showing the planned location of each Wind Turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the Wind Energy Facility to the transmission line and substation(s), ancillary equipment, buildings, fences and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback, heights above existing grade.

(e) Documents related to decommissioning including a schedule for decommissioning.

(f) Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Permit Officer to determine whether the permit can be granted.

(g) Name, address and phone number of the person preparing the report;

(h) Name, address, and phone number of the record property owner (and all parties with any lease or equitable interest in the parcel or parcels included in the deed for the property on which the Wind Energy Facility is located (excepting utility easements), the Operator, and the Applicant, to include the legal form of each;

(i) Postal address and tax map parcel number of the property; and a copy of the recorded Deed for the property confirming the identity of the property owner.

(j) Zoning District or designation in which the property is situated;

(k) A site plan drawn to scale showing property line locations, size of the property stated both in square feet and lot line dimensions, power location, proposed Wind Energy Facility locations, driveways, fences, parking and landscape plan.

(l) Location of nearest Occupied Building to each Wind Energy Facility;

(m) Location of nearest habitable structure to each Wind Energy Facility;

(n) Location, size and height of all structures on the property which is the subject of the application;

(o) Location, size and height of all proposed and existing Wind Energy Facilities and all appurtenant structures.

(p) Type, locations and dimensions of all proposed fencing;

(q) Copies of any propagation or migration studies, wetlands, historic or endangered species studies that the applicant has performed as required under any federal or state law or regulation;

(r) An in depth environmental study a qualified hydro geologist specifically assessing the impact of the proposed Wind Energy Facility, including both the Wind Turbine and road construction will have on the ground water beneath and in the vicinity of the proposed Wind Energy Facility. The study shall include an analysis of the potential impact or dangers to both municipal and private water sources

(s) A plan to remediate any and all adverse impacts, if any, to water wells, reservoirs and springs located within a one mile radius of any Wind Energy Facility occasioned by or in any manner related to the installation, operation, maintenance and repair or decommissioning of the Wind Energy Facility. The plan shall also include a statement explaining the technology utilized to minimize the impact of the Wind Energy Facility on existing surface and groundwater flows from all construction associated with installation and operation of the Wind Energy Facilities. The plan should also include a statement of what preventative measures will be utilized, if necessary, to insure that the installation and operation of the proposed Wind Energy Facility will not cause groundwater contamination in violation of any applicable law.

(7) Documentation that the Applicant has presented a copy the Application by certified mail, return receipt requested, to the following agencies and any other federal or state agencies that have jurisdiction over the construction or operation of the Wind Energy Facility for their comments and recommendations regarding the planned location of the proposed Wind Energy Facility and associated structures. The Applicant shall provide the Township with a copy of all correspondence received from these agencies. The Applicant shall be required to follow all requirements and directives of these agencies and provide a letter of consistency from each agency. If any agency fails to respond within ninety (90) days of the date of the return receipt of the Applicant's request for review of the Application, this requirement will be satisfied as to the need to obtain a finding of consistency from that specific agency.

- i. U.S. Fish and Wildlife Service
Pennsylvania Field Office
315 South Allen Street, Suite 322
State College, PA 16801-4850
- ii. Pennsylvania Historical and Museum Commission, Bureau
of Historical Preservation
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120-0093
- iii. PA Department of Conservation and Natural Resources,
Bureau of Forestry
Central Office
6th Floor, Rachel Carson State Office Building
P.O. Box 8552
Harrisburg, PA 17105-8552
- iv. Pennsylvania Game Commission
2001 Elmerton Avenue
Harrisburg, PA 17110-9797
- v. Pennsylvania Fish and Boat Commission
1601 Elmerton Avenue
P.O. Box 67000
Harrisburg, PA 17106-7000

- vi. Hegins Hubley Municipal Authority
915 East Main Street
Hegins PA 17938
- vii. All branches of the U.S. Military, Military Reserve Units and Pennsylvania National Guard operating out of Fort Indiantown Gap Military Base;
- (viii) The operator of the Joe Zerbey Regional Airport in Schuylkill County, Pennsylvania.

(8) A permit under this Ordinance shall not be issued or if issued in error shall not be valid until the Facility Owner, Operator and the property landowner have entered into a Development Agreement for the Wind Energy Facility in the form of the Development Agreement attached hereto, the provisions and requirements of which are incorporated herein by reference as Exhibit "A" to the same extent as if set forth in the body of this Ordinance. The Development Agreement for each Wind Energy Facility shall be substantially in the form of Exhibit "A" and with such modifications reasonably required by the Township considering the specifics described in the Application and the required documents and materials submitted with the Application pursuant to this Ordinance. No Wind Energy Facility shall be constructed, operated or maintained in Hegins Township without a Development Agreement and a permit for such Wind Energy Facility. In addition to the provisions of the Development Agreement in the form attached hereto, the Development Agreement shall incorporate by reference the provisions of this Ordinance, including but not limited to the provisions in the following sections.

(9) Compliance with FAA Lighting. The applicant will provide a written copy of an analysis completed by a qualified individual or organization to determine if the Wind Energy Facility requires lighting under Federal Aviation Regulation Part 77. This requirement shall be for any new Wind Energy Facility or existing Wind Energy Facility where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA, and any related correspondence shall be provided in a timely manner. Lighting shall be limited to the minimum requirements of the FAA or other government regulatory

(10) Safety Design and Installation.

