## WHATCOM COUNTY COUNCIL AGENDA BILL

### CLEARANCES

<table>
<thead>
<tr>
<th>Originator: Alex Cleatham</th>
<th>Initial</th>
<th>Date</th>
<th>Date Received in Council Office</th>
<th>Agenda Date</th>
<th>Assigned to:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACC</td>
<td>10/10/12</td>
<td></td>
<td>10/23/2012</td>
<td>Introduction</td>
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</tbody>
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<tr>
<th>Division Head: Wain Harrison</th>
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<tr>
<td>Dept. Head: Sam Ryan</td>
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<td>Purchasing/Budget: Brad Bennett</td>
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<td>Executive: Jack Louws</td>
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**RECEIVED**

OCT 15 2012
WHATCOM COUNTY COUNCIL

**TITLE OF DOCUMENT:** Wind Energy Systems

### ATTACHMENTS:

1. Council’s Ordinance

### SEPA review required? (x) Yes ( ) NO

### SEPA review completed? (x) Yes ( ) NO

### Should Clerk schedule a hearing? (X) Yes ( ) NO

**Requested Date:** November 7, 2012

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Amendments to Whatcom County Code 20.14 Wind Energy Systems. The proposal allows for a range of Wind Energy System (WES) sizes with regulations pertaining to setbacks, appearance, sound levels and measurement, abandonment and complaint issues.

### COMMITTEE ACTION:

**COUNCIL ACTION:**

10/23/2012: Introduced
11/07/2012: Council Adopted 5-1, Mann opposed and Weimer absent

Ord. 2012-041

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**

Ord. 2012-041

**Please Note:** Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County’s website at: www.co.whatcom.wa.us/council.
ORDINANCE NO. 2012-041

AMENDING WCC TITLE 20.14, WIND ENERGY SYSTEMS

WHEREAS, ORD2008-043 adopted development regulations for Wind Energy Systems in unincorporated Whatcom County.

WHEREAS, The Whatcom County Council adopted emergency ordinance 2010-015 prohibiting the application for wind energy systems greater than 500 kw and the application for multiple wind energy systems with a cumulative rated output greater than 100 kw.

WHEREAS, ORD2010-018 established a moratorium on wind energy systems greater than 500 kw and the application for multiple wind energy systems with a cumulative rated output greater than 100 kw.

WHEREAS, In accordance with RCW 36.70A.106 Whatcom County Planning and Development Services notified the Department of Commerce of proposed amendments to WCC 20.14 on Nov 3, 2010.

WHEREAS, The Whatcom County SEPA official issued a Determination of Nonsignificance (DNS) on April 13, 2011.

WHEREAS, the Planning Commission held a public hearing on May 26, 2011 and voted 6-1 for a recommendation of approval for the proposed amendments to WCC 20.14, Wind Energy Systems.

WHEREAS, the Whatcom County Council held a number of work sessions between 2011 and 2012 as well as public hearings on May 8 and November 7, 2012 regarding revisions to the Wind Energy chapter of the Whatcom County Code.

FINDINGS OF FACT AND REASONS FOR ACTION

1. The Whatcom County Council in response to the moratorium organized a Wind Energy Work Group. The work group was comprised of citizens, renewable energy professionals, Whatcom County staff and elected officials.


3. The Wind Energy Work Group discussed issues such as setbacks, noise, shadow flicker and siting of windmills near residential development.
4. The results of the Wind Energy Work Group were two proposed ordinances, one from Councilmember Brenner and one from Council member Mann. The Whatcom County Council was unable to reach consensus on an ordinance and requested the Whatcom Planning Commission to review the proposals and make a recommendation.

5. The Whatcom County Planning Commission held work sessions on and a public hearing on the results of the Wind Energy Work group on November 18, 2010, and December 9, 2010 respectively.

6. At the December 9, 2010 hearing the Planning Commission was unable to find consensus between Councilmember Brenner and Mann’s proposals. The Planning Commission requested that staff begin to re-evaluate the current ordinance and make improvements based on concerns raised by the public and discussion at the Planning Commission work session and public hearing.

7. Planning staff held two more work sessions on updating WCC 20.14. Those work sessions were held on January 13 and March 24, 2011.

8. Citizens and Planning Commissioners identified the following as issues to be addressed during the work sessions; permitting and zoning, setback requirements, pre and post monitoring of sound, height limitations, blade throw, shadow flicker, animal habitat impacts, and decommissioning.


