

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF ANTIS, COUNTY OF BLAIR IN THE COMMONWEALTH OF PENNSYLVANIA CONCERNING THE PLACEMENT AND OPERATION OF WIND TURBINE GENERATORS IN THE TOWNSHIP, REQUIRING PERMITS FOR THE CONSTRUCTION AND MAINTENANCE OF WIND TURBINE GENERATORS, AND ESTABLISHING CRITERIA AND REGULATIONS FOR THE ISSUANCE, PLACEMENT AND OPERATION OF WIND TURBINE GENERATORS, AND PRESCRIBING PENALTIES FOR VIOLATION OF THE SAME.

WHEREAS, the Antis Township 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 Turbine Generators create a potential danger to the public health, safety, and welfare, and endanger the watershed; and

WHEREAS, the Antis Township Supervisors have determined, that under certain circumstances, the operation and construction of large Wind Turbine Generators 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 ENACTED by the Township of Antis, in the County of Blair, and Commonwealth of Pennsylvania, and it is hereby ordained and enacted by the authority of the same as follows:

I. Findings - The Antis Township Supervisors make the following findings with respect to the construction, operation and maintenance of Wind Turbine Generators:

- A.** The construction, maintenance and operation of Wind Turbine Generators which fail to comply with all criteria and regulations set forth in this ordinance, 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 Turbine Generators presents a danger following the useful life of the Wind Turbine Generators from deteriorating structures if provisions for decommissioning are not made as required by this ordinance;
- C.** The construction, maintenance and operation of Wind Turbine Generators, which fail to comply with all criteria and regulations set forth in this ordinance, unreasonably interferes with the reasonable use, comfort and enjoyment of property in the vicinity and/or endangers the health, safety and/or welfare of the occupants of the property in the vicinity, and prohibits or denies the property owners and taxpayers the legitimate enjoyment of their reasonable rights and use of their property and rights;
- D.** The construction, maintenance and operation of Wind Turbine Generators, which fail to comply with all criteria and regulations set forth in this ordinance including, but not limited to, the repetitive noise and glare, visual impacts, 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 taxpayers in the legitimate enjoyment of their reasonable rights and use of their property and rights, and constitute a danger to migratory birds and the watershed.
- E.** The wind turbine generators shall meet current standards and regulations, if any, of any other agency of the State, Federal and Local government with the authority to regulate wind turbine generators.

II. Establishment - The Antis Township Supervisors hereby declare the construction and maintenance of Wind Turbine Generators to constitute a nuisance and offensive business, if not constructed and maintained in accordance with the criteria and regulations set forth in this ordinance, a copy of which is attached hereto and

incorporated herein by reference, subject to prohibition under Section 1529 of the Pennsylvania Second Class Township Code (53 P.S. § 66529) and provide for their regulation and permitting under the conditions set forth below in order to avoid the maintenance of nuisance or offensive businesses within the geographic limits of Antis Township.

III. Definitions - (1) Wind Turbine Generators - As prohibited or regulated by this Ordinance shall mean real and personal property, which are composed of generators, blades, tower, base, components of the aforementioned and appurtenances of the aforementioned (“Wind Turbine Generator” with the term referring to both the singular and the plural of such structure); **(2) Property Line** - As referred to in the boundary of the property or lot upon which the Wind Turbine Generators is to be located.

IV. Special Conditions.

A. Design. Each wind turbine generator shall consist of a tubular support, generator, nacelle, and three blades. Each wind turbine generator site will have access roads, underground transmission cabling to connect the generators to an electric substation, and underground fiber optic lines. On-site transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground. All wind turbine generator sites shall be designed and constructed in such a fashion as to avoid any disruption and/or interference with private wells, springs and/or other water sources. In the event any problems occur with any private water source, which problems are proximately caused by Developer/Permittee, Developer/Permittee shall immediately supply potable water in such quality and quantity as supplied by the original private water source. Applicant must provide written notice to all property owners and tenants occupying property within 2,500 feet of the boundary of the property upon which the wind turbine generator will be located and advise them that Applicant, at Applicant’s sole cost, will test their well prior to construction as to the land owners potable water, the quality of the water and the quantity of the water and supply and the report thereof shall be furnished to the Township and to the property owners and tenants.