(a) Design Safety Certification. The design of the Wind Energy Facility shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.

(b) Uniform Construction Code. To the extent applicable, the Wind Energy Facility shall comply with the Pennsylvania Uniform Construction Code, Act 45 of 1999

as amended and the regulations adopted by the Department of Labor and Industry, and with the Hegins Township Uniform Construction Code Ordinance.

(c) Controls and Brakes. All Wind Energy Facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed 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 overspeed protection.

(d) Electrical Components. All electrical components of the Wind Energy Facility shall conform to relevant and applicable local, state and national codes, and relevant and applicable international standards.

(11) Visual Appearance; Power Lines.

(a) Wind Turbines shall be a non-obtrusive color such as white, off-white or gray.

(b) Wind Energy Facilities shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.

(12) Warnings.

(a) A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations to the extent required by applicable laws or regulations.

(b) Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten feet from the ground.

(13) Climb Prevention/Locks

(a) Wind Turbines shall not be climbable up to fifteen (15) feet above ground surface.

(b) All access doors to Wind Turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

(14) Regulations. The conditions to the granting of Permit shall include a requirement that the Wind Energy Facility shall also conform to all permits, approvals, or licenses, regulations, rules and requirements for such Wind Energy Facilities under any Federal, State or local law or ordinance or as adopted by any agency or department.

(15) Use of Public Roads.

(a) The Applicant shall identify all state and local public roads to be used within Hegins Township to transport equipment and parts for construction, operation or maintenance of the Wind Energy Facility.

(b) Hegins Township's engineer or a qualified third party engineer hired by Hegins Township and paid for by the Applicant, shall document road conditions prior to construction. The engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.

(c) The Permit Officer may require the applicant to bond the Township roads in compliance with Pennsylvania and Township as a condition to the granting of the Permit.

(d) Any road damage caused by the Applicant or its contractors shall be promptly repaired at the Applicant's expense to the satisfaction of the Township.

(e) The Applicant shall comply with all Federal and Pennsylvania permitting and bonding requirements for use of their roads.

(16) Local Emergency Services. The conditions to the granting of the present shall include the following requirements:

(a) The Applicant shall provide a copy of the project summary and site plan to local emergency services, including paid or volunteer Fire Department(s).

(b) Upon request, the Applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the Wind Energy Facility.

(17) Noise and Shadow Flicker

(a) Audible sound from a Wind Energy Facility shall not exceed forty-five (45) dBA, as measured at a distance of 500 feet in each direction from each Wind Energy Facility and at the exterior of any Occupied Building on any property of any Non-Participating Landowner. Methods for measuring and reporting acoustic emissions from Wind Turbines and the Wind Energy Facility shall be equal to or exceed the minimum standards for precision described in AWEA Standard 2.1 - 1989 titled *Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I: First Tier*. The audible sound limits shall be determined by night time conditions and not day/night averages.

(b) The Facility Owner and Operator shall make reasonable efforts to minimize shadow flicker to any Occupied Building on a Non-Participating Landowner's property, which efforts shall be determined by the Permit Officer and included in the conditions to the granting of the permit.

(18) Signal Interference. The conditions to the granting of the permit shall include the requirement that the Applicant shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television or similar signals, and shall mitigate any harm caused by the Wind Energy Facility.

(19) Liability Insurance. There shall be maintained by the Facility Owner or Operator a current general liability policy covering bodily injury and property damage with limits insuring just Wind Energy Facility and the operations of the Wind Energy Facility in Hegins Township of at least \$1 million per occurrence and \$1 million in the aggregate. Certificates shall be made available to Hegins Township upon request.

(20) Decommissioning.

(a) The Facility Owner and Operator shall, at its expense, complete decommissioning of the Wind Energy Facility, or any individual Wind Turbines, within (12) twelve months after the use of any individual Wind Turbine has been discontinued or abandoned by the Facility Owner or Operator or upon the expiration of the term of the Development Agreement and permit or the revocation of the Development Agreement following a default which has not been timely cured, whichever is earlier. In addition to the above, the Wind Energy Facility or any individual Wind Turbine will be presumed to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months and the decommissioning shall be completed within 12 months after the end of such useful life.

(b) Decommissioning shall include removal of Wind Turbines, buildings, cabling, electrical components, roads, foundations to a depth of 36 inches, and any other associated facilities.

(c) Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

(d) An independent and certified Professional Engineer shall be retained to estimate the total cost of decommissioning ("Decommissioning Costs") without regard to salvage value of the equipment. Said estimates shall be submitted to Hegins Township prior to beginning construction of the Wind Energy Facility and shall be updated to reflect then current costs every fifth year thereafter and the Decommissioning Funds deposited as provided herein shall be increased by additional deposits by the Facility Owner or Operator if the estimated costs have increased.

(e) The Facility Owner or Operator shall post prior to beginning construction and maintain at all times thereafter with Hegins Township Decommissioning Funds in an amount equal to Decommissioning Costs. The Decommissioning Funds shall be deposited and maintained with a Federal or Commonwealth chartered lending institution selected by the Facility Owner or Operator the Decommissioning Funds providing that the selected by the lending institution is authorized to conduct such business within the Commonwealth and is approved by Hegins Township, which approval shall not be unreasonably withheld.