10. A legal notice for the May 26, 2011 Whatcom County Planning Commission public hearing was publishing on May 15, 2011


12. The Whatcom County Council has held a number sessions between 2011 and 2012 on the proposed ordinance to amend WCC 20.14 Wind Energy Systems.

13. At the work sessions issues such as, permits, zoning, setback requirement, sound level measurement, height limitations, general safety, blade tip height requirements, ice throw, blade throw, flicker analysis, establishing a complaint process, and abandonment of the systems were discussed.


**CONCLUSION**

The proposal meets all of the legal requirements as noted within the
Findings of Fact and Reasons for Action. The proposed amendment is compatible with the Growth Management Act, Whatcom County Comprehensive Plan Goals and Policies, along with policies within Whatcom County's County Wide Planning Policies. Approval of this amendment is in the public interest.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. The Official Whatcom County Zoning Ordinance (Title 20) is hereby amended as shown in Exhibit A.

ADOPTED the __th day of November, 2012.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Kathy Kershner, Council Chairperson

APPROVED as to form:

[Signature]

Civil Deputy Prosecutor

[Signature]

( ) Denied

Jack Louws, Executive

Date: 11/8/2012
EXHIBIT A
Chapter 20.14

Wind Energy Systems

Sections
20.14.010 Purpose
20.14.020 Definitions
20.14.030 Applicability
20.14.040 Regulatory Framework
20.14.050 General Requirements
20.14.060 Sound Levels and Measurement
20.14.070 Safety
20.14.080 Sound measurement protocol for assessment of proposed and existing wind energy systems with a cumulative rated output over 100 kW
20.14.090 Complaint Process
20.14.100 Abandonment, insurance, and decommissioning for WES
20.14.110 Federal, State and Local Requirements

20.14.010 PURPOSE

The purpose of the Ordinance is to regulate the installation and operation of wind energy conversion systems in Whatcom County for private landowners, subject to reasonable restrictions.

20.14.020 DEFINITIONS

As used in this Ordinance, the following terms shall have the meanings indicated:

County shall mean Whatcom County government.
1. County shall mean the Whatcom County government.
2. Decibel – A unit of measure of sound pressure.
3. dBA – A-weighted sound pressure scale.
4. dBC – C-weighted sound pressure scale.
5. FAA shall mean the Federal Aviation Administration.
6. Flicker or Shadow Flicker – The moving shadow cast by the rotating blades of a SWES/WES, or any intermittent, repetitive, or rhythmic lighting effect that is a direct result of rotating SWES/WES blades.
7. Flicker Analysis – A study showing the duration and location of flicker potential.
8. Hub Height – The distance from the ground to the center axis if the rotor.
9. **Qualified Independent Acoustical Consultant** – A private, third-party individual with full membership in the Institute of Noise Control Engineers (INCE), or other demonstrated acoustical engineering certification.

10. **MET Tower or “Meteorological tower”** - a structure designed to support the gathering of wind energy resource data, and includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment, anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.

11. **Rotor** – A system of airfoils designed to provide a reaction force relative to the movement of the surrounding air. The rotor is connected to a hub that rotates around an axis.

12. **Small Wind Energy System (SWES)** - A wind energy conversion system, with a rated output up to and including 50 kW, consisting of: wind turbine, tower, base and associated control or conversion electronics, as well as all anchors, guy cables and hardware.

13. **Total Height** – The distance measured from the grade plane (WCC 20.97.162) to the tip of the SWES/WES rotor blade extended to its highest point. The support tower structure may be freestanding, guyed, or a monopole.

14. **Tower Height** - The distance measured from the grade plane (WCC 20.97.162) to the hub height of the wind turbine. This structure may be freestanding, guyed, or a monopole.

15. **Upwind Turbine Design** – A SWES/WES that has rotors and towers aligned such that the wind encounters the rotors before the tower. The tower will always be downwind of the rotors.

16. **Wind Turbine** - The parts of the wind energy conversion system including the blades, generator and tower.

17. **Wind Energy System (WES)** - A wind energy conversion system with a rated output greater than 50 kW, consisting of: wind turbine, tower, base and associated control or conversion electronics, as well as all anchors, guy cables, and hardware.