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.

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.

Developer/Permittee shall install wind turbine generators of two megawatts nameplate capacity each unless otherwise agreed to by the Parties, which comply with all terms and provisions of this Agreement.

- B. Maintenance, Repair & Replacement.** Developer/Permittee shall repair, maintain and replace the wind turbine generators and associated equipment during the Term of this Agreement in a manner consistent with Good Utility Practice as needed to keep the Project in good repair and operating condition.
- C. Signs.** No advertising material or signage other than warning, equipment information or indicia of ownership shall be allowed on the wind turbine generators. 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.
- D. Lightning.** The wind turbine generators 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.
- E. Aesthetics.** The towers and generators of the wind turbine generators 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 turbine generators are not covered by this section.
- F. Stray Voltage/Electromagnetic Fields (EMF).** Developer/Permittee will utilize Good Utility Practice to minimize, to the extent practicable, the impact, if any, of stray voltage and/or EMF on Non-participating property. Developer/Permittee expects there will be no stray voltage impacts from the Project because such impacts occur only on distribution facilities which are not included in the Project.

V. Permits Required - No Wind Turbine Generators shall be constructed, operated or maintained within Antis Township without a permit for the same. Application for permit shall be made on forms provided by the Township. The application form shall include a statement requiring that the applicant indemnify the Township with respect to all activities related to the operation of the Wind Turbine Generator(s). A separate application shall be filed for each structure. In addition, the issuance of a permit pursuant to this Wind Turbine Ordinance will not relieve the facility owner of any applicable requirements contained in any other Township ordinance including the Township Subdivision and Land Development Ordinance.

A. Permit Application - The permit application shall demonstrate that the proposed Wind Energy Facility will comply with this Ordinance.

B. Among other things, the application shall contain the following:

1. A narrative describing the proposed Wind Energy Facility, including an overview of the project; the project location; the approximate generating capacity of the 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 and respective manufacturers, and a description of ancillary facilities.
2. An affidavit or similar evidence of 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 necessary permits for construction and operation of the Wind Energy Facility.
3. 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.
4. 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 substation(s), ancillary equipment, buildings, and structures,

including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.

5. Setbacks - The wind turbine generators shall comply with the following setbacks:

- a. **Civil Structures.** Each wind turbine generator shall be set back from the nearest existing (at the time of the building permit issuance) school, hospital, church or public library, a distance of no less than 2,500 feet.
- b. **Participating Residences.** For existing (at the time of the building permit issuance or notice from the building code enforcement officer that no building permit is required) participating primary occupied residences, the setback distance from a wind turbine generator shall be at least 1,000 feet. In the event that a lesser distance is desired, the Developer/Permittee shall request a waiver to this provision pursuant to the requirements of this Ordinance. In no event shall the setback distance be less than 1.1 times the total height of the wind turbine generator (measured at the highest point of the blade tip).
- c. **Non-Participating Residences.** For existing (at the time of the building permit issuance or notice from the building code enforcement officer that no building permit is required) non-participating primary occupied residences, the setback distance from a wind turbine generator shall be at least 2,500 feet.

Definition of Participating and Non-Participating. For purposes of this Ordinance “Participating” shall mean a property owner or property (including a residence) that is subject to an agreement or lease with Developer/Permittee. “Non-Participating” shall mean all property owners or properties (including a residence) which are not participating property owners or property.