(f) Decommissioning Funds shall be in the form of cash collateral to be held in an escrow account by the Township as escrow agent at a lending institution of the type described in Section 20(e) above. The Hegins Township Supervisors may, in their sole discretion, but shall be required to, accept an alternative form of financial security for the Decommissioning Funds.

(g) If the Facility Owner or Operator fails to complete decommissioning within the period prescribed in (20)(a) above, then the landowner shall have six (6) months to complete decommissioning.

(h) If neither the Facility Owner nor the Operator, nor the landowner complete decommissioning within the periods prescribed by Sections (20)(a) and (20)(g), then Hegins Township shall have the right to receive the Decommissioning Funds from the escrow account and may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement submitted with the application for the permit for the Wind Energy Facility to Hegins Township shall constitute agreement and consent of the landowner, the Applicant, Operator and Facility Owner, their respective heirs, successors and assigns that Hegins Township may take such action as necessary to implement the decommissioning plan. The obligation of the Facility Owner, Operator and the landowner to decommission the Wind Energy Facilities shall not be limited to the amount of the Decommissioning Funds. The Facility Owner, Operator and the landowner shall be responsible for all Decommissioning Costs and shall be liable to reimburse the Township for all Decommissioning Costs incurred by the Township if neither the Facility Owner, Operator nor the landlord complete the decommissioning as required herein.

(i) Hegins Township shall release the Decommissioning Funds when the Facility Owner, Operator or landowners have established to the satisfaction of the Township that decommissioning has been satisfactorily completed.

(21) Public Inquiries And Complaints. The conditions to the granting of the permit shall include the following requirements:

(a) The Facility Owner and Operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

(b) The Facility Owner and Operator shall make reasonable efforts to respond to the public's inquiries and complaints.

(22) Waivers, Relief, Exemptions

(a) Any Applicant desiring waiver, relief or exemption from any aspect or requirement of this Ordinance may request such from the Township Supervisors, provided that the waiver, relief or exemption is contained in the original application for a permit or an amendment to the application timely submitted to the Permit Officer. Such relief may be temporary or permanent, partial or complete, at the discretion of the Township Supervisors. However, the burden of proving the need for the requested relief or exemption is solely on the

applicant to prove to the satisfaction of the Supervisors. The applicant shall bear all costs of the Township in considering the request and the relief and shall not be transferable to a new or different holder of the permit or owner of the Wind Energy Facility without the specific written permission of the Township, such permission shall not be unreasonably withheld or delayed. No such waiver, relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the waiver, relief or exemption will have no significant adverse effect on the health, safety, welfare, preservation of historical values, natural, scenic or historical values or public or private water supplies of the Township, its residents and property owners and other service providers.

(b) The applicant shall submit a signed notarized document from the property owner (s) and adjoining property owners, as applicable, that they are in agreement with the applicant's request for any waiver. This document shall stipulate that the property owner(s) know of the requirements required by this Ordinance, describes how the proposed Wind Energy Facility is not in compliance, and state that consent is granted for waiver requested.

(c) Any such waiver be executed in recordable form and shall be recorded in the Recorder of Deeds Office for Schuylkill County. The waiver shall describe the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver shall run with the land and may forever burden the subject property.

(23) The Permit Officer, in his discretion, may, upon request of the applicant, waive the submission of certain design certifications at the time of the application and include the submission of such design certifications as conditions in the granting of the permit.

(24) Following the review and approval of the application, any permit that is issued shall incorporate all the requirements and conditions set forth in this Ordinance and the Development Agreement and the Facility Owner, Operator and each landowner upon which the Wind Energy Facilities are located shall sign and be bound by the conditions and requirements of the Development Agreement and permit.

Section 5. Violations; Remedies; Fines. It shall be unlawful for any person, firm or corporation to violate or fail to comply with or take any action which is contrary to the terms of this Ordinance, the Development Agreement or any permit issued under this Ordinance, or cause another to violate or fail to comply with or take any action which is contrary to the terms of this Ordinance, the Development Agreement or any permit issued under this Ordinance.

Any person failing to comply with a notice of violation or order under this ordinance served in accordance with the Second Class Township Code shall be guilty of a summary offense and upon conviction shall pay a fine not less than \$500.00 nor more than \$1,000.00. Each day a violation is found to exist after notice of violation has been given shall be deemed a separate offense and subject to a separate fine for each day until proof of compliance is proven. A separate offense shall arise and be deemed to exist for each section of this Ordinance that is found to be violated. Notwithstanding any provision of this Ordinance with respect to enforcement, the Township reserves the right to enforce this Ordinance through an action for injunction in the Court of Common Pleas of Schuylkill County pursuant to 53 P.S. §66601(c.1)(4). In addition to the above, the Township shall have all the rights and remedies set

forth in The Development Agreement and all rights, remedies and powers otherwise available to the Township under applicable law.