### 20.14.030 APPLICABILITY

1. **The requirements set forth in this Ordinance shall govern the siting of wind energy conversion systems used to generate mechanical or electrical energy to perform work, and which may be connected to the utility grid pursuant to the Revised Code of Washington, Chapter 80.60, Net Metering of Electricity, and serve as an independent source of energy, or serve as part of a hybrid system.**

2. **The requirements of this Ordinance shall apply to all Small Wind Energy Systems (SWES) and Wind Energy Systems (WES) proposed after the effective date of this Ordinance. Any SWES/WES for which a required permit has been properly issued prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided, however, that any such pre-existing SWES/WES that is not producing energy for a continuous period of twelve (12) months shall meet the requirements of this Ordinance prior to recommencing production of energy. No
modification that increases the height of the system or increases the system output more than 25% shall be allowed without full compliance with this Ordinance.

20.14.040 REGULATORY FRAMEWORK

.041 PERMITS AND ZONING

<table>
<thead>
<tr>
<th>System Type</th>
<th>Required Permit</th>
<th>Zones</th>
</tr>
</thead>
<tbody>
<tr>
<td>MET Tower</td>
<td>Outright permitted(^1)</td>
<td>All – for up to 24 months</td>
</tr>
<tr>
<td>One or multiple SWES with a cumulative rated output up to and including 50 kW.</td>
<td>Outright permitted(^1)</td>
<td>All</td>
</tr>
<tr>
<td>One WES with a rated output greater than 50 kW up to and including 500 kW.</td>
<td>Administrative permit(^2)</td>
<td>HIII</td>
</tr>
<tr>
<td>One or multiple WES with a rated output greater than 500 kW.</td>
<td>Conditional Use permit(^3)</td>
<td>HIII</td>
</tr>
<tr>
<td>Multiple WES per parcel with a cumulative rated output greater than 50 kW.</td>
<td>Conditional Use permit(^3)</td>
<td>HIII</td>
</tr>
<tr>
<td>SWES/WES</td>
<td>Not permitted</td>
<td>Within and 1000 feet beyond the boundaries of the Lake Whatcom Watershed that are recognized and approved by Whatcom County, except that roof mounted SWES that do not exceed a total height of five (5) feet above the highest roof peak of the building on which they are mounted are allowed.</td>
</tr>
</tbody>
</table>

1 – SWES, WES and MET towers are required to be in compliance with but not limited to Whatcom County Code, Title 15, Buildings and Construction, and acquire the necessary building permits.
2 – Administrative Permit WCC 20.84.235
3 – Conditional Use Permit WCC 20.84.200

.042 PRINCIPAL OR ACCESSORY USE

1. A SWES/WES may be considered either as a principal or accessory use. A different existing use or an existing structure on the same lot shall not preclude the installation of a SWES/WES or a part of such facility on such lot. Any SWES/WES that is constructed and installed in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.
20.14.050 GENERAL REQUIREMENTS FOR SWES AND WES

.051 VISUAL APPEARANCE; LIGHTING; POWER LINES

1) Wind Turbines shall be painted a non-reflective, non-obtrusive color such as the manufacturer's default color option or a color that conforms to the environment and architecture of the community, unless FAA standards require otherwise. The zoning administrator may require a photo of a SWES/WES, of the same model as that proposed in the landowner's application, adjacent to a building or some other object illustrating scale (e.g., manufacturer's photo).

2) At SWES/WES sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the SWES/WES to the natural setting and the existing environment.

3) No SWES/WES shall be artificially lighted, except to the extent required by the FAA or other applicable authority.

4) No SWES/WES shall be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind turbine.

5) Electrical controls, control wiring and power lines shall be wireless or underground, except where SWES/WES wiring is brought together for connection to the transmission or distribution network adjacent to that network, and except that in the Agricultural Zone the minimum installation depth for electrical controls, control wiring and power lines is 48 (forty-eight) inches below finish grade.

6) The road access to the proposed site must be rated to carry an axle load sufficient to bear the weight of all materials, vehicles, and equipment delivered to the site.

7) The compatibility of the foundation, tower, and generating unit (including rotor and rotor-related equipment) shall be certified in writing by a professional engineer licensed in Washington State. The engineer shall certify compliance with established engineering practices and compliance with all applicable adopted codes and regulations. For all SWES/WES, the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the SWES/WES are compatible and within accepted professional standards, given local design criteria per Whatcom County Code, Chapter 15.

8) The electrical system design shall be certified in writing by an electrical engineer licensed in Washington State unless waived by the Building Official. All SWES/WES electrical systems shall comply with requirements per the Washington State Department of Labor and Industries and the current adopted edition of the National Electrical Code when and where applicable.

9) All SWES/WES shall meet requirements per the applicable sections of WCC 20.80.634, 20.80.635, and 20.80.636 for erosion control and stormwater management.