- d. **Property Lines.** Each wind turbine generator shall be set back from the nearest property line a distance of no less than 1,000 feet.
- e. **Public Roads.** Each wind turbine generator shall be set back from the nearest public road a distance of no less than 1,000 feet, determined at the nearest boundary of the right-of-way

for such public road. Unless conclusive evidence exists to the contrary, the public road right-of-way is presumed to be 66 feet.

f. **Communication and Electric Lines.** Each wind turbine generator shall be set back from the nearest above-ground public electric power line or public telephone line a distance of no less than 1,000 feet.

g. **Natural Resources and Historic Sites and Structures.** Each wind turbine generator shall be set back a distance of no less than 2,500 feet from the nearest existing critical and irreplaceable natural and cultural resource areas of the Township (at the time of the building permit issuance):

1. Important Bird Areas (IBA).
2. National Wetland Inventory (NWI) wetlands.
3. Historic structure listed or eligible to be listed on the Pennsylvania Heritage Inventory and National Landmarks.
4. Blair County Natural Heritage Areas.
5. Lakes, dams, ponds and public water source wells and springs

The Applicant is required to contact and present their proposals by certified return receipt mail to each of the following agencies. The Applicant will copy the Township on any correspondence sent to or received from the agencies. The Applicant is required to follow all the recommendations and all directives of the agencies and provide the township with a letter of consistency from each agency.

Should any agency fail to respond within 90 days of the date of return receipt to an applicant's request for review of the proposal, this sub-section of the ordinance will be satisfied as to the need to obtain a finding of consistency from that specific agency. Setback requirements or recommendations of the following agencies as they relate to Natural Resources and Historic Sites and Structures supersede the setbacks in this Section. Where specific standards, recommendations or requirements as to any of the Historic or Natural resources listed in this section are not obtained, this ordinance and permit requirements will be adhered to. Where the different agencies differ in their standards, recommendations or requirements, the more strict standards, recommendations and requirements will be followed by the applicant.

U.S. Fish and Wildlife Service
PA Field Office
315 South Allen Street, Suite 322
State College, PA 16801-4850

Pennsylvania Historical & Museum Commission
Bureau for Historic Preservation
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120-0093

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

Pennsylvania Game Commission
2001 Elmerton Avenue
Harrisburg, Pennsylvania 17110-9797
Pennsylvania Fish and Boat Commission
1601 Elmerton Avenue
P.O. Box 67000
Harrisburg, PA 17106-7000

- C. Documents related to decommissioning.
 - D. Other relevant studies, reports, certifications and approvals as may be reasonably requested by Antis Township to ensure compliance with this Ordinance.
 - E. Within (30) days after receipt of a permit application, Antis Township will determine whether the application is complete and advise the applicant accordingly.
- VI. Permit Fee** - Developer/Permittee will pay to the Township a permit fee of ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00) per proposed megawatt for each wind turbine generator. The permit fee shall be paid at the time the application is submitted. Fees shall not be returned where an application has been denied. 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.

Thereafter, Developer/Permittee will pay the Township ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00) per megawatt for each wind turbine generator actually installed in the Township (the "Per Megawatt Payment").

Pursuant to the above terms, Developer/Permittee specifically agrees that the Commonwealth may not impair the right to this payment by the passage of legislation, executive order or otherwise.

Such payments shall be on an annual basis payable on the anniversary of the Issuance or Notice Date. Under no circumstances shall the Township receive less than ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS per megawatt from Developer/Permittee. However, Developer/Permittee may receive a Credit, which shall be set off against the Per Megawatt Payment. "Credit" is defined as the amount of any payments related to the Wind Farm or wind turbine generators located in the Township paid by Developer/Permittee to any other governmental entity, for which such funds are actually (or are traceable to an amount) received by the Township. If the Credit is less than the Per Megawatt Payment, then the Per Megawatt Payment will be reduced by the Credit. However, if the Credit is equal to or greater than the Per Megawatt Payment, no Per Megawatt Payment is payable to the Township.

VII. Duration of Permit - A permit issued shall be valid for a period of thirty (30) years. Permits are non-renewable and any Wind Turbine Generator facility operator wishing to continue operation must reapply for a new permit under this ordinance.

