

ARTICLE #21
CONDITIONAL USES

Section 1: PROCEDURES AND REQUIREMENTS. Allowable conditional uses may be permitted, enlarged, or altered upon application for a conditional use permit in accordance with the rules and procedures of the Board of Adjustment. The Board of Adjustment will grant or deny a conditional use permit in accordance with the standards set forth herein and with the intent and purpose of this Ordinance, in granting a conditional use permit, the Board of Adjustment will authorize the issuance of a conditional use permit and may prescribe and impose appropriate conditions, safeguards, and a specified time limit for the performance of the conditional use permit.

Section 2: APPLICATION FOR CONDITIONAL USE PERMIT. An application for a conditional use permit may be initiated by a property owner or his authorized agent by filing an application with the Zoning Administrator upon forms prescribed for the purposes. A zoning certificate which shows the names and last known addresses of the owners of all property within 500 feet of the property for which the conditional use is requested is required. The zoning certificate will be ordered by the Zoning office and billed to the applicant. Also a site plan and other such plans and data showing the dimensions, arrangements, descriptive data, and other materials constituting a record essential to an understanding of the proposed use and proposed modification in relation to the standards set forth herein. The application shall also be accompanied by a fee of \$350.00, which is subject to change by amendment of this Ordinance.

Section 3: PROCEDURE. A conditional use permit shall not be granted by the Board of Adjustment unless and until the following procedures have been fulfilled:

- A. The Board of Adjustment shall schedule a public hearing in relation to the conditional use request. Notice shall be given to the public hearing as required by State Statute by publication in the official County newspaper(s) and the local advertising shopper. The Zoning office shall give notice by ordinary mail to all property owners located within 500 feet by mailing such notice to the last known addresses of those to be thus notified by depositing such notice with sufficient postage in the United States mail at least fifteen (15) days prior to the public hearing. An affidavit of mailing shall be obtained for each notice mailed.
- B. The Board of Adjustment shall determine that it is empowered under this Ordinance to grant the conditional use as described in the application, and the granting of the conditional use will not adversely affect the public interest pursuant to testimony presented at the public hearing;
- C. In granting any conditional use, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this Ordinance and punishable under Article 26 of this Ordinance.

- D. The concurring vote of three (3) members of the Board of Adjustment grants a conditional use permit. An order of the Board of Adjustment granting a conditional use permit shall be valid for a period no longer than six (6) months from the date of such an order, unless the Board of Adjustment specifically grants a longer period of time or a building permit is obtained within the six (6) month period and construction is commenced.
- E. The Zoning Administrator shall determine whether or not the request for conditional use is in conflict with the Dickinson County Comprehensive Plan. The Zoning Administrator shall provide the Board of Adjustment a written statement of such determination.

Section 4: STANDARDS. The Board of Adjustment may consider the following factors when determining whether a conditional use permit should be granted:

- A. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, or general welfare of the county.
- B. That the conditional use will not be injurious to the use of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.
- C. That the establishment of the conditional use will not impede the normal and orderly development in improvement of the surrounding property for uses permitted in the district.
- D. That adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
- E. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- F. The use shall not include any activity involving the use or storage of flammable or explosive material unless protected by adequate fire fighting and fire suppression equipment and by such safety devices as are normally used in handling of any such material.
- G. The use shall not include noise which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
- H. The use shall not include vibration which is discernible without instruments on any adjoining lot or property.
- I. The use shall not involve any malodorous gas or matter which is discernible on any adjoining property.

- J. The use shall not involve any pollution of the air by fly-ash, dust, vapors, or other substance which is harmful to health, animals, vegetation, or other property or which can cause soiling, discomfort, or irritation.
- K. The use shall not involve any direct or reflected glare which is visible from any adjoining property or from any public street, road or highway.
- L. The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestions.
- M. The use shall not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.
- N. That the use will not be in conflict with the Dickinson County Comprehensive Plan.

Section 5: SUPPLEMENTAL STANDARDS. Section 5. B Planned Unit Development (PUD) and Section 5. D Wind Energy Conversion Systems (WECS) uses shall comply with the requirements and standards specified in their respective sections below and are exempt from the general conditional use standards listed under Section 4 above. All other conditional uses shall comply with their respective applicable supplemental standards in addition to the general standards of Section 4.