Section 6. Appeals. Any person aggrieved by any determination or action by the Permit Officer shall have an opportunity to present and explain its position before the Township Board of Supervisors. Any and all decisions and/or determinations with respect to an application or granting of a permit by the Township Board of Supervisors may be appealed to the Court of Common Pleas of Schuylkill County, and all appeals are *de novo*. Any such request to be heard by the Township Board of Supervisors shall be on forms provided by the Township and shall include a complete statement of the reasons the person is aggrieved together with a written statement of all evidence to be provided to the Township Board of Supervisors. The factual basis or summary of any expert testimony that will be presented at such meeting of the Township Board of Supervisors must also be attached to the form provided by the Township. Failure to request the opportunity to present evidence to the Township Board of Supervisors under this paragraph within thirty (30) days from the date of the determination or action by the Township will result in the waiver of any right to request an opportunity to present evidence to the Board of Supervisors and appeal to the Court of Common Pleas. The person requesting an opportunity to be heard under this paragraph must provide written notice of the same to all property owners and tenants occupying property within one thousand five hundred (1,500) feet of each Wind Turbine. Proof of service of such notice by Certified Mail or notarized Affidavit of hand delivery must be included with the form provided by the Township. The appeal shall be accompanied by a fee of Three Hundred and 00/100 Dollars (\$300.00). Appellant shall be responsible for all costs of the appeal in excess of Three Hundred and 00/100 Dollars (\$300.00). Failure to file a complete appeal, pay the appeal fee at the time of filing the appeal together with all statements, may result in dismissal of the appeal. The appeal fee may be revised from time to time by resolution of the Township Supervisors

Section 7. All Ordinances and parts of Ordinances inconsistent with the terms of this Ordinance are hereby repealed; provided, however, that such repeals shall only be to the extent of such inconsistency and in all other respects, this Ordinance shall be cumulative with the other Ordinances regulating and governing the subject matter covered by this Ordinance. Notwithstanding the above, this Ordinance shall not replace, amend or limit the provisions of the Zoning Ordinance, Subdivision and Land Development Ordinance, Uniform Construction Code or any other applicable ordinances of Heggies Township or the requirements of any federal or state law or regulation. Land development plan approvals shall be required for all Wind Energy Facilities as provided in the Heggies Township Subdivision and Land Development Ordinance. A permit shall not be issued or if issued with conditions shall not be effective until all other required permits or approvals, including but not limited to zoning and subdivision and land development approvals, have become final.

Section 8. If any section, subsection, sentence, entrance, clause or provision or parts thereof in this Ordinance shall be adjudged to be invalid, unconstitutional, illegal or unenforceable, such invalidity, unconstitutionality, illegality or unenforceability shall not affect the validity of the Ordinance as a whole or any other section or provision of the part thereof. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been

adopted had such invalid, unconstitutional, illegal or unenforceable sentence, clause, section or part thereof not been included in this Ordinance.

Section 9. This Ordinance shall be in full force and effect from and after its passage or the first day allowed by law thereafter.

ORDAINED AND ENACTED INTO LAW this 7th day of June, 2010.

HEGINS TOWNSHIP SUPERVISORS





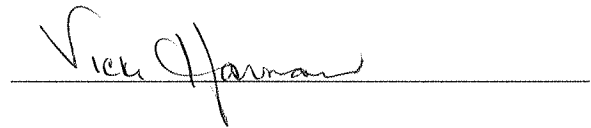


EXHIBIT "A"
WIND ENERGY SAFETY ORDINANCE

DEVELOPMENT AGREEMENT and PERMIT

This Development Agreement and Permit ("Agreement") dated the _____ day of _____, 20____, is executed by and among the Township of Hegins, located in Schuylkill County, in the Commonwealth of Pennsylvania and organized under the Second Class Township Code ("Township") and _____ with registered office in Pennsylvania at _____ (the "Facility Owner"); _____ with registered office in Pennsylvania at _____ (the "Operator"); and _____ with registered office in Pennsylvania at _____ (the "Landowner"). The Facility Owner and the Operator are collectively referred to herein as the "Developer/Permittee". The Township, the Developer/Permittee and the Landowner are referred individually as a "Party" and collectively as the "Parties".

GENERAL CONDITIONS

1. Default. Any of the following occurrences shall constitute an event of default (Event of Default) under this Agreement:

a. If Developer/Permittee ceases to operate the Project provided; however, that Developer/Permittee shall not be deemed to have ceased operating the Project if Developer/Permittee ceases operations for all or substantially all the Project for a period not exceeding six (6) months;

b. If a petition is filed by Developer/Permittee under any bankruptcy, reorganization, arrangement, insolvency, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within ninety (90) days after such filing;

c. If Developer/Permittee fails to observe or perform any material condition or provision hereof for a period of sixty (60) days after receiving written notice of such failure from the Township, Developer/Permittee shall commence corrective action within thirty (30) days of notice from any source, of any failure, and shall complete corrective action within sixty (60) days of receipt of notice. Any period of time for which Developer/Permittee is unable to commence or complete corrective action as the result of any material third party withholding approval of such action shall not be counted against Developer/Permittee. If Developer/Permittee is unable to commence corrective action within thirty (30) days of notice or is unable to complete corrective action within sixty (60) days of receipt of notice for reasons other than delays caused by any material third party, Developer/Permittee shall request an extension from the Township which shall not be unreasonably withheld and which may include reasonable conditions in order for Developer/Permittee to receive and maintain such extension;

d. If Developer/Permitee continues to be in material breach of any statute, regulation, rule or permit administered by any federal, state, county or local department, agency or commission within sixty (60) days after receiving written notice of a violation by such Federal, State or County department, agency or commission, Developer/Permitee shall notify the Township, in writing, of any alleged violation, order or enforcement proceeding within seven (7) days of receipt. Developer/Permitee shall commence corrective action within thirty (30) days of notice, from any source, of any breach and/or violation, and shall complete corrective action within sixty (60) days of receipt of notice. Any period of time for which Developer/Permitee is unable to commence or complete corrective action as the result of any material third party withholding approval of such action shall not be counted against Developer/Permitee. If Developer/Permitee is unable to commence corrective action within thirty (30) days of notice or is unable to complete corrective action within sixty (60) days of receipt of notice for reasons other than delays caused by any material third party, Developer/Permitee shall request an extension from the Township which shall not be unreasonably withheld and which may include reasonable conditions in order for Developer/Permitee to receive and maintain such extension;