Any permit granted under this Ordinance is 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.

- VIII. Notice of Application** - The applicant must provide written notice of application to all property owners and tenants occupying property within 2,500 feet of the boundaries of the property upon which the Wind Turbine Generators will be located. Proof of service of such notice by Certified Mail or notarized Affidavit of hand delivery must be provided with the application.
- IX. Review of Applications** - The Township will review the application submitted, and reject the same if it is incomplete in any respect. In such case, the application fee shall be retained as compensation for the time spent in review. If the application is determined to be complete, the Township Secretary shall place the matter on the agenda for action by the Supervisors at a public meeting.
- X. Issuance of Permits** - The Supervisors of the Township, with the assistance of such consultants as they deem appropriate, shall make a determination at a public meeting as to whether the application submitted meets the criteria and regulations set forth in this Ordinance, and approve or reject the application based upon that determination in a public vote.
- XI. Criteria and Regulations for Granting of Permit** - No permit for the construction, operation or maintenance of a Wind Turbine Generator(s) shall be granted unless the applicant demonstrates compliance in its application with all criteria and regulations set forth in this Ordinance.

XII. Waiver - No waiver by the Township of the obligations of the permittee shall be deemed to be made unless the same shall be in writing and be signed by a 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. The decision of the Township Board of Supervisors on a waiver request shall be considered final.

All Waivers shall be in the form of an executed written waiver or non-disturbance easement, covenant or consent. All of the aforementioned must be recorded in the Office of the Recorder of Deeds of Blair County, Pennsylvania. Such easement or covenant shall run with the land and, at a minimum, provide that the said property owner waives and releases any and all claims, damages and/or losses resulting from higher noise levels, visual impacts or flickering reflections and/or shadows which may arise as a result of the location of a wind turbine generator within the established setback distance of an existing residential or commercial structure on the property of the owner executing the same. Such easement, covenant or consent shall meet such requirements as to form and content consistent with this Agreement as may be required by the Township.

XIII. Continued Compliance - An applicant granted a permit under this Ordinance shall be under a continuing obligation to meet the performance criteria and regulations set forth above. The Antis Township Supervisors hereby declare that a Wind Turbine Generator(s) which ceases to meet the criteria and regulations listed above, after construction pursuant to a permit, shall constitute a nuisance, and following a

30-day notice to the applicant at the address listed on the application for permit of the need for abatement, which remains unremedied or unappealed, the Township may act to remove the structure. Such Notice shall be designated as a Notice of Violation, and shall be appealable as set forth below.

XIV. Noise and Shadow Flicker.

A. Developer/Permitee shall comply with the following noise standards:

1. Developer/Permitee shall make a good faith effort to maintain a noise level attributable to the wind turbine generators of not more than 45dbC within a reasonable margin of error as measured from the property line of existing Non-Participating residences;
2. 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.

B. The Facility Owner and Operator shall make every reasonable effort to minimize shadow flicker to any Occupied Building on a Non-participating Landowner's property.

XV. Private Access Roads and Forestry Management. Every effort should be made to use existing roads and logging roads. New deforestation and forest fragmentation should be kept to a minimum. Private entrance roads to wind turbine generators and associated meteorological towers, communication towers, and auxiliary buildings will not be paved but kept mud free. The cartway will be kept to the minimum possible.

XVI. Use of Public Roads - The Applicant shall identify all state and local public roads to be used within the municipality to transport equipment and parts for construction, operation or maintenance of the Wind Energy Facility.

- A. The Township Engineer or a qualified third party engineer hired by the 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.
- B. The Township will require that the road be bonded in compliance with state regulations to ensure the prompt repair of damaged roads. The Developer/Permitee shall comply with all other Township ordinances with respect to public roads.
- C. Any road damage caused by the applicant or its contractors shall be promptly repaired at the applicant's expense.