- A. Salvage Yards: All salvage yards, including any area where waste, junk, discarded or wrecked and salvaged materials are bought, sold, stored, exchanged, baled or packed, disassembled or handled (including dismantling or "wrecking" of automobiles or machinery or other vehicles or Wind Energy Conversion System (WECS) components) shall be located in the Agricultural (A-1) and Industrial (LI and HI) Districts under a conditional use permit.

The application for a conditional use permit shall be accompanied with a proposed intent or covenant to meet the minimum requirements described herein:

1. The yards shall be at least 500 feet distant in all directions from any residential building.
2. The out-of-doors yards shall be screened by a solid wall or uniformly painted solid fence not less than eight (8) feet in height, or in lieu thereof, a landscape buffer strip may be planted no less than 50 feet wide with deciduous and evergreen trees and large shrubs to provide a landscape screen at least 10 feet high.
3. An off-street parking or service area in connection with the yards may be located outside the screened-in area.

- B. Planned Unit Development (PUD):

1. Purpose. The purpose of PUD regulations is to encourage flexibility in the design and development of land in order to promote its most appropriate use; to facilitate the adequate and economical provision of streets, utilities, and public spaces; and to preserve the natural and scenic qualities of open areas.

The procedure is intended to permit diversification in the location of structures and improve circulation facilities and other site qualities while ensuring adequate standards relating to public health, safety, welfare, and convenience both in the use and occupancy of buildings and facilities in planned groups. A planned unit development to be eligible under this Article must be:

- a) In accordance with the Comprehensive Plan of the county and with the regulations of this Ordinance.
- b) An effective and unified means of treating possible development providing for preservation of scenic features and amenities of the site and the surrounding area.
- c) So designed in its space allocation, orientation, landscaping, circulation system, materials and other features as to produce an environment of stable and desirable character, complimenting the design values of the neighborhood.

2. Tract Land Use.

- a) Minimum Area. A PUD containing other than residential uses shall include not less than three (3) acres of contiguous land.
- b) Open Space. A minimum of 25 percent of planned unit site area shall be developed as common open space. Parking areas and vehicle access facilities shall not be considered in calculating open space.
- c) Land Use. At least sixty-five (65) percent of the PUD site exclusive of open space shall be devoted to those uses permitted in the zone district in which the PUD is located. Proposed land uses shall not adversely affect surrounding development, and shall be in accordance with the objectives and policies of the Dickinson County Comprehensive Plan.
- d) Unity of Control. In order that the purpose of these regulations may be realized, the land and buildings and appurtenant facilities shall be in single ownership, or under management or supervision of a central authority, or otherwise subject to such supervision lease or ownership control as may be necessary to carry out the provisions herein.

3. Application Procedures. Planned Unit Developments shall be subject to the approval of the Zoning Board of Adjustment based upon review and recommendations by the Planning and Zoning Commission.

a) General Development Plan. The applicant shall file a General Development Plan which shall include the following information:

i) A statement describing the general character of the intended development.

ii) An accurate map of the project area including its relationship to surrounding properties, existing topography, and key features.

iii) A plan of the proposed project showing at least the following information in sufficient detail to make possible the evaluation of the criteria for approval:

a. The pattern of proposed land use including shape, size, and arrangement of proposed use areas, density and environmental character.

b. The pattern of public and private streets.

c. The location, size and character of recreational and open space areas reserved or dedicated for public uses such as schools, parks, greenways, etc.

d. A utility plan and an availability letter from each utility servicing the development.

iv) Appropriate statistical data on the size of the development, ratio of various land uses, percentage of multi-family units by number of bedrooms, expected staging, and any other plans or data pertinent to evaluation by the county

v) General outline of intended organizational structure related to property owners' association, deed restrictions and private provision of common services.

b) Specific Implementation Plan. A specific and detailed plan for implementation of all or a part of a proposed PUD after approval of the General Development Plan must be submitted within one (1) year. The specific implementation plan shall be submitted for review by the Planning and Zoning Commission and approval or disapproval by the Zoning Board of Adjustment and shall include the following detailed construction and engineering plans and related detailed documents and schedules:

- i) An accurate map of the area covered by the plan including the relationship to the total general development plan.
 - ii) The pattern of public and private roads, driveways, walkways, and parking facilities.
 - iii) Detailed lot layout and subdivision plat where required.
 - iv) The arrangement of building groups, and their architectural character;
 - v) Sanitary sewer and water mains.
 - vi) Grading plan and storm drainage.
 - vii) The location and treatment of open space areas and recreational or other special amenities.
 - viii) The location and description of any areas to be dedicated to the public, if any.
 - ix) General landscape treatment.
 - x) Proof of financing capability or performance capability.
 - xi) A development-schedule indicating (1) the approximate date when construction of the project can be expected to begin, (2) the stages in which the project will be built and the approximate date when construction of each stage can be expected to begin, (3) the anticipated rate of development of each of the stages will be completed, and 4) the area and location of common open space that will be provided at each stage.
 - xii) Agreements, bylaws, provisions, or covenants which govern the organizational structure, use, maintenance, and continued protection of the PUD and any of its common services, common open areas, or other facilities;
 - xiii) Any other plans, documents, or schedules requested by the Board of Adjustment.
4. Criteria for Approval: As a basis for determining the acceptability of a PUD application, the following criteria shall be applied to the precise development plan for such district with specific consideration as to whether it is consistent with the spirit and intent of this Ordinance, it has been prepared with competent professional advice and guidance, and it produces significant benefits in terms of environmental design.
- a) Character and Intensity of Land Use. In a PUD, the use proposed and the intensity and the arrangement on the site shall be of visual and operational character which:
 - b)
 - i) Is compatible to the physical nature of the site with particular concern for preservation of natural features, tree growth, and open space.

- ii) Would produce an attractive environment of sustained aesthetic and ecologic desirability, economic stability and functional practicality compatible with the general development plans for the area as established by the community.
 - iii) Would not adversely affect the anticipated provision for school or other municipal services.
 - iv) Would not create a traffic or parking demand incompatible with the existing or proposed facilities to serve it.
- b) **Economic Feasibility and Impact.** The proponents of a PUD application shall provide evidence satisfactory to the Zoning Board of Adjustment of its economic feasibility, of available adequate financing, and that it would not adversely affect the economic prosperity of the county or the values of surrounding properties.
 - c) **Engineering Design Standards.** The width of street right-of-way, width and location of street or other paving, location of sewer and water lines, provision for storm water drainage, or other similar environmental engineering consideration shall be in no case less than those necessary to ensure the public safety and welfare of county residents.
 - d) **Preservation and Maintenance of Open Space.** In a PUD, adequate provision shall be made for the permanent preservation and maintenance of common open space either by private reservation or dedication to the public:
 - i) In the case of private reservation, the open area to be reserved shall be protected against building development by conveying to the county as part of the conditions for project approval an open space easement over such open areas restricting the area against any future building or use except as is consistent with that of providing landscaped open space for the aesthetic and recreational or cultural purposes compatible with the open space objective may be permitted only where specifically authorized as part of the development plan or subsequently, with the express approval of building site and operational plans by the Planning Commission. All easements are subject to acceptance by the Board of Supervisors.
 - ii) The care and maintenance of such open space reservation shall be assured by establishment of appropriate management organization for the project. The manner assuring maintenance and assessing such cost to individual properties shall be included in a contractual agreement with the county and shall be included in the title to each property.
 - iii) Ownership and tax liability of private open space reservation shall be established in a manner acceptable to the county and made a part of the conditions of the plan approval.

- e) Implementation Schedule. The proponents of a PUD shall submit a reasonable schedule for the implementation of the development to the satisfaction of the Board of Adjustment including suitable provisions for assurance that each phase could be brought to completion in a manner which would not result in adverse effects upon the county as a result of termination at that point.

