

# TOWN OF RIDGEVILLE

## WIND ENERGY CONVERSION SYSTEMS ORDINANCE

The Town Board of the Town of Ridgeville, County of Monroe, State of Wisconsin, ordains as follows:

### I. GENERAL PROVISIONS

**A. Title.** These regulations shall officially be known, cited and referred to as the Wind Energy Conversion Systems (WECS) Ordinance of the Town of Ridgeville, and hereinafter will be referred to as “The Ordinance.”

**B. Findings.** Under state law, electric generating facilities of less than 100 megawatts (“MW”) are subject to regulations enacted by counties and local units of government. The Town of Ridgeville is under the Monroe County Zoning and Wind Energy System Ordinance, which regulates such facilities. However, the Monroe County Zoning and Wind Energy System Ordinance has insufficient standards to protect the public health and safety of the residents and property owners of the Town of Ridgeville. Therefore, this Town of Ridgeville licensing ordinance has been adopted under the Town of Ridgeville’s town and village powers and Wis. Stat. § 66.0401. The Town finds that Wind Energy Systems which may be constructed and operated in the Town require special licensing by the Town in addition to any restrictions that may be imposed by Monroe County, in order to protect the public health and safety of Town residents and property owners. In this regard, the Town finds that the report issued by the National Research Council entitled *Environmental Impacts of Wind-Energy Projects*, May 2007 (“2007 NRC Report”), addresses several important public health and safety issues relative to WECS that require regulation by the Town. The Town further finds that the provisions of the “Draft Model Wind Ordinance for Wisconsin,” as promoted by the State of Wisconsin’s Department of Administration, are inadequate to reasonably protect public health and safety.

**C. Purposes and Intent.** The purposes and intent of this Ordinance are to protect the public health and safety of the residents and property owners of the Town of Ridgeville who may be affected by the development and operation of WECS. Such purposes and intent shall be accomplished by regulating noise, protecting emergency communications, regulating shadow flicker, ensuring adequate fire protection, establishing adequate setbacks, protecting water quality, preventing soil erosion, regulating visual obstructions, preventing conflicts between incompatible land uses, ensuring proper installation of WECS, and ensuring safe and complete decommissioning of WECS.

### II. DEFINITIONS

**Ampacity:** Means the current carrying capacity of conductors or equipment expressed in Amperes.

**Ampere:** The basic unit measuring the quantity of electricity.

**Anemometer:** A device for measuring the speed and direction of the wind.

**Applicant:** Means the person, firm, corporation, company, limited liability corporation or other entity which applies for approval under this ordinance, as well as the applicant's successor(s), assign(s) and/or transferee(s) as to any approved WECS or testing facility. An applicant must have the legal authority to represent and bind the landowner or lessee who will construct, own, and operate the WECS or testing facility. The duties and obligations regarding any approved WECS or testing facility shall be with the owner of the WECS or testing facility, and jointly and severally with the owner and operator or lessee of the WECS or testing facility. Also known as owner or operator.

**Aerodynamic Noise:** Means a noise that is caused by the flow of air over and past the blades of a WECU.

**Ambient Noise:** Means intermittent noise events such as from aircraft flying over, dogs barking, mobile farm or construction machinery, and the occasional vehicle traveling along a nearby road are all part of the ambient noise environment, but would not be considered part of the background noise unless they were present for at least 90% of the time.

**Background Noise:** Sounds that would normally be present at least 90% of the time. Also known as the lull in the ambient noise environment.

**Blade Glint:** Means the intermittent reflection of the sun off the surface of the blades of a single or multiple WECS.

**Board:** Means the Town Board for the Town of Ridgeville, Monroe County, Wisconsin.

**Broadband Noise:** Means the "swishing" or "whooshing" sound emitted as a function of a WECS(s) operation.

**Employee:** Means any and all Persons, including but not limited to "operators" who work in or at, or render any services directly related to operation of Wind Energy Conversion Systems.

**FAA:** Means Federal Aviation Administration.

**Good Utilities Practice:** Means any of the practices, methods and acts with respect to the safe operation of the Wind Energy Conversion System (WECS) engaged in or approved by a significant portion of the electric utility industry and, in particular, those portions of the industry with experience in the construction, operation, and maintenance of wind turbines during the relevant 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.

**High Voltage Electrical Termination:** Means connecting of conductors to a device or system where the voltage exceeds 600 volts.

**Hub Height:** Means the distance to the center of the wind turbine hub as measured from ground level.

**Ice Throw:** Means accumulated frozen moisture or ice buildup on the rotor and/or blades of a WECU that is or can be thrown during normal spinning or rotation.

**Impermissible Interference:** Means the blockage of wind from a wind energy conversion unit or system for which a permit has been granted under this ordinance during a use period if such blockage is by any structure or vegetation on property, an owner of which was notified in advance by certified mail or delivered by hand of any property which the applicant proposed to be limited by the permit. Impermissible interference does not include:

1. Blockage by a narrow protrusion, including but not limited to a pole or wire, which does not substantially block the wind from a wind energy conversion unit or system.
2. Blockage by any structure constructed, under construction or for which a building permit has been applied for before the date the last notice was mailed or delivered.
3. Blockage by any vegetation planted before the date the last notice was mailed or delivered.

**Impulsive Noise:** Means short acoustical impulses or “thumping” sounds, which vary in amplitude and are caused by the interaction of the wind turbine blades with the distributed air flow around the tower of downwind WECU’s.

**Inoperable:** A WECU shall be determined inoperable if it has not generated power within the preceding two calendar quarters equal to at least 60% of the expected production.

**Licensee:** Means the applicant and/or successor who has received a license under this ordinance.

**Livestock Facility:** Means a confinement area designed specifically for raising, controlling, feeding, and providing care for livestock. This may include but is not limited to: dairy barns, pastures, feedlots, free stall barns, calf hutches, horse barns, veal barns,

feed storage areas, brooder and laying barns, farrowing and finishing barns, veterinary care.

**Low Frequency Noise:** Means an ongoing debilitation sound emitted during periods of turbulence as the blades are buffeted by changing winds that can cause structural vibration.

**Measurement Point:** (MP): Means the location where sound and/or vibration measurements are taken such that no significant obstruction blocks sound and vibration from the site.

**Mechanical Noise:** Means sound produced as a byproduct of the operation of the mechanical components of a WECU(s). This is also known as “tonal noise.” Tonal noises are distinct and tend to be more noticeable at the same relative loudness of other types of noises.

**Meteorological Tower:** Means a tower used for the measurement of wind speed and direction, also known as MET tower or wind test tower.

**NFPA:** Means the National Fire Protection Association.

**Nacelle:** Means the enclosure located at the top of a WECU tower that houses the gearbox, generator and other equipment.

**Noise:** Means any unwanted sound.

**Non-Participating Property Line:** Means a continuous line surrounding all contiguous adjacent parcels of property owned by a single individual, company, corporation, partnership or other entity not part of a proposed Wind Energy Conversion System.

**Operator:** Means the person who is designated on the license application to be the person in charge of daily operation of the premises and who is to be the Wind Energy Conversion System contact person for the Town.

**Ownership Property Line:** Means a continuous line surrounding all contiguous adjacent parcels of property owned by a single individual, company, corporation, partnership or other entity.

**Person:** Means an individual, proprietorship, corporation, association, limited liability entity, or other legal entity.

**PSCW:** Means the Public Service Commission of Wisconsin.

**Project Area:** Means all the properties within the project boundary and within a one-mile radius beyond the project boundary of a proposed or approved WECS project.

**Project Boundary:** Means a continuous line, which encompasses all WECU's and related equipment to be used in association with a WECS project.

**Property Line:** Means the recognized and mapped property parcel boundary line.

**Related Equipment:** Means transformers, tower, electrical conductors, termination points, switches, fences, substations, and any other related equipment necessary to operate a WECS.

**Residences & Other Buildings:** Means all private residences and businesses located 2,640 feet, measured from the foundation of an existing residence or business to the outermost edge of the closest of the circular path of the wind turbine rotor blade of a WECS, further providing a non-participating land owner has applied for a building permit on or before a full and complete application is submitted to the Town Board per Section V of this ordinance.

**Sensitive Environmental Area:** Means an identified habitat for threatened or endangered species, or another designated environmentally significant area as identified by Town, county, state or federal officials.

**Sensitive Receptor:** Means places that are likely to be more sensitive to the exposure of the noise or vibration generated by WECS(s). This includes but is not limited to: schools, day-care centers, hospitals, parks, residences, residential neighborhoods, places of worship, and elderly care facilities.

**Setback:** Means the minimum allowable horizontal distance from a given point or line of reference, such as a thoroughfare right-of way, water line, or prospective line to the nearest vertical wall or other element of building or structure.

**Setback Area:** Means the land base that falls within a specified setback.

**Shadow Flicker:** Means the effect when the blades of an operating wind energy conversion unit pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his/her immediate environment.

**Shadow Flicker and Glade Glint Zone:** Means the land area that falls within the setback for shadow flicker or blade glint.

**Stray Voltage (Ground Current):** Means neutral-to-earth voltage measured from the electrical system neutral and/or any structure bonded to this neutral to earth that adversely affects humans or animals.

**Structures:** Means residences, livestock facilities, communications towers, commercial businesses, and all sensitive receptors.

**Total Height:** Means the distance between the ground at normal grade and the highest point of the installed WECS (being the tip of the blade when the blade is in the full vertical position).

**Wetland:** Means an area of land, which regularly persists in a wet state, or as otherwise defined by the WDNR.

**Wind Energy Conversion Unit (WECU):** Means a wind driven