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

- A. All wiring between the wind turbine generators and the substation shall be underground to the extent practicable; and
- B. The outside of the wind turbine generator towers shall not be climbable; and
- C. All access doors to the towers and electrical equipment shall be locked; and
- D. 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.
- E. Appropriate and clearly visible warning signage shall be placed on each tower, all electrical equipment, and all entrances; and
- F. Developer/Permitee shall abide by all applicable local, state and federal fire code and emergency services guidelines; and
- G. All wind turbine generators shall be equipped with portable fire extinguishers, unless the local fire department or municipal engineer provides written documentation establishing that the same is not necessary; and
- H. Inspection and O&M Provider: Developer/Permitee shall cause its Operations and Maintenance provider ("O&M Personnel") to comply with the following schedule;
 - 1. 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 turbine generators, towers and antennas. At

a minimum, this inspection shall be conducted in accordance with the provisions of this Ordinance and in accordance with the wind turbine generator inspection check list provided by the Parties' respective Engineers, as applicable. This is considered a major inspection.

2. 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 turbine generator foundations, structures, 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 generator 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 turbine generator. This is considered a minor inspection.
3. In addition to the regularly scheduled major and minor inspections set forth in paragraphs 1 and 2 above, a minor inspection, at a minimum will be conducted if a wind turbine generator or its appurtenances are noted at any time to be visibly damaged. Additionally a major inspection should be conducted if the visible damage to a wind turbine generator is significant or when, after conducting a minor inspection, significant questions remain about the structural integrity of a wind turbine generator.
4. Developer/Permitee shall provide an annual letter to the Township certifying compliance with the inspection requirements of this Section.

XVIII. Insurance - Developer/Permitee shall maintain the following insurance coverage:

- A. A commercial general liability insurance policy with a financially responsible insurance company providing for; (i) a limit of not less than \$1,000,000 for personal or bodily injury or death to any one person; and (ii) for a limit of not less than \$3,000,000 for personal or bodily injury or death to any number of persons arising from any one occurrence; and (iii) for a limit of not less than \$1,000,000 for any instance of property damage;
- B. Worker's compensation coverage in an amount required by Pennsylvania law. Developer/Permitee shall require subcontractors and others not protected under its insurance to obtain and maintain worker's compensation and employers' liability insurance; and

- C. Umbrella liability insurance with coverage to be in excess of the insurance required above. Limits of liability shall not be less than \$3,000,000 for each occurrence and \$3,000,000 in aggregate; and
- D. The Township shall be identified as an additional insured on all insurance policies referenced herein. No policy of insurance shall be cancelled without first providing the Township with at least 30 days prior written notice of intent to cancel.
- E. Certificates of insurance evidencing compliance with these requirements shall be provided to the Township. All policies other than workers compensation shall be written on an occurrence and not on a claims made basis.
- F. Coverage limits contained in this Section may be revisited by the Board of Supervisors from time to time. The Developer/Permitee will be required to provide updated insurance certificates to document the amended adequate coverage limits.

XIX. Field Representative and Site Manager - Developer/Permitee will be responsible for overseeing compliance with the conditions of this a permit issued under this Ordinance 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 a permit issued under this Ordinance for the duration of the Term of the permit. 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 residents and officials. 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 contact information. In addition, Developer/Permitee will make contact information available for the entity providing operation (monitoring) and maintenance services.

XX. Inspections. Designated representatives of the Township shall be allowed to inspect the wind turbine generator sites after providing notice to Developer/Permitee.

XXI. Performance Standards - Developer/Permitee agrees that the Project shall be operated and maintained consistent with Good Utility Practice for comparable facilities. For purposes 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.

XXII. No Further Land Development – Building permits shall not be issued for construction on the same parcel as a permitted Wind Turbine Generator(s) when the proposed construction is within 2,500 feet of the Wind Turbine Generator(s), unless the party requesting the building permit shall have executed a written waiver or non-disturbance easement, covenant, consent or any of the aforementioned which

has been recorded in the Office of the Recorder of Deeds of Blair County, Pennsylvania.