10) Violation of any part of this chapter of the code (WCC 20.14) shall be subject to the provisions of WCC 15.04.050.

.052 SETBACK REQUIREMENTS

The following setback requirements shall apply to all SWES/WES and MET Towers. All setbacks are measured from the property lines of the property on which the project is located:
1) Setbacks table

<table>
<thead>
<tr>
<th>System Size</th>
<th>Setback Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to and including 50 kW</td>
<td>1.2 times total height, to a maximum of total height plus 20 feet¹</td>
</tr>
<tr>
<td>Greater than 50 kW</td>
<td>1320 feet (one quarter mile) from a property line of any property in a non-HII zone. If the neighboring property is an HII zone the setback is 1.2 times the total height from the property line.¹</td>
</tr>
</tbody>
</table>

Footnote 1. A reduction in setbacks may be approved if appropriate easements from neighboring property owners or appropriate mitigation acceptable to neighboring property owners are approved by the Zoning Administrator or Hearing Examiner and recorded against the applicable deed(s).

2) Communication and electrical lines: Each SWES/WES shall be set back from the nearest above-ground public or private non-participating utility a distance no less than 1.2 times its Tower Height, up to a maximum of Tower Height plus 20 feet, determined from the existing power line or telephone line.

3) Setbacks shall be measured to the outer edge of the base of the SWES/WES structure towers. Guy cables and other accessory support structures may be located within setback areas.

4) Setback to other WES: A WES may not be placed such that it substantially disturbs the wind flow into another WES. A new WES may not be placed such that another non-participating WES falls within an egg-shaped exclusion zone around the new WES defined by an axis along the primary wind direction. In the upwind direction the exclusion zone shall have a semi-circular shape with a radius three times the rotor diameter of the new WES. In the downwind direction the exclusion zone shall have a semi-elliptical shape extending eight times the rotor diameter of the new WES along the axis downwind and extending three times the rotor diameter of the new WES in a direction perpendicular to the axis. In this way the new WES will be at least three of its rotor diameters behind, three to the side of, and eight in front of a pre-existing WES.

.053 HEIGHT LIMITATIONS

1) The total height of a WES shall not exceed 500 feet. MET Towers cannot exceed a maximum height of 100 feet except in the Agricultural, Rural Forestry and Commercial Forestry zones.

2) SWES with a total height taller than 100 feet must obtain an Administrative Permit, except within the AG, CF and HII zones.

   a). All SWES with a total height greater than 100 feet must provide in writing that the height requested is the minimum height necessary for the SWES to operate efficiently, and provide approved justification for the proposed height and analysis according to recognized industry standards.

20.14.060 SOUND LEVELS AND MEASUREMENT
.061 SWES Sound levels, performance, and measurement standards

1. Audible sound is not to exceed 20 dB(a) above ambient background noise or 45 dB(a), whichever is greater, at any point beyond the project property line. Detectable infrasound or C-weighted sound pressure is not to exceed 20 dB(c) above ambient background noise or a maximum of 45 dB(c), whichever is greater, except that there is no infrasound or C-weighted sound pressure requirements at property lines adjacent to HII zones.

.062 WES with a cumulative output greater than 50 kW sound level, performance, and measurement standards

1. Audible sound is not to exceed 10 dB(a) above ambient background noise or 45 dB(a), whichever is greater, at any point beyond the project property line. Detectable infrasound or C-weighted sound pressure is not to exceed 20 dB(c) above ambient background noise or a maximum of 45 dB(c), whichever is greater, except that there is no infrasound or C-weighted sound pressure requirements at property lines adjacent to HII zones.

.063 Upwind design shall be used on all WES greater than 50 kW, unless it can be demonstrated that no detectable infrasound or C-weighted sound pressure is generated above 20 dB(c) and A-weighted sound pressure standard can be met, as required per 20.14.061 and 20.14.062.

20.14.070 SAFETY

.071 General Provisions for SWES/WES

1. Wind Turbine towers shall not provide step bolts or a ladder readily accessible to the public and shall be a minimum height of 10 feet above ground level.

2. All electrical equipment shall be safely and appropriately enclosed from unintentional access by means such as barrier fencing, equipment cabinetry or similar approved barriers. All access doors to Wind Turbine towers and electrical equipment shall remain locked except when access is necessary.

3. Appropriate warning signage (e.g., electrical hazards) shall be placed on Wind Turbine towers, electrical equipment, and SWES/WES.

