

Staff Response to Working Group Questions

March 12th Questions

1. If there is an accident at a wind turbine site, approved by the County by special permit, is the County liable for any damages to adjoining property?

Response from Brittany Behrens, Deputy County Attorney: No case law was found that would indicate a cause of action would exist against a County for issuance of a special permit for a wind turbine site that has a later accident. There would have to be some fact pattern that creates a duty on the part of the County to prevent said accident. I cannot think of a fact pattern involving a wind turbine site accident that would implicate a duty on the part of the County.

Additionally, the Political Subdivision Tort Claims Act enumerates an exemption to political subdivision liability if the claim is based on “the issuance, denial, suspension, or revocation of or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, or order.” In the event the County was ever named in the type of law suit mentioned, this would undoubtedly be raised as a defense.

2. Is wind a mineral right? Is there a wind right?

Response from Brittany Behrens, Deputy County Attorney: Wind is not typically considered a mineral right, as mineral rights are generally understood to be below the surface of the property. There are a few above ground items that the mineral estate includes (ie. surface water, gravel, rock), but wind is not one of them. Wind is oftentimes referred to when talking generally about land rights.

As for the term “wind rights”, the only context that I can find a discussion of “wind rights” is when a developer or utility purchases “wind rights” from a landowner to install Wind Energy Conversion System (WECS) or Commercial WECS on the landowners property, in exchange for payment to the landowner. The rights purchased by the developer are referred to as wind rights.

I cannot find any case law indicating a cause of action by a landowner for harm or damage to their “wind rights”. I cannot find any case alleging harm to the landowner’s wind rights.

Responses to March 26th Questions

3. Can you provide a further breakdown of exactly where the funds from the wind turbine “nameplate capacity tax” is distributed to various government agencies within a county?

According to <http://www.revenue.nebraska.gov/legal/regs/nameplate.html#003> the name plate capacity tax is distributed to local taxing entities and distributed proportionally as if it were real property tax collected. The specific state regulation states:

“003.06 The county treasurer must distribute all nameplate capacity tax revenue received to local taxing entities which, but for the personal property tax exemption, would have received personal property tax revenue from depreciable personal property located at the facility.

003.06A The distribution to each eligible local taxing entity is calculated by determining the amount of taxes that the eligible local taxing entity levied during the taxable year and dividing this amount by the

total tax levied by all of the eligible local taxing entities during the year. Each eligible entity's resulting fraction is then multiplied by the revenue distributed to the county treasurer by the Department to determine the portion of the revenue due each local taxing entity.”

4. Can we provide the source for the data on bird deaths due to various causes?

The graph shown in the power point presentation comes from <http://www.treehugger.com/renewable-energy/north-america-wind-turbines-kill-around-300000-birds-annually-house-cats-around-3000000000.html> which is based on data from the State of the Birds 2014 report of the North American Bird Conservation Initiative US Committee located here http://www.stateofthebirds.org/2014%20SotB_FINAL_low-res.pdf This report cites independent assessments of direct human caused mortality in the US and Canada adapted from *Direct Human-Caused Mortality of Birds. Loss, SR, Will, T., and Marra, PP. Annual Review of Ecology, Evolution, and Systematics in Prep, 2014.*

5. Can we provide clarification of rotor revolutions per second in the handouts?

In the slide presentation it was stated that large wind turbines rotated at about 1 revolution per three seconds. The accompanying document, page 4 under Shadow Flicker, States the cycles per second to be generally less than one per second. We should have clarified that this meant the cycles of the “flicker” caused by the rotation. Since most large wind turbines have three blades they would produce three “flickers” as they go through a complete turn of the rotor. So, in a 3 second period you would have three “flickers”, or one per second.

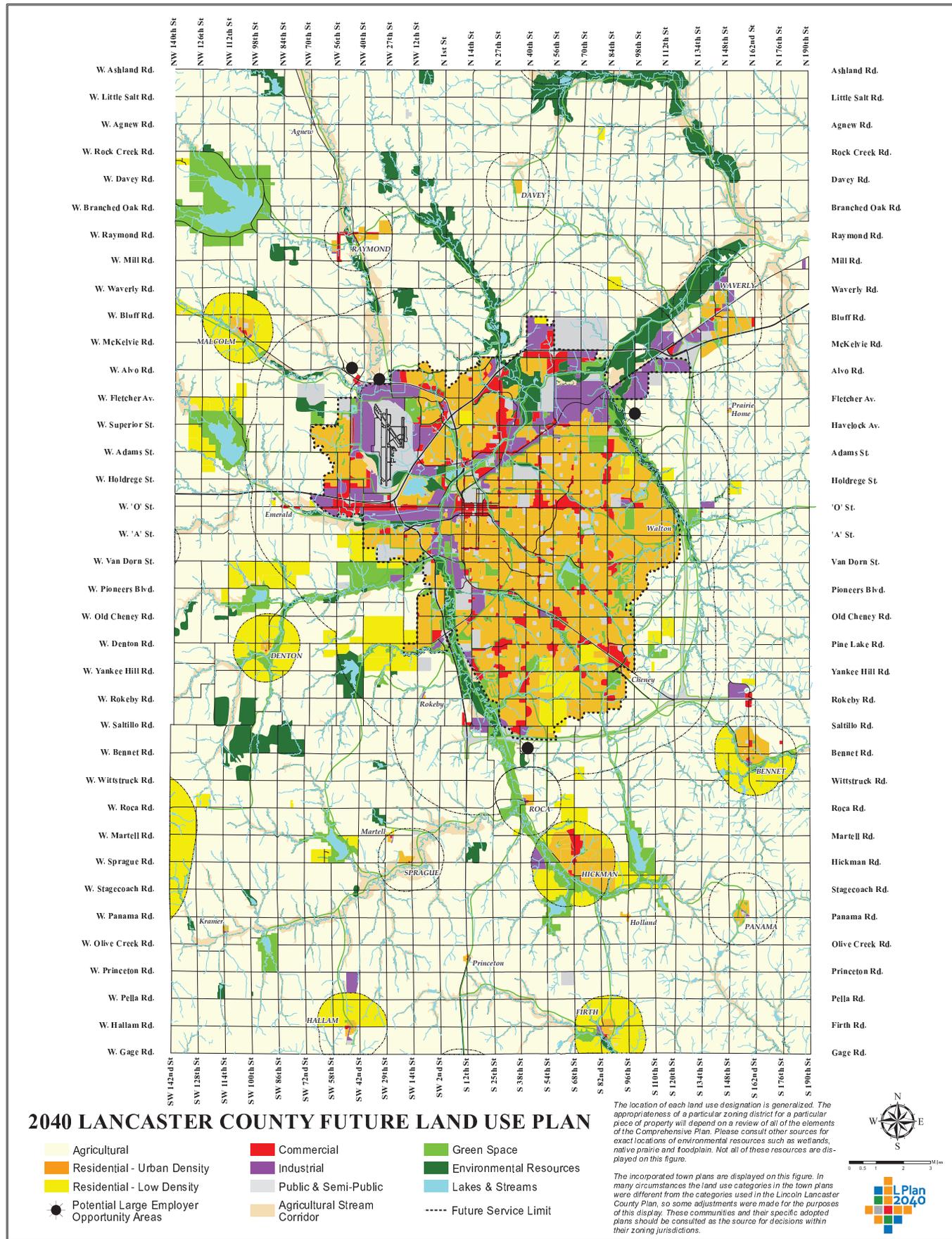
6. Can we provide a link to the City of Lincoln Growth Tiers and Priority Areas Map?

This is being attached to this document for your review. Also attached is the 2040 Future Land Use Map. These two maps give information about the future growth of the City of Lincoln as well as the land uses anticipated through the year 2040. The small, incorporated towns of Lancaster County have their own future land use plans which have been incorporated as best they can be into the overall county map. For an explanation of the maps, go to page 12.1 of the Plan Realization chapter of the 2040 Lincoln and Lancaster County Comprehensive Plan <http://lincoln.ne.gov/city/plan/lplan2040/plan/document/Amended/plan.pdf>

7. There were some questions regarding prevailing wind conditions in Lancaster County.

There is some data from the High Plains Regional Climate Center from four different weather stations in Lancaster County. Two of these stations are in more of the suburban edge of Lincoln, while another is a few miles west of the airport and a fourth is near the water tower at 84th and Yankee Hill Rd. The wind rose map produced in the most agricultural area of the four (Lincoln 12W 55N) <http://www.hprcc.unl.edu/awdn/winds/> not only shows winds of the highest speed of the four available for Lincoln, but also shows a strong tendency for winds to be north/south. It is important to understand that winds aloft are generally faster and have a stronger directional tendency than winds at the surface. Terrain, structures, and friction caused by the surface of the earth can slow wind and affect the direction it blows at the surface. A good

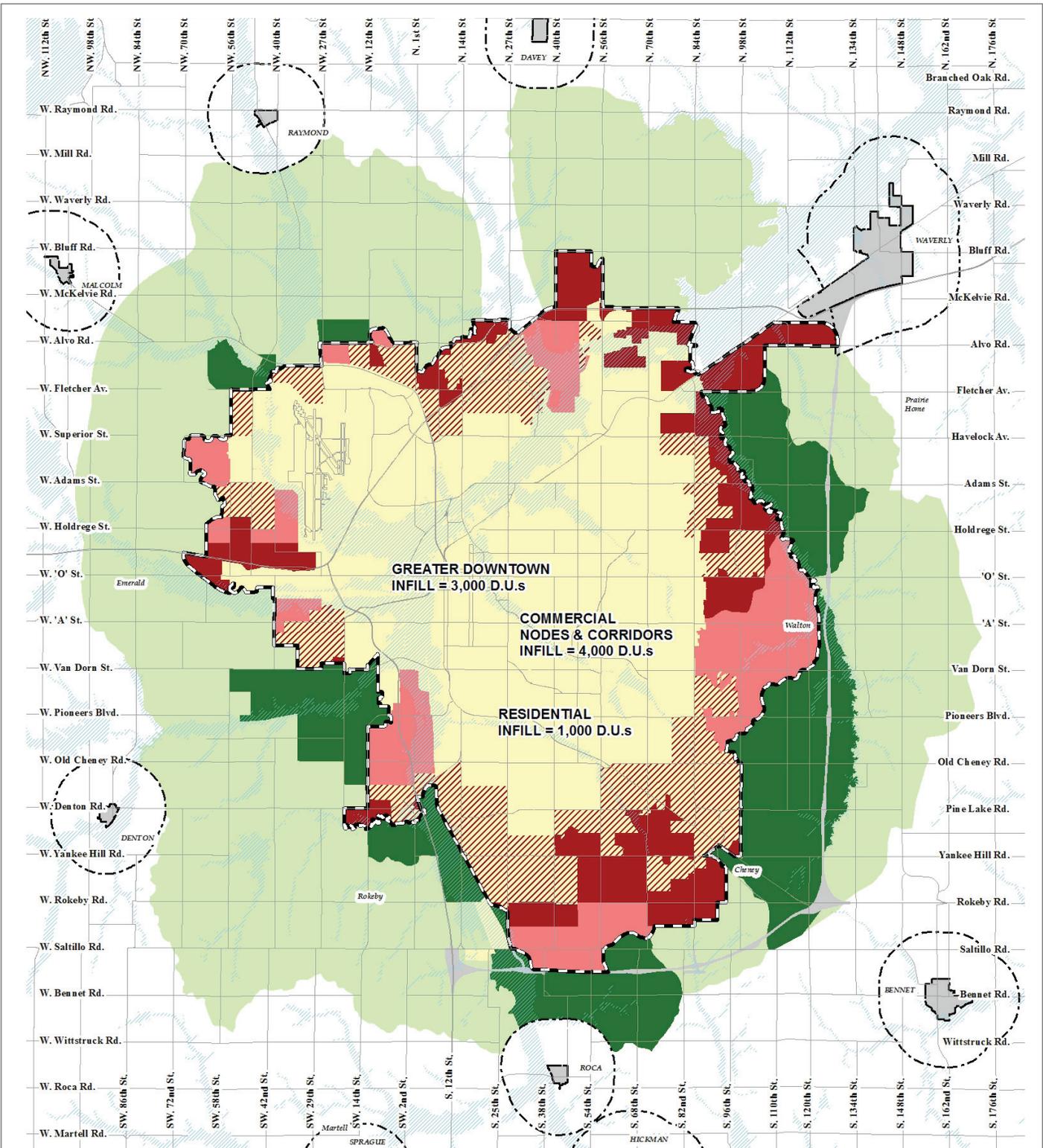
indicator of what the prevailing wind directions are in an area is the direction in which airport runways have been oriented. Runways are oriented so that planes can most often land and take off in the same direction that the wind is blowing in order to minimize cross wind.



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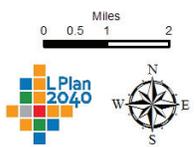
AMENDED: COUNCIL RES. #87694 ADOPTED 12/12/13; #87221 ADOPTED 2/25/13; #87171 ADOPTED 11/14/13; #89713 ADOPTED 1/5/15.

Map 12.1: Lancaster County Future Land Use Plan



2040 PRIORITY GROWTH AREAS

- Existing Lincoln City Limits and Approved Preliminary Plans (2011)
- Floodplain and Flood Prone Areas
- 2040 Future Service Limit
- Tier I, Priority A (Developing)
- Tier I, Priority B (2025)
- Tier I, Priority C (2040)
- Tier II (2060)
- Tier III



Map 12.3: Growth Tiers with Priority Areas