XXIII. Revocation of Permit - The following reasons shall constitute cause to revoke a permit issued under this Ordinance. Below is a partial list and the Township reserves the right to revoke a permit for violation of any other provision contained in this Ordinance.

- A.** If Developer/Permitee ceases to operate the Project provided, however, that Developer/Permitee shall not be deemed to have ceased operating the Project if Developer/Permitee ceases operations for all or substantially all of the Project for a period not exceeding 6 months;
- B.** If a petition is filed by Developer/Permitee under any bankruptcy, reorganization, arrangement, insolvency, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 90 days after such filing;
- C.** If Developer/Permitee fails to observe or perform any material condition or provision hereof for a period of 60 days after receiving written notice of such failure from the Township, Developer/Permitee shall commence corrective action within 30 days of notice from any source, of any failure, and shall complete corrective action within 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 30 days of notice or is unable to complete corrective action within 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,
- 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 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 days of receipt. Developer/Permitee shall commence corrective action within 30 days of notice, from any source, of any breach and/or violation, and shall

complete corrective action within 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 30 days of notice or is unable to complete corrective action within 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,

E. In addition, the Township may revoke a permit issued under this Ordinance if the following conditions are met:

1. The Event of Default remains uncured; and
2. There is no Force Majeure Event causing the Event of Default to continue; and
3. The Township has provided Developer / Permitee an opportunity to present and explain its position before the Township Board to respond to the Event of Default, and any and all decisions and/or determinations by the Township Board may be appealed to the Court of Common Pleas of Blair County, and all appeals are de novo; and
4. All de novo appeals from the decision rendered by the Township Board under (Section E.3) have been exhausted.

XXIV. No Further Subdivision - No property or lot upon which a Wind Turbine Generator has been located shall be further subdivided where to do so would result in the setbacks required by this Ordinance and/or as set forth in the permit not to be met.

XXV. Wind Turbine Generator Removal.

A. Bonding: Decommissioning

1. Before Final Permit approval, the Applicant must submit to the Antis Township Board of Supervisors a bond which shall be deposited with the municipality of financial security in an amount sufficient to cover the costs of decommissioning all improvements or common amenities

including, but not limited to the windmill and appurtenances including the base and footing, storm water detention and/or retention basins and other related drainage facilities, and electrical apparatus and restoration of the land to its original condition including forestry plantings of the type and density as the original.

2. When requested by the developer, in order to facilitate financing, the governing body may furnish the developer with a signed copy of a resolution indicating approval of the permit contingent upon the developer obtaining a satisfactory financial security and meeting all requirements of this Ordinance and Permit. The resolution or letter of contingent approval shall expire and be deemed to be revoked if the financial security agreement is not executed within ninety (90) days unless a written extension is granted by the township; such extension shall not be unreasonably withheld and shall be placed in writing at the request of the developer.
3. Without limitations as to other types of financial security which the municipality may approve, which approval shall not be unreasonably withheld, Federal or Commonwealth chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in such lending institutions shall be deemed acceptable financial security for the purposes of this section.
4. Such financial security shall be posted with a bonding company or Federal or Commonwealth chartered lending institution chosen by the party posting the financial security, provided said bonding company or lending institution is authorized to conduct such business with the Commonwealth.
5. Such bond or other security shall provide for and secure to the public the decommissioning of any improvements.
6. The amount of financial security to be posted for the decommissioning of any improvements shall be equal to 110% of the cost. Annually, the municipality may adjust the required amount of the financial security. Subsequent to said adjustment, the municipality may require the developer to post additional security in order to assure that the financial security equals said 110%. Any additional security shall be posted by the developer in accordance with this subsection.
7. The amount of financial security required shall be based upon an estimate of the cost of decommissioning of any improvements, submitted by an applicant or developer and prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The

municipality, upon the recommendation of the municipal engineer, may refuse to accept such estimate for good cause shown. If the applicant or developer and the municipality are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the municipality and the applicant or developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the municipality and the applicant or developer.