Upon an Event of Default, the Township may revoke this Agreement if an Event of Default has not been timely cured, but any such revocation of this Agreement does not release the Developer/Permitee of its obligations under this Development Agreement, the Ordinance and the permit, including but not limited to the decommissioning obligations.

2. Non-Assignability. The rights granted by this Agreement are not assignable or transferable to any other person, firm or corporation, whether by operation of law or otherwise, without the express prior written consent of the Township, such consent not to be unreasonably withheld.

3. Interpretation. In their interpretation and application, the provisions of this Agreement shall be considered minimum requirements. This Agreement shall not be deemed to have been drafted by any particular Party so as to be interpreted strictly against such Party.

4. Modification. No provision of this Agreement may be modified except in writing by Developer/Permitee and the Township. Developer/Permitee is required to obtain separate authorizations for the erection and support of any buildings or improvements, highway access permits, and any other permit, license or authorization required by any County, State or Federal agency. The Township makes no representations regarding Developer/Permitee's right to obtain whatever additional authorizations or permits which may be necessary for the operation of its Wind Energy Facilities.

5. Force Majeure. The time to cure an Event of Default by any Party shall be extended for a reasonable period of time if the breach of the Agreement or the failure to comply by a Party is a direct result of an act of God or riot, sabotage, public calamity, flood, strike, or other event beyond its reasonable control. The party having the responsibility for the facilities affected; however, shall proceed promptly to remedy the consequences of such event. Notwithstanding a force majeure event, the Party shall be responsible to immediately begin to cure the Event of Default and comply with the requirements of this Agreement and remedy the

consequences of such an event, whether or not the cause of such event was within the control of the Party.

6. Severability. Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law as determined by a Court of competent jurisdiction, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of the Agreement and the Parties agree that this Agreement shall be deemed to be modified to the minimum extent needed to avoid such prohibition or invalidity.

7. Waiver. No waiver by the Parties or their officials shall be deemed to be made unless the same shall be in writing and be signed by the duly authorized Township or Developer/Permittee official. Each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Township or Developer/Permittee in any other respect at any other time.

8. Performance Standards. Developer/Permittee agrees that the Project shall be operated and maintained consistent with Good Utility Practice for comparable facilities. For purpose of this Agreement, "Good Utility Practice" shall mean any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region. Under no circumstances shall the definition of "Good Utility Practices" include any violation, regardless of degree, of any local, state, and/or federal law, ordinance, rule, and/or regulation.

9. Indemnification. Developer/Permittee shall defend, indemnify and hold harmless the Township and its officials, employees and agents from and against any and all claims, demands, losses, suits, cause of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees (such liabilities together known as "Liability") arising out of the selection, construction, operation and removal of the Wind Energy Facilities and affiliated equipment including, without limitation, liability for property damage or personal injury (including death), whether said Liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the Township's other indemnification rights available under law. Nothing in this Agreement shall in any way reduce the exemption or immunities that the Township has that are available under applicable law.

10. Incorporation of Wind Energy Safety Ordinance Provisions. All of the provisions of the Hegin Township Wind Energy Safety Ordinance to which the form this Development Agreement was attached as Exhibit "A" are incorporated herein by reference with the same effect as if included in the body of this Development Agreement. The requirements set forth in

the Ordinance and this Agreement shall be cumulative and if there is any direct conflict the more stringent requirements shall apply.

SPECIAL CONDITIONS

1. Term and Renewal. This Agreement shall continue for thirty (30) years (the "Term") from the date of approval of this Agreement, unless earlier terminated or revoked as provided herein.

The Township makes no representations to Developer/Permitee regarding the renewal of the Agreement at the expiration of the Term, and the Township reserves all rights available under law or in equity to any such extension. Developer/Permitee is hereby informed that it has no property right in the expectation of the renewal of this Agreement.

2. Building Codes: Safety Standards. To ensure the integrity of the Wind Energy Facilities, including but not limited to the Wind Turbines, Developer/Permitee shall maintain the Wind Energy Facilities in compliance with Good Utility Practice for Wind Energy Facilities. If, upon inspection by the Township and/or any other regulatory entity with lawful jurisdiction over the Wind Energy Facilities, the Township or such entity provides written notice that any of the Wind Energy Facility fail to comply with Good Utility Practices or constitutes a danger to persons or property, then Developer/Permitee shall immediately commence corrective action for any failure and/or danger, and shall complete corrective action to bring the noncompliant Wind Energy Facilities into compliance with such standards within sixty (60) days of receipt of notice. If Developer/Permitee is unable to bring the non-compliant Wind Energy Facility into compliance with such standards within sixty (60) days of receipt of notice, Developer/Permitee shall request an extension from the Township, which shall not be unreasonably withheld and which may include reasonable conditions in order for Developer/Permitee to receive and maintain such extension. Failure to bring such non-complaint Wind Energy Facilities into compliance shall constitute grounds for the Township to request removal and decommissioning of said Wind Energy Facility at Developer/Permitee expense. In addition to all the remedies provided for in the Wind Energy Ordinance, this Agreement and available under applicable law, the Parties agree that the Township is authorized to file an action for injunctive relief in the Court of Common Pleas of Schuylkill County, Pennsylvania, to require Developer/Permitee to remove the noncompliant Wind Energy Facilities.

3. State and Federal Requirements. The Wind Energy Facilities shall meet current standards and regulations, if any of any other agency of the state or federal government with the authority to regulate Wind Energy Facilities. If such standards and regulations are changed, then Developer/Permitee shall bring the Wind Energy Facilities into compliance with such applicable revised standards and regulations within six (6) months of the effective date of such standards regulations, unless a different compliance schedule is mandated by the controlling state or federal agency or approved by the Township. Failure to bring the Wind Energy Facilities into compliance with such applicable revised standards and regulations shall constitute an Event of Default. The Wind Turbines shall be marked as required by the Federal Aviation Administration (FAA). Any required determination of No Hazard for each Wind Turbine must be obtained from the FAA as a condition precedent for the installation of each Wind Turbine.

Developer/Permitee shall comply with any and all future state and/or federal regulations which are applicable to Wind Energy Facilities or wind farms, unless grandfathered.

4. Design. Each Wind Turbine shall consist of a tubular support, generator, nacelle, and three (3) blades. All Wind Energy Facility and Wind Turbine sites shall be designed and constructed in such a fashion as to avoid any disruption and/or interference with private and municipal reservoirs wells, springs and/or other water sources. In the event any problems occur with any private or municipal water source, which problems are proximately caused by Developer/Permitee, Developer/Permitee shall immediately supply potable water in such quality and quantity as supplied by the original private or municipal water source..

The design of the Wind Energy Facility shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of compliance obtained by the equipment manufacturers from the Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.

All Wind Turbine shall be equipped with a redundant braking system. This includes both aerodynamic overspeed 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 overspeed protection.

5. Maintenance, Repair and Replacement. Developer/Permitee shall repair, maintain and replace the Wind Energy Facilities and associated equipment during the Term of the Agreement in a manner consistent with Good Utility Practice as needed to keep the Project in good repair and operation condition.

6. Signs. No advertising material or signage other than warning, equipment information or indicia of ownership shall be allowed on the Wind Energy Facilities. This prohibition shall include the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners or waiving, fluttering or revolving devices, but not including weather devices.

7. Lighting. The Wind Turbines and other Wind Energy Facilities shall not be artificially illuminated except as required by the FAA or any other applicable authority. If lighting is required, the lighting alternatives and design chosen will seek to minimize the disturbance to the surrounding views and attracting birds.

8. Aesthetics. The towers and generators of the Wind Energy Facilities shall have a non-reflective, painted steel finish in a neutral color, subject to any applicable standards of the FAA or other regulatory requirements. The blades of the Wind Turbines are not covered by this section.

9. Stray Voltage/Electromagnetic Fields (EMF). The Applicant shall ensure that there will be no disruption or loss of radio, telephone, television or similar signals. Developer/Permitee will utilize Good Utility Practice to minimize, to the extent practicable, the impact, if any, of stray voltage and/or EMF on properties of Non-Participating Landowners.

Developer/Permittee represents that it believes there will be no stray voltage impacts from the Wind Energy Facility because such impacts occur only on distribution facilities which are not included in the Project.

10. Wind Energy Facility Removal and Decommissioning. In addition to the general incorporation of all the provisions of the Wind Energy Safety Ordinance, the provisions of Section (4) (20) "Decommissioning" are incorporated here by reference the same as if set forth in the body of this Agreement.

The Landowner by executing this Development Agreement is expressly agreeing to be responsible for decommissioning as provided in the Wind Energy Safety Ordinance and this Agreement if the Developer/Permittee fails to timely perform its obligations.

11. Setbacks. The Wind Energy Turbines shall comply with the following setbacks:

a. Occupied Building. Each Wind Turbine shall be set back from each existing Occupied Building, (in existence at the time the permit application was submitted), a distance of no less than 2 times the Turbine Height. The setback distance shall be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building. The setback requirements shall apply with respect to all Occupied Buildings on the land of all Non-Participating Landowners and to all Occupied Building on the property where the a Wind Turbine is located, unless the landowner and the tenant consent to the waiver of this setback requirement as to Occupied Buildings on the same property as the Wind Turbine.

b. Property Lines. Each Wind Turbine shall be setback from the nearest property line a distance of no less than 2 times the Turbine Height. The distance shall be measured from the center of the Wind Turbine base to the nearest point on the nearest property line.

c. Public Roads. Each Wind Turbine shall be set back from the nearest public road a distance of no less than two times the Turbine Height.

d. Reservoirs, Dams, Ponds and Reservoirs. Each Wind Turbine Generator shall be set back a distance of no less than two times the Turbine Height from any private, public or municipal reservoir, lake or dam.

e. Zoning. The setbacks required under the applicable provisions of any applicable zoning ordinance.

12. Noise and Shadow Flicker. Developer/ Permittee shall comply with the following noise and flicker standards:

a. Audible sound from a Wind Turbine shall not exceed forty-five (45) dba within a reasonable margin of error as measured at the exterior of any Occupied Building on any property of a Non-Participating Landowner. Methods for measuring and reporting acoustic emissions from a Wind Turbine shall be equal to or exceed the minimum standards for precision described

in AWEA Standard 2.1 – 1989 entitled “*Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I: First Tier*”. The audible sound limits shall be determined by nighttime conditions and not day/night averages.

b. The parties acknowledge that the Project’s construction will be the source of intermittent noise. Developer/Permitee shall require all contractors to incorporate reasonable noise reduction measures in order to mitigate the amount of noise generated during the construction phase.

c. The Developer/Permitee shall make reasonable efforts to minimize shadow flicker to any Occupied Building on a Non-Participating Landowner’s property which efforts shall be determined by the Permit Officer and included in the conditions to the granting of the permit

13. Safety. Developer/Permitee shall comply with the following safety standards:

a. All wiring between the Wind Turbine and the substation shall be underground to the extent practicable.

b. The outside of the Wind Turbine tower shall not be climbable up to fifteen (15) feet above the ground surface.

c. All access doors to the Wind Turbine and electrical equipment shall be locked or fenced, as appropriate, to prevent entry of non-authorized persons.

d. Appropriate and clearly visible warning signage concerning voltage shall be placed at the base of each Wind Turbine, each pad-mounted transformer and sub-station, on all electrical equipment, and at all entrances. Visible, reflective, colored objects, such as flags, reflectors or tape, shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten (10) feet from the ground.

e. Developer/Permitee shall abide by all applicable local, state and federal fire code and emergency services guidelines.

f. All Wind Energy Facilities shall be equipped with portable fire extinguishers, unless the local fire department provides written documentation establishing that the same is not necessary.

g. Inspection and O&M Provider: Developer/Permitee shall cause its Operations and Maintenance provider (“O&M Personnel”) to comply with the following schedule:

(i) At least once every thirty-six (36) months the individual wind turbine generators shall be inspected by O&M Personnel, or its agent, who is regularly involved in the maintenance, inspection and/or erection of Wind Energy Facilities and Wind Turbines, towers and antennas. At a minimum, this inspection shall be conducted in accordance with the provisions of this Agreement and in accordance with the Wind Energy Facilities inspection check list provided by the Parties’ respective engineers, as applicable. This is considered a major inspection.

(ii) At least once every twelve (12) months a visual inspection from the ground shall be conducted by O&M Personnel. This inspection shall include, but not be limited to, visual inspection of Wind Energy Facilities foundation, structure, guy and connections for evidence of settlement or lateral movement, soil erosion, condition of paint or galvanizing, rust or corrosion, loose or missing bolts, loose or corroded lightening protection connectors, Wind Turbine tower plumbness, significant variation in guy sags (i.e., guy tensions), and other material areas or matters relating to the structural integrity of the Wind Energy Facilities. This is considered a minor inspection.

(iii) In addition to the regularly scheduled major and minor inspections set forth in Paragraphs (i) and (ii) above, a minor inspection, at a minimum, will be conducted if a Wind Energy Facility or its appurtenances are noted at any time to be visibly damaged. Additionally a major inspection should be conducted if a visible damage to a Wind Energy Facility is significant or when, after conducting a minor inspection, significant questions remain about the structural integrity of the Wind Energy Facility.

(iv) Developer/Permitee shall provide an annual letter to the Township certifying compliance with the inspection requirements of this Section.

14. Insurance. Developer/Permitee shall maintain the insurance coverages specified in the Wind Energy Safety Ordinance. The Township shall be identified as an additional insured on all required insurance policies. No policy of insurance shall be cancelled without first providing the Township with at least thirty (30) days prior written notice of intent to cancel. Certificates of insurance evidencing compliance with these requirements shall be provided to the Township. All policies shall be written on an occurrence and not on a claims made basis.

15. Defense of Township Decision. In addition to the indemnification described above, Developer/Permitee shall reimburse the Township its reasonable attorneys' fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of this Agreement or any portion thereof, or the issuance of any permits to Developer/Permitee by the Township for the Wind Energy Facilities. Unless it decides to refuse indemnification, the Township shall be entitled to indemnification from the Developer/Permitee. The Township shall notify Developer/Permitee in writing promptly upon discovering any claim entitling it to a defense reimbursement, but in no event later than thirty (30) days (or shorter if warranted to avoid prejudice or damage to Developer/Permitee) after receiving written notice of any action, lawsuit, proceeding, investigation or other claim against it which may give rise to a claim for a defense reimbursement to avoid prejudice or damage to Developer/Permitee. In the event Township fails to notify Developer/Permitee, within the aforementioned thirty (30) days, Developer/Permitee shall not be obligated to indemnify and defend the Township with respect to any such liability, action or claim, only insofar as such knowing failure to notify Developer/Permitee has actually resulted in prejudice or damage to Developer/Permitee. With respect to any third party action, lawsuit, proceeding, investigation or other claim which is subject to reimbursement under this section, Developer/Permitee shall be entitled to assume the control (with counsel of its choice, which counsel must be approved by the Township provided; however, such approval shall not be unreasonably withheld) the defense of such action, lawsuit,

proceeding, investigation or other claims at Developer/Permitee's expense, provided; however, that the Township shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose (the fees and expenses of such separate counsel to be borne by the Township) and to assert against any third party any and all cross claims and counterclaims the Township may have. If Developer/Permitee elects to assume the defense of any such claim, it may settle such claim in its sole discretion so long as either: (i) such settlement provides an unconditional release of the Township, or (ii) Developer/Permitee shall obtain the prior written consent of the Township (which consent shall not be unreasonably withheld). If Developer/Permitee elects to assume the defense of any claim, the Township shall fully cooperate with Developer/Permitee and its counsel in such defense.

16. Payment of Fees to Township. The Developer/Permitee will pay all fees required under the Wind Energy Safety Ordinance as set forth therein and in any subsequent fee resolution and shall make additional payment of escrow funds as provided in the Ordinance or elsewhere in this Agreement.

17. Field Representative and Site Manager. Developer/Permitee will be responsible for overseeing compliance with the conditions of this Agreement during the construction phase of the Project. Upon completion of construction, Developer/Permitee shall designate a contact person for the Township who will be responsible for overseeing compliance with the conditions of this Agreement for the duration of the Term of this Agreement. Developer/Permitee shall provide the names, addresses, daytime telephone numbers and emergency telephone numbers of any other designated field representative and site manager to the Township. The Township may make the telephone numbers available to local officials, emergency service providers and also to the extent required under any Public Record or Sunshine laws or regulations. . Developer/Permitee shall be entitled, upon prior written notice to the Township, to change the field representative or site manager, or make other changes in the contract information. In addition, Developer/Permitee will make contact information available for the entity providing operation (monitoring) and maintenance services.

18. Inspections. Representatives of the Township shall be allowed to inspect the Wind Energy Facility sites after providing not less than twenty-four (24) hours advance written notice to Developer/Permitee through its site manager or field representative as defined in Section 17. Wildlife specialists, when accompanied by representatives of the Township, shall be allowed to inspect the Wind Energy Facilities sites periodically for bird, bat and other wildlife kills. Provided however, during construction Developer/Permitee may limit the access to the Wind Energy Facilities to two (2) designated representatives of the Township, unless safety reasons mandate otherwise and/or the inspection is required by law. Any costs of inspection by any entity, including the Township, shall be borne by the Developer/Permitee.

19. Project Permit. Upon execution by both Parties to this Agreement, and subject to any appeal rights, this document shall also constitute a permit for Developer/Permitee to proceed with the Wind Energy Facilities, subject to the requirements of this Agreement and the Wind Energy Safety Ordinance and the requirement of Developer/Permitee to obtain all other necessary permits and approvals as required by Federal, state, and local law, including, but not limited to, Township Subdivision and Land Development approval, Township Zoning approval,

FAA permits, Pennsylvania Department of Environmental Protection permits, and building permits.

20. Governing Law and Venue. This agreement shall be interpreted in accordance with and governed by the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law principles thereof. The Court of Common Pleas of Schuylkill County, Pennsylvania, shall have jurisdiction/venue over any and all matters or disagreement between the Parties hereto arising out of interpretation of this Agreement or any matters herein set forth and all Parties hereby consent to the jurisdiction and venue of said Court as the form for resolution of disputes under this Agreement.

21. Relationship of Parties. The Parties understand and agree that no Party is an agent, employee, contractor, vendor, representative or partner of the other Party, that (except as expressly set forth in writing) no Party shall owe a fiduciary duty to any other Party and no Party shall hold itself out as such to third parties and that no Party is capable of binding the other Party to any obligation or liability without the prior written consent of the other Party. Neither the execution nor delivery of this Agreement, nor the consummation of the transactions contemplated hereby, shall create or constitute a partnership, joint venture or any other form of business organization or arrangement between the Parties.

22. Attorney's Fees. The Developer/Permittee agrees that it shall be responsible and shall pay or reimburse the Township for all attorneys' fees and costs incurred by the Township in enforcing the obligations of the Developer/Permittee under this Agreement and the Ordinance and for all such costs and fees incurred following an Event of Default by the Developer/Permittee whether or not the Event of Default is timely cured.

23. Immunity. Neither Party hereto waives any rights or immunities arising out of and/or pursuant to any applicable governmental immunity, laws and/or statutes.

24. Compliance with Laws. Nothing contained in this Agreement shall provide or apply/infer that either Party is authorized to engage in any conduct which is not in compliance with all federal, state, and local laws, rules and regulations that presently exist and/or are adopted/amended in the future.

25. Non-exclusive Remedy. No right or remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other right or remedy given by this Agreement or now or hereafter existing at law or in equity. The failure of either Party to insist upon the strict performance of any obligations shall not be deemed a waiver thereof.

IN WITNESS WHEREOF, the parties have hereto caused this Agreement to be duly executed on the date set forth above.

TOWNSHIP OF HEGINS

ATTEST:

BY: _____

BY: _____

BY: _____

FACILITY OWNER:

BY: _____

OPERATOR:

BY: _____

LANDOWNER:

BY: _____

ATTEST:

ATTEST:

ATTEST:
