**BUEL TOWNSHIP ORDINANCE NO. 15-**1

An Ordinance to Amend the Buel Township Ordinance No. 04-02 by Amending Section 9.04.02 to change the Minimum Lot Area and by adding Article XIV to Regulate the Location, Installation and Operation of Wind Energy Conversion Facilities, To Provide for Severance of Invalid Provisions, to Repeal Conflicting Ordinances and to Establish an Effect Date.

**THE TOWNSHIP OF BUEL, SANLAC COUNTY, MICHIGAN, ORDAINS** that Ordinance No. 04-02 being the Buel Township Zoning Ordinance is hereby amended in the following manner:

1) Section 9.04.02 is hereby amended to provide:

**9.04.02 MINIMUM LOT AREA**

 A. The minimum lot area where public wastewater treatment is available shall be Twenty Thousand (20,000) square feet with a minimum one hundred (100) foot frontage on a street and a minimum one hundred (100) foot width for at least 90% of the depth of the lot.

 B. The minimum lot area where public wastewater treatment is not available shall be Sixty-Five Thousand Three Hundred Forty (65,340) square feet with a minimum one hundred fifty (150) foot frontage on a street and a minimum one hundred fifty (150) foot width for at least 90% of the depth of the lot.

 C. The minimum lot area requirements established in subsection B above shall not apply to any lot that existed in its present size and configuration on the date the zoning ordinance first became effective provided there is an occupied dwelling located on said lot. This provision shall not modify any setback requirements established in this Ordinance.

2) The following Article XIV is added:

**ARTICLE XIV**

**14.00.00 WIND ENERGY CONVERSION SYSTEMS**

**14.01.00 PURPOSE AND INTENT**

It is the purpose and intent of this article to supplement the provisions of Article VIII of this Ordinance for Special Land Use Permits for Wind Energy Conversion Facilities.

**14.02.00 APPLICABILITY**

This Article shall apply to any Wind Energy Conversion Facility utilizing a Wind Turbine or turbines exceeding 100 feet in total height or with a capacity exceeding 100 kilowatts.

**14.03.00 LOCATION**

Wind Energy Conversion Facilities may be located in any zoning district within Buel Township subject to the provisions of this Article and any other non-conflicting provisions of this Ordinance.

**14.04.00 CONFLICTING REGULATIONS, ORDINANCES AND ARTICLES**

Whenever any provision of this Article imposes more stringent requirements, regulations, restrictions or limitations than are imposed or required by the provision of any other law or ordinance the provisions of this Article shall govern. Whenever there is a conflict between this Article and any other Article of this Ordinance this Article shall govern.

**14.05.00 DEFINITIONS**

When used in this Ordinance the following terms shall have the following meanings:

WIND ENERGY CONVERSION FACILITY (WECF). An electricity generating facility consisting of one or more Wind Turbines under common ownership or operational control including substations, towers, cables, wires, transmission lines and other structures accessory to such facility the main purpose of which is to supply electricity to off-site customers.

WIND TURBINE. A structure that converts wind power to electricity through the use of a generator, blades, tower, base pad and transformer.

**14.06.00 REQUIREMENTS**

All Wind Energy Conversion Facilities shall meet the following requirements:

**14.06.01** **Visual Appearance, Lighting, Power Lines**

1. TOWER. Wind Turbines shall be mounted on tubular, monopole towers painted a non-reflective, non-obtrusive color.

B. OTHER STRUCTURES. All other WECF structures shall, to the extent reasonably possible, use materials, textures and screening that will blend these structures into the surrounding setting and environment. Any painted structure shall be painted a non-reflective, non-obtrusive color.

C. LIGHTING. WECFs shall not be artificially lighted except to the extent required by governmental authorities and agencies having appropriate jurisdiction or unless otherwise necessary for reasonable safety and security.

D. ADVERTISING. WECFs shall not be used for displaying any advertising except for the reasonable identification of the manufacturer and/or operator thereof.

E. ELECTRICIAL COLLECTION/DISTRIBUTION SYSTEM. The electrical collection/distribution system of any WECF shall meet the following requirements:

i. The electrical collection/distribution system shall be located at a depth of not less than four feet underground on the interior of each parcel.

ii. Surface markers shall be placed to indicate the location of all underground installations. A map showing the location of said installations shall be provided to the township. The WECF shall be a member of and shall participate in MISS DIG Systems, Inc. and proof of membership shall be provided to the Township.

iii. The electrical collection system may be placed overhead adjacent to public roads, near substations, at points of connection to the electric grid, and at such other locations where underground location is not feasible.

**14.06.02 Setbacks, Separation and Security.**

A. No Wind Turbine shall be located less than 1,320 feet from any inhabited structure unless written consent is obtained from all owners of the inhabited structure and recorded with the Sanilac County Register of Deeds in which case the Wind Turbine may be located not less than two times the distance from the ground to the middle of the hub of the Wind turbine from any inhabited structure.

B. No Wind Turbine may be located closer than one and one-half times the distance from the ground to the middle of the hub of the Wind Turbine from any public road, above ground utility line or any property line of property for which the owner or operator of the WECF has not obtained a written lease to install, operate and maintain the Wind Turbine which lease must be recorded with the Sanilac County Register of Deeds and which must remain in effect until the Wind Turbine is decommissioned.

C. All other structures utilized in the WECF shall comply with the setback requirements of the zoning district in which they are located.

D. Wind Turbines shall not be located closer than two times the blade diameter of the larger Wind Turbine from one another.

E. No Wind Turbine shall exceed 428 feet from the ground in total height or shall have a clearance of less than 50 feet from the ground to the rotor blade at its lowest point. All other structures in the WECF shall meet the size and height requirements of the zoning district in which they are located.

**14.06.03 Noise.**

A. Audible noise or the sound pressure level from the operation of the WECF shall not exceed forty-five (45) dBA or the ambient sound pressure level plus five (5) dBA, whichever is greater, for more than ten percent (10%) of any sixty (60) minute interval measured at any residence, school, hospital, church or public library existing on the date of approval of any WECF special use permit. The applicant shall be able to provide sound pressure level measurements from a reasonable number of sampled locations at the perimeter and in the interior of the WECF to demonstrate compliance with the standard.

1. In the event audible noise from the operation of the Wind Energy Facility contains a steady pure tone the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five (5) dBA.

i. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dBA for center frequencies of five (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.

1. Ambient noise levels shall be measured at a building’s exterior of potentially affected existing residences, schools, hospitals, churches and public libraries.

i. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind-generated noise at the microphone.

ii. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow Wind Turbine operations provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

D. Any noise level falling between two (2) whole decibels shall be the lower of the two.

E. The noise level limit established herein may be raised provided the owner/operation of the WECF obtains a written agreement with all owners of any effected property consenting to the increased noise levels. Said agreement shall:

i. contain the legal description of property on which the Wind Turbine is located and the affected property;

ii. contain the maximum noise level to which the parties agree;

iii. set forth the term of the agreement;

iv. be in recordable form;

v. be recorded with the Sanilac County Register of Deeds.

**14.06.04 Signal Interference**. No WECF shall interfere with any radio, television, cellular telephone, microwave communication or any other form of wireless communication:

**14.06.05 Safety**.

A. Wind Turbine towers shall not be climbable on the exterior;

B. All points of access to Wind Turbines and other structures shall be capable of being securely locked and shall be kept locked at all times when not occupied by the owner/operator or its agents;

C. Signs shall be placed at all access points to any Wind Turbine or other structure prohibiting entry, warning of dangers upon entry, containing the name and address of the owner/operator and providing a telephone number and other emergency contact information;

D. Unless waived by the landowner the owner/operator of the WECF shall place a gate at the intersection of any access road and any public road preventing access to the access road and shall place a no trespassing sign at said location.

**14.07.00 SITE PLAN REVIEW**. In addition to the requirements set forth in Article VIII of this Ordinance a special use permit application site plan shall include:

A. an avian study to assess the potential impact of the proposed WECF on bird and bat species. The study shall, at a minimum, report on a literature survey for threatened and endangered species and relevant information on critical flyways. If the report reveals any negative impact, the application shall contain a plan for post-construction mitigation and monitoring which may be included as a condition for the Special Use Permit.

B. the location, drawn to scale, of all features of the WECF site including all existing buildings and structures, roads, driveway, utilities and utility rights of way, property lines, property owners and zoning district;

C. the location, drawn to scale, of all proposed Wind Turbines, structures, electrical collection/distribution systems, including the depth of buried lines, and the height of overhead lines, access roads, ditches, culverts and any other physical feature that is proposed showing compliance with the provisions of this Article and Article VIII;

D. the routes to be used for delivery of materials and equipment for construction of the WECF, all proposed modifications to existing roads, restoration plans for removing modifications and repairing damages to existing roads. If feasible, all gravel removed when road modifications are removed shall be applied to repairing, restoring and improving roads in the township;

E. proposed construction schedule;

F. proof of membership in MISS DIG Systems, Inc. of Michigan;

G. proposed Construction Bond;

H. application fee established by the Buel Township Board which may be greater than the application fee for any other special use permit.

**14.08.00 CONSTRUCTION BOND**. Before construction is commenced the owner/operator shall post a bond issued by sureties satisfactory to Buel Township naming Buel Township as the obligee. Said bond shall insure the satisfactory completion and operational status of the WECF. The bond shall be in an amount sufficient to ensure the complete removal of all Wind Turbines including foundations, structures, accessories and electricity collection/distribution systems as well as the restoration of all roads, ditches, drains and other public improvements to their pre-construction condition in the event the WECF is not completed and becomes operational.The bond shall be in an amount deemed sufficient by the Buel Township Planning commission to accomplish these purposes. The bond shall be cancelled when construction of the WECF is successfully completed and the WECF becomes operational.

**14.09.00 DECOMMISSIONING**. If the use of any Wind Turbine, structure, accessory or any portion of the electricity collection/distribution system of a WECF is terminated on a permanent basis or remains unused for the production, collection and distribution of electricity for 24 consecutive months (“abandoned”), the owner/operator shall, within 180 days after said termination or abandonment, completely remove the unused or abandoned portion of the WECF from Buel Township. If the entire WECF is removed pursuant to this provision, all public roads, drains, ditches or other public improvements that were altered in any manner when the WECF was constructed shall be restored to their pore-construction condition.

**14.09.01 Decommissioning Bond**. At the time the construction bond required by this Article is cancelled the owner/operator of the WECF shall post a performance bond naming Buel Township as the obligee to ensure the complete removal of the WECF, or any part thereof, that is abandoned or becomes unused as provided in Section 3.09.00. Said bond shall be in the amount of $500,000 or ten percent of the total construction cost of the WECF, whichever is greater. Said bond shall remain in effect until the WECF is completely removed. Said bond shall contain a replenishing obligation requiring that any portion thereof that is used for the removal of any part of the WECF shall be forthwith replenished until the entire WECF is removed.

3) Ordinance #04-02 shall remain in full force and effect except as modified herein.

4) If any section, clause or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

5) All other previously adopted ordinances or parts of ordinances in conflict with this Ordinance shall, to the extent of such conflict, be considered repealed at such time as this Ordinance becomes effective.

6) This ordinance shall become effective seven days after publication unless a notice to file a petition under MCL 125.3402 is filed with the township clerk in which event the ordinance shall take effect as provided in said statute.

Motion made by : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Motion seconded by : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AYE : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAY : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Absent : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Motion : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 LISA WOOD