8. As the work of decommissioning of any improvements proceeds, the party posting the financial security may request the governing body to release, or authorize the release, from time to time, such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the governing body, and the governing body shall have forty-five (45) days from receipt of such request within which to allow the municipal engineer to certify, in writing, to the governing body that such portion of the decommissioning of any improvements has been completed. Upon such certification, the governing body shall authorize release by the bonding company or lending institution of an amount as estimated by the municipal engineer fairly representing the value of the decommissioning of any improvements or, if the governing body fails to act within said 45-day period, the governing body shall be deemed to have approved the release of funds as requested.

B. Release from Decommissioning Bond.

1. When the developer has completed the decommissioning of all improvements, the developer shall notify the municipal governing body, in writing, by certified or registered mail, of the completion of the aforesaid decommissioning of all improvements and shall send a copy thereof to the municipal engineer. The municipal governing body shall, within ten (10) days after receipt of such notice, direct and authorize the municipal engineer to inspect the site. The municipal engineer shall, thereupon, file a report in writing with the municipal governing body, and shall promptly mail a copy of the same to the developer by certified or registered mail. The report shall be made and mailed within 30 days after receipt by the municipal engineer of the aforesaid authorization from the governing body. Said report shall be detailed and shall indicate approval or rejection of said decommissioning of all improvements, either in whole or in part, and if said improvements, or any portion

thereof, shall not be approved or shall be rejected by the municipal engineer, said report shall contain a statement of reasons for such non-approval or rejection.

2. The municipal governing body shall notify the developer, within fifteen (15) days of receipt of the engineer's report, in writing by certified or registered mail of the action of said municipal governing body with relation thereto.
3. If the municipal governing body or the municipal engineer fails to comply with the time limitation provisions contained herein, all decommissioning of all improvements will be deemed to have been approved and the developer shall be released from all liability, pursuant to its performance guaranty bond or other security agreement.
4. If any portion of the work shall not be approved or shall be rejected by the municipal governing body, the developer shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined herein, shall be followed.
5. Nothing herein, however, shall be construed in limitation of the developer's right to contest or question by legal proceedings or otherwise, any determination of the municipal governing body or the municipal engineer.
6. Where herein reference is made to the municipal engineer, he shall be a duly registered professional engineer employed by the municipality or engaged as a consultant thereto.
7. The municipality may prescribe that the applicant shall reimburse the municipality for the reasonable and necessary expense incurred for the inspection of decommissioning of improvements. Such reimbursement shall be based upon a schedule established by resolution. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the municipal engineer or consultant for work performed for similar services in the community, but in no event shall the fees exceed the rate or cost charged by the engineer or consultant to the municipalities when fees are not reimbursed or otherwise imposed.
 - a. In the event the applicant disputes the amount of any such expense in connection with the inspection of decommissioning of improvements, the applicant shall, within ten (10) working days of the date of billing, notify the municipality that such expenses are disputed as unreasonable

or unnecessary, in which case the municipality shall not delay or disapprove a permit related to the development due to the applicant's request over disputed engineer expense.