5. Approval of the Specific Implementation Plan.

- a) Following a review of the specific implementation plans, the Planning and Zoning Commission shall recommend to the Board of Adjustment that the plans be approved as submitted, approved with modifications, or disapproved.
- b) Upon receipt of the Planning and Zoning Commission recommendation, the Board of Adjustment may approve the plan and authorize the development to proceed accordingly, or disapprove the plan.
- c) In the event of approval of the Specific Implementation Plan, the building, site, and operational plans for the development, as approved, as well as all other commitments and contractual agreements with the county offered or required with regard to project value, character, and other factors pertinent to an assurance that the proposed development will be carried out basically as presented in the official submittal plans, shall be recorded by the developer within 90 days in the County Recorder's Office. This shall include posting a performance bond or certified check in an amount determined by the Board of Adjustment with Dickinson County, Iowa, guaranteeing that required improvements will be constructed according to the approved implementation schedule. This shall be accomplished prior to the issuance of any compliance permit.
- d) Any subsequent change or addition to the plans or use shall first be submitted for approval to the Board of Adjustment and Planning Commission and if such change or addition constitutes a substantial alteration of the original plan, the procedures in the above shall be required.
- e) If construction of the PUD does not commence within two (2) years of the official recording of the implementation schedule, then the PUD shall be voided.

C. Outdoor Entertainment Facilities. All commercial recreation and or amusement parks shall be subject to the issuance of a conditional use permit.

- 1. Authorization for a conditional use permit may be granted under the following conditions:
 - a) Buildings involving the large assemblages of people (150 or more) shall not be located less than 300 feet from any existing dwelling site.

- b) Uses involving nuisances such as noise, vibration, pollution, etc., shall not be located less than 500 feet from any residential district or less than 1000 feet from an existing dwelling.
- c) Uses involving large assemblages exceeding 150 people shall not be located where the arterial traffic system is inadequate to provide for the increased traffic density.
- d) Uses involving the extensive use of exterior lighting shall not be located where such lighting may be hazardous to air or ground trafficways and such uses shall not be located less than a distance required to reduce the light intensity to normal residential street lighting intensity.

D. Wind Energy Conversion Systems (WECS).

1. All wind Energy Conversion System (WECS) projects shall be located only in the Agricultural (A-1) District under a conditional use permit. Applicants shall follow the procedures and requirements outlined herein. If a property owner in the A-1 Agricultural District requests to construct a single turbine on their property for primarily personal use, or if a WECS owner/developer requests to construct a meteorological tower, any requirements of this Section 5. D may be waived by the Board of Adjustment.
2. Pre-application Informational Conference Required. Whenever a WECS development is proposed in the jurisdiction of Dickinson County, the owner/developer of the WECS planned development is required to hold a public informational conference on the proposed WECS development. This conference shall be held a minimum of 45 days and a maximum of 90 days prior to the date of the first public hearing with the Board of Adjustment. The conference shall be held in Dickinson County at a place adequate in size to serve the anticipated attendance. The conference shall be advertised as the "Pre-Application Informational Conference" in the official county newspaper(s) and local county shopper once a week for the two weeks prior to the conference. The ad in the newspaper shall be a minimum size of 1/8 page. The ad shall include as a minimum the name of the proposed project, a contact person for the proposed project, the location of the proposed project (list Township names and section numbers), the time and place of the conference and a description of the proposed project. Computer modeling for sound and shadow flicker will be available for all human occupied dwellings within the project area. The owner/developer of the proposed WECS project is responsible to meet all of these requirements and shall provide documentation to the county that all of these requirements have been met.
3. Agency Notification and Review. The WECS project owner/developer is responsible for notifying the following agencies of their planned project and allowing the agency 120 days to do a preliminary review. Notification will be sent via certified mail and return receipt. Documentation of notification of the agencies below is required. If a response is received

from an agency, it must be provided in its entirety to the county at the time of application submittal. If the agency does not respond, it may be deemed there was no action taken.

Federal Aviation Administration
Army Corps of Engineers
Bureau of Land Management
U.S. Fish and Wildlife
U.S. Department of Agriculture (Local FSA and NRCS)
Environmental Protection Agency
Federal Communications Commission State
Department of Transportation.
Iowa Utilities Board
Office of State Archaeologist
Dickinson County Engineer's Office
Dickinson County Board of Health
Dickinson County Conservation Board
Dickinson County Planning and Zoning Office
Dickinson County Emergency Management Office
Local EMS Fire and Rescue
Local, District, and State Iowa Department of Natural Resources
Incorporated City within 2 miles

4. Notification. The Board of Adjustment shall schedule a public hearing in relation to the conditional use request. Notice shall be given to the public hearing as required by State Statute by publication in the official County newspaper(s) and the local advertising shopper. The Zoning office shall give notice by ordinary mail to all property owners located within one (1) mile of the property boundary by mailing such notice to the last known addresses of those to be thus notified by depositing such notice with sufficient postage in the United States mail at least fifteen (15) days prior to the public hearing. An affidavit of mailing shall be obtained for each notice mailed. Notice shall include the name of the proposed project, a contact person for the proposed project, the location of the proposed project, (list Township names and section numbers), and the time and place of the public hearing.
5. Setbacks.
 - a) Structures.
 - 1) Dwelling. The Wind Energy Conversion System (WECS) is to be placed no less than the greater of two times the total height of the WECS turbine measured from the base to the rotor tip in its highest position, or 1600 feet, from any human occupied dwelling. A human occupied dwelling is defined as one capable of being occupied for residential purposes. The measurement between the dwelling and turbine is to be taken from the nearest point of the human occupied dwelling to the center of the turbine base.

Any participating landowner may waive the 1600 feet setback to the human occupied dwelling, however a minimum setback of 1200 feet is required. The waiver must be in a written instrument signed by all owners, included with the application, and recorded at the County Recorder's office.

2) Non-Human Dwelling. The Wind Energy Conversion System (WECS) is to be placed 500 feet from any unoccupied non-human dwelling structures. An unoccupied non-human dwelling structure is defined as one not capable of being occupied for residential purposes. The measurement is to be taken from the nearest point of the unoccupied non-human dwelling structures to the center of the turbine base.

b) Commercial Uses. All publicly used commercial buildings, having a permitted commercial use shall have the same setback as a human occupied dwelling. Including but not limited to public assembly and commercial recreational areas.

c) Property Lines. At no time shall any part of the wind turbine and meteorological tower overhang an adjoining property without securing appropriate easements from adjoining property owners.

d) Public Right of Way. The Wind Energy Conversion System (WECS) is to be placed 1.1 times the height of the WECS turbine from the base to the rotor tip in its highest position from the nearest point of the public road right of way. This measurement to be taken from the center of the turbine base.

e) Overhead Utility. The Wind Energy Conversion System (WECS) is to be placed 1.1 times the height of the WECS turbine from the base to the rotor tip in its highest position from the overhead utility line or structure. This measurement to be taken from the center of the turbine base.

f) Public Lands and Water. It is required that the owner/developer have a preliminary review with the Iowa Department of Natural Resources (IDNR) early in the planning stages of all WECS projects located in Dickinson County. This review will allow the IDNR to present scientific research showing the detrimental impacts of siting WECS near wildlife habitats and will allow the IDNR to explain why no WECS will be allowed on private lands within 1/8 mile (660') of lands and waters owned and/or managed or under control of the IDNR (subject to Dickinson County Board of Adjustment approval and the section 14 variance clause). The review will also allow IDNR Local, District, and State staff to identify other sensitive water quality and wildlife habitat concerns near public lands and waters, and to work with the owner/developer to voluntarily identify

alternative WECS siting options that minimize to the extent practicable, the area disturbed by pre-construction site monitoring and testing activities and installations, and to avoid locating WECS in areas identified as having a demonstrated and unmitigable high risk to animals identified by the IDNR.

g) Density. Turbine spacing will vary depending on common industry practice and specifications. Owner/developers shall consider the public interest and the natural environment, and maintain the intent and purpose of this section.

h) Maximum Height. To have a maximum height of 600' feet measured from the base to the rotor tip in its highest position. Owner/developers seeking to construct a WECS height greater than 600' feet will require a variance from the Board of Adjustment and an independent review by a third party engineering firm.

6. Duration of Conditional Use Permit. The conditional use permit is valid so long as it is used as a Wind Energy Conversion System (WECS) as defined in the Dickinson County Zoning Ordinance, "Any device such as a wind charger, windmill, or wind turbine which converts wind energy to a form of useable energy or a discontinued use of no more than one year unless otherwise specified by the Board of Adjustment."
7. Discontinuation and Decommissioning. In the event of abandonment or discontinued use of one or more devices within the WECS, the owner/developer of the WECS shall be responsible for dismantling the abandoned or discontinued use WECS device(s) and returning the property to its original use. A device within the WECS shall be considered a discontinued use or abandonment after one year without energy production, other than as a part of a pre-planned program of operation or maintenance. Any plan that varies from this can only be approved by the Board of Adjustment. All abandoned or discontinued use WECS device(s) and accessory facilities shall be removed within 180 days of the discontinuation of use. Each WECS project shall have a decommissioning plan outlining the anticipated means of removing the WECS devices upon the WECS device becoming a discontinued use. This plan shall be submitted with the application. The abandonment or discontinued use of one WECS device does not require decommissioning of the entire WECS project. If the entire WECS project enters into the abandoned or discontinued phase, the owner/developer shall have 180 days to commence and two (2) years to complete the decommissioning.

The WECS owner/developer shall make the following financial assurances to the County:

- A. Financial Assurance may be in the form of cash deposited with County, a performance bond, or surety bond, as long as the form of the Financial Assurance is mutually agreeable between the County and the WECS and the security is equal to or greater than the net amount set forth in the Decommissioning Plan or provided for by this Article. Review of the adequacy of the financial assurance shall be every 36 months and shall subject to change if deemed by the County as being inadequate at

the time. A financial assurance report shall be completed by a third party engineer at the cost of the owner/developer.

- B. Such Financial Assurance shall be adjusted corresponding to the Decommissioning Plan updates and the minimum amounts provided for in this Article.
- C. If the cost of the restoration of the Project exceeds the salvage value and financial assurance amounts, the WECS shall be responsible for any differences.
- D. If any Financial Assurance required hereunder lapses or WECS otherwise fails to post the same, WECS shall be obligated to do so within twenty (20) days of written notice from the County to do the same or otherwise shall be considered in default hereunder.
- E. Such Financial Assurance shall be released after the Project has been decommissioned or removed and a certificate of completion has been provided and accepted by the County.

8. Mitigation of Damages to Public Infrastructure.

- a) Drainage system. The owner/developer of the WECS shall remedy any adverse effect on any duly established drainage district caused by construction of the WECS project. See Ordinance 22-1 Drainage Easement Ordinance
- b) Roads. Costs of repair of damage and any maintenance to county roads, rights-of-way, or any county infrastructure resulting from the construction, maintenance, or decommission phases of the WECS project shall be the responsibility of the owner/developer of the WECS. A Road Use Agreement will be established with the County Engineer.
 - c) Electronic interference. Any substantiated interference with electronic devices shall be remedied by the owner/developer of the WECS in accordance with current electrical industrial standards. A WECS device/project will not be located in any Public Safety Radio Microwave Buffer area. Owner/developer is to contact the Dickinson County Emergency Management Coordinator to ensure compliance.
 - d) Safety. Owner/developer will establish a safety protocol to be submitted with the application. This protocol is required to be reviewed and approved by the Dickinson County Emergency Management Coordinator and the Fire Chief of the district where the project is located.

(Documentation required from the owner/developer accepting any responsibility of a, b, c and d above as part of the application.)

9. Color, finish, and markings. WECS shall to the extent reasonably possible, use materials, color, and texture that will blend with the natural setting and existing environment. All WECS will be marked as required by FAA and in accordance with current and future FAA industry standards and with the goal to reduce the impact of nighttime light distraction. A

third party engineer will prepare a report of the most updated FAA marking/lighting standards every 36 months. If the FAA updates their marking/lighting standards the owner/operator will have 180 days to implement the new standards. Any guy wires will have a colored spherical marker. A general visual simulation of the project area is required at the time of application.

10. Signage. The WECS shall not be used for display of any advertising except for reasonable identification of the manufacturer or project owner/operator and any safety signs. Documentation showing any signage is required with the application.
11. Sound. Sound produced by any wind energy devices under normal operating conditions (the equipment is properly installed and properly maintained and not showing any evidence of repeating failure) as measured at the closest point of the Human Occupied Dwelling nearest to the WECS shall not produce a sound at a level that would constitute a nuisance. WECS sound shall not exceed 50 dba, however sound levels may be exceeded during short term events out of anyone's control, such as utility outages and/or severe windstorms. Sound buffering technology is to be implemented as it becomes an industry standard.

In the event of a sound complaint that is consistent and abnormal, the sound measured at the Human Occupied Dwelling that exceeds the limit of 50 dba will be considered to be non-compliant. Observations of excess noise can sometimes indicate the need to repair or maintain equipment. See resolution protocol in the application and/or #13 in the event of non-compliance from the owner/developer.

The owner of a human occupied dwelling may waive the sound limits established above, said waiver must be in a written instrument signed by all owners, included with the application, and recorded at the County Recorder's office.

12. Shadow Flicker. A report prepared by a qualified third-party using the most current modeling software available establishing that no Human Occupied Residence will experience more than thirty (30) hours per year, or more than thirty (30) minutes per day on average measured from the closest point of the Human Occupied Residence based on the assessment modeling. The report must show the locations and estimated amount of shadow flicker to be experienced at all Human Occupied Residences as a result of the individual WECS in the project.

The owner of a human occupied dwelling-may waive the shadow flicker limits established above, said waiver must be in a written instrument signed by all owners and included with the application, and recorded at the County Recorder's office.

13. Resolution Protocol. Application shall include a complaint resolution protocol. The owner/developer shall investigate all complaints consistent with the complaint resolution protocol. At a minimum, the complaint resolution protocol will include the requirement for a WECS representative to follow-up with any local resident within 5 business days that

submits a complaint to fully understand the complaint. All complaints shall be logged along with the results of the investigation and measures taken to resolve the complaint.

In the event the complaint is not resolved with the owner/developer then the affected property owner can then follow the procedure below:

- a Complaints shall be submitted to the Dickinson County Attorney in writing from the affected property owner, or written designee, including name, address, contact information, and specific complaint. The written complaint shall include the specific section of the ordinance which is believed to be violated. The County Attorney shall cause the complaint to be added to the agenda of the next Dickinson County Board of Supervisors' meeting in accordance with the procedure for setting the agenda.
- b The County Attorney shall submit to the owner/developer of record notice of all written complaints to the county within 5 (five) business days of receipt of any complaint. Complaints received by the county and the date of any Dickinson County Board of Supervisors' meeting where complaints may be considered shall be communicated to the owner/developer at least 10 days prior. The notice shall state that the
- c Dickinson County Board of Supervisors and the County Attorney may determine that the WECS is in violation of its permit and is therefore a nuisance and may be ordered out of service until the owner/developer can demonstrate compliance with the requirements of this ordinance.
- d If WECS is found in violation of this ordinance, the owner/developer shall take immediate action to bring the WECS into compliance. If the owner/developer fails to bring the operation into compliance within thirty (30) days, the county may seek any relief at law or equity to abate the nuisance and may also issue a municipal civil infraction citation. Each violation shall result in a \$1000.00 fine per turbine. Each day of non-compliance shall be a separate offense.

14. Variances. Where in the case of a particular proposed WECS project, it can be shown that a strict compliance with the requirements of Ordinance 102, Article 21, Section 5.D. would result in extraordinary hardship to the owner/developer, because of unusual conditions, the Board of Adjustment may vary, modify, or waive the requirements so that substantial justice may be done and the public interest secured, provided, however, that such variance modification or waiver will not have the effect of nullifying the intent and purpose of this section. In no case shall any variance or modification be more than minimum easing of the requirements as necessary to eliminate the hardship. In so granting a variance, the Board of Adjustment may impose such additional conditions as are necessary to secure substantially the objectives of the requirements so varied, modified, or waived.
15. Documentation is required by the owner/developer at the time of application for all items 1 – 15 of this section.

E. Hazardous Liquid Pipelines: Any person proposing to use land for purposed of locating or constructing a Hazardous Liquid Pipeline shall submit an application for a conditional use permit according to the regulations set forth in Article #36 of the zoning ordinance.