4. Any SWES/WES found to be unsafe by the building official shall be repaired by the landowner and/or project owner to meet federal, state and local safety standards, according to the regulatory authority of the Building Official and applicable provisions per WCC Chapter 15.

.072 Blade Tip Height

1. The blade tip of any SWES with a cumulative rated output up to and including 50 kW shall, at its lowest point, have ground clearance of no less than twenty (20) feet, as measured at the lowest point of the arc of the blades.

2. WES with a cumulative rated output greater than 50 kW shall, at its lowest point, have ground clearance of no less than thirty (30) feet, as measured at the lowest point of the arc of the blades.

.073 Over-speed Controls
All SWES/WES shall be equipped with over-speed controls to limit rotation of blades to speed below the designed limits of the system. No changes or alterations from the certified design shall be permitted unless accompanied by a licensed professional engineer’s statement of certification.

.074 Flicker Analysis for WES

1. A flicker analysis is required for all WES. The analysis shall include the duration and location of flicker potential for all buildings and for roadways within a one (1) mile radius of each turbine within a project. The applicant shall provide a site map identifying the locations of shadow flicker that may be caused by the project and the expected durations of the flicker at these locations from sun-rise to sun-set over the course of a year. The analysis shall account for topography but not for obstacles such as accessory structures and trees. Flicker at any building shall not exceed thirty (30) hours per year within the analysis area. Flicker in excess of the limits established in this ordinance shall be grounds for the County or his/her designee to order operational adjustments, which may include mitigation measures requiring cessation of operation during periods when flicker effects any building, for all non compliant WES.

.075 Wildlife Protection for WES

Prior to permit approval provide documentation from a qualified professional wildlife biologist (WCC Section 16.16, Article 8, Definitions) verifying the following:

1. Endangered or Threatened Species: Development and operation of a WES shall not have a significant adverse impact on endangered or threatened fish, wildlife, plant species, their critical habitats, or other significant habitats identified in the Whatcom County Comprehensive Plan and/or other current studies or plans relevant to the region and recognized by the County.
2. Other Species: The project development and/or operation plan shall be sited, designed, operated and monitored to prevent WES from having a significant adverse impact on migratory birds, raptors and bats.


.081 Sound Modeling
As part of the conditional use permit process, all WES proponents shall provide a report by a qualified independent acoustical consultant approved by Whatcom County PDS and in accordance with standard industry best practices, that models the sound transmission of the proposed WES at the project property lines and indicates that the WES, when operated properly, will conform to the sound performance requirements of this ordinance.

20.14.090 Complaint process:
If two or more complaints from different households are received with 2 weeks of each other, and documented at a particular site, a sound measurement will be conducted within ten (10) business days by a qualified consultant approved by Whatcom County.

The cost of the sound measurement shall be the responsibility of the WES owner/operator. The operator shall reimburse the County for the expense within ten (10) days of billing.

Measurements shall be conducted where the complaints were documented.

If an evaluation shows that the WES is operating outside of its permitted sound performance standards, the operator will have thirty (30) days to adjust the system(s) or terminate operations.

To avoid frivolous complaints, any household(s) that registers a complaint against a WES that is proven to be in compliance shall be responsible for the costs of any future complaints originating from the same household(s) for two years unless the WES project has expanded and/or proven to be in violation of the sound performance standards. At the discretion of Whatcom County PDS, if it appears residents are abusing the complaint process, complaints may be compiled for three (3) months at a time and then a study conducted at all of the locations. No WES project shall be required to conduct more than two (2) sound measurements at any one adjacent property per year unless the WES project has expanded and/or proven to be in violation of the sound performance standards.

Complaints originating from properties located farther than 1 mile from a WES project do not trigger the complaint process.

20.14.100 Abandonment, insurance, and decommissioning for WES

.101 Abandonment:
Absent notice of a proposed date of decommissioning, WES project shall be considered abandoned when the project fails to operate for more than one year without the written approval of the Director or designee. The Director or designee shall determine in its decision what proportion of the project is inoperable for the project to be considered abandoned and shall notify the property owner. Within one hundred and twenty (120) days of receipt of Notice of Abandonment or within one hundred and twenty (120) days of providing Notice of Termination of Operations to the County, the owner of a wind energy system must comply with the removal requirements in Section 20.14.102 below. If the property owner/project owner fails to remove the WES in accordance with the requirements of this section within one hundred and twenty (120) days of Notice of Abandonment, the County shall have the authority to enter the property and physically remove the WES. Financial Surety funds shall be used to pay for removal and restoration.

.102 Removal requirements:
When a SWES (with a total height that exceeds the height of the underlying zone) or a WES is scheduled to be decommissioned, the project owner/property owner shall notify the County by certified mail of the proposed date of discontinued operations and plans for removal. Within one hundred and twenty (120) days of receipt of Notice of Abandonment or within one hundred and twenty (120) days of providing Notice of Termination of Operations, the owner of a wind energy
system must:

1) Remove all wind turbines, above-ground improvements, and outdoor storage. Property owners of WES in the HI1 zone, and SWES in the AG and CF zones, may choose to leave foundations in place and intact, partially or in whole, for approved, permitted reuse, except that in the AG zone foundations left in place must be located such that the distance between SWES foundations and foundations of existing buildings shall not exceed 50 (fifty) feet.

2) Remove all hazardous material from the property and dispose of the hazardous material in accordance with federal, state and local law.

3) In addition to removing the wind turbine generator, the owner shall restore the site by planting native or other approved vegetation to minimize erosion.

.103 Insurance:

Proof of continuous liability insurance shall be submitted to Whatcom County indicating coverage for potential damages or injury to landowners, occupants, or other third parties. For WES with a rated output greater than 50 kW the required insurance is two million dollars ($2,000,000.00) aggregate and one million dollars ($1,000,000.00) per occurrence. Whatcom County shall be named on the liability policy as additional insured. The insurance carrier shall be instructed to notify all applicable governmental authorities of any delinquency in payment of premiums. The liability policy shall be endorsed to notify the County of any cancellation thirty (30) days in advance. Failure to provide such insurances shall be considered abandonment and full and sufficient grounds for termination of the permit and disposal of the equipment and appurtenances as stated herein.

.104 Financial Surety:

As a condition of WES permit approval, the applicant shall be required to provide a form of surety (i.e., post a bond, or establish an escrow account or other means) at the amount of 150% of the estimated full cost of project decommissioning less the approved, documented salvage value of any applicable project materials and equipment, naming Whatcom County as the beneficiary, with fifty percent (50%) due prior to final project approval, twenty-five percent (25%) due within twelve (12) months of the date of final project approval, and twenty-five percent (25%) due within twenty-four (24) months of the date of final project approval, to cover costs of WES removal in the event the County must remove the facility. Nothing may prevent the County from seeking reimbursement from the WES project owner. The project owner is responsible to the County for any costs related to decommissioning that exceed the amount of financial surety.

As part of the Decommissioning Plan, the Applicant shall submit a fully inclusive estimate of the costs associated with removal, accounting for reasonable salvage value of any applicable project materials and equipment, prepared by a qualified professional. The decommissioning plan shall provide that the decommissioning funds shall be reevaluated every five years from the date of substantial completion of the WES to ensure sufficient funds for decommissioning and, upon mutual agreement by the Applicant and the County at that time, the amount of decommissioning funds shall be adjusted accordingly.

Prior to permit issuance, the Applicant shall provide the County with a copy of the Financial Surety device or another approved mechanism.

.105 Decommissioning Plan:
As part of the permit approval process, a decommissioning plan shall outline the anticipated means and cost of removing WES at the end of their serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a competent party: such as a Professional Engineer, a licensed contractor capable of decommissioning or a person, firm, partnership, corporation or other entity with suitable expertise or experience with decommissioning, as determined by the Building Official or designee. The plan shall also identify Financial Surety to pay for the decommissioning and removal of the WES and accessory facilities. The plan shall also address road maintenance during and after the decommissioning.

20.14.110 FEDERAL, STATE AND LOCAL REQUIREMENTS

1) SWES/WES shall comply with all current adopted Whatcom County Codes & Ordinances, including but not limited to Whatcom County Code, Title 15, Title 16, and Title 23.

2) SWES/WES must comply with regulations of the Federal Aviation Administration (FAA), along with requirements within WCC 20.80.675 “Height Limitations Surrounding Airports”.

   a) If necessary an applicant may be required to submit the following information for analysis of airspace obstructions in relation to WCC 20.80.675: Mean Sea Level (MSL) of adjacent airports; MSL of proposed site; Euclidean distance from adjacent airports to proposed site, total elevation/height of SWES/WES structure.

3) All SWES/WES electrical systems shall comply with requirements per the Washington State Department of Labor & Industries and the current adopted edition of the National Electrical Code (NEC) when and where applicable.

4) All SWES/WES with the intention to tie to their respective utility provider’s grid system, shall meet the requirements of Chapter 80.60 of the Revised Code of Washington, Net Metering of Electricity.