- b.** If, within twenty (20) days from the date of billing, the municipality and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant and municipality shall jointly, by mutual agreement, appoint another professional engineer licensed as such in the Commonwealth of Pennsylvania to review the said expenses and make a determination as to the amount thereof which is reasonable and necessary.
- c.** The professional engineer so appointed shall hear such evidence and review such documentation as the professional engineer in his or her sole opinion deems necessary and render a decision within fifty (50) days of the billing date. The applicant shall be required to pay the entire amount determined in the decision immediately.
- d.** In the event that the municipality and applicant cannot agree upon the professional engineer to be appointed within twenty (20) days of the billing date, then, upon application of either part, the President Judge of the Court of Common Pleas of the judicial district in which the municipality is located (or if at the time there be no President Judge, then the senior active judge then sitting) shall appoint such engineer, who, in that case, shall be neither the municipal engineer nor any professional engineer who has been retained by, or performed services for, the municipality or the applicant within the preceding five years.
- e.** The fee of the appointed professional engineer for determining the reasonable and necessary expenses shall be paid by the applicant if the amount of payment required in the decision is equal to or greater than the original bill. If the amount of payment required in the decision is less than the original bill by \$1,000 or more, the municipality shall pay the fee of the professional engineer, but otherwise the municipality and the applicant shall each pay one-half of the fee of the appointed professional engineer.

C. Remedies to Effect Completion of Decommissioning of Improvements.

In the event that any decommissioning of improvements which are required have not been completed as provided in this ordinance and permit, the

governing body of the municipality is hereby granted the power to enforce any corporate bond, or other security by appropriate legal and equitable remedies. If proceeds of such bond or other security are insufficient to pay the cost of decommissioning of improvements covered by said security, the governing body of the municipality may, at its option, proceed with of decommissioning of all improvements and may institute appropriate legal or equitable action to recover the moneys necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the developer, or both, shall be used solely for the decommissioning of all improvements covered by such security and not for any other municipal purpose.

XXV. Penalty - Any person who violates any portion of this Ordinance shall, in a civil enforcement proceeding, pay a fine as set by the Township Supervisors as provided for in the Second Class Township Code, 53 P.S. §66601. This Ordinance is deemed to be an ordinance related to public health and safety, enacted under authority of the statutes referred to in the preamble hereto and the Townships general authority to protect public health, safety and welfare. As such, a penalty of \$1,000.00 shall be assessed as a civil penalty for any violation hereof. Each day a violation continues shall be considered a separate and distinct violation and subject to a separate assessment, until proof of compliance is provided. Notwithstanding any provision of this Ordinance respecting enforcement, the Township reserves the right to enforce this Ordinance through an action for injunction in the Court of Common Pleas of Blair County pursuant to 53 PS. §66601 (c.1) (4). In addition to any civil penalty imposed, any person who violates this ordinance will be required to pay all court costs and attorney fees accrued by the Township.

XXVI. Appeals - Any person aggrieved by any determination or action by the Township shall have an opportunity to present and explain its position before the Township Board of Supervisors. Any and all decisions and/or determinations by the

Township Board of Supervisors may be appealed to the Court of Common Pleas of Blair 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 2,500 feet of the boundaries of the property upon which the Wind Turbine Generators will be located. 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.

XXVII. The appeal shall be accompanied by a fee of \$300.00. Appellant shall be responsible for all costs of the appeal in excess of \$300.00. Failure to file a complete appeal, together with all statements, may result in dismissal of the appeal.

XXVIII. Savings Clause - It is hereby declared to be the intent of the Township that these regulations be considered nuisance regulations and not building regulations

under the Uniform Construction Code, authorized by Act 45 of 1999, implemented by regulations of the Commonwealth of Pennsylvania Department of Labor and Industry.

XXIX. Repealer - All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

XXX. Severability - If any sentence, clause, section, or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Board of Supervisors that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein,

XXXI. This Ordinance shall become effective immediately, or as soon as legally permissible.

XXXII. It is declared that the adoption of this Ordinance and the execution, acknowledgment and delivery of the documents are necessary for the protection, benefit and preservation of the health, safety and welfare of the general public of the Municipality.

XXXIII. **ADOPTED** at a public meeting of the Antis Township Supervisors held the _____ day of _____, 2006, following advertisement, as required by law.

ATTEST:

ANTIS TOWNSHIP

Secretary

Chairman, Board of Supervisors

Vice-Chairman, Board of Supervisors

Supervisor

Supervisor

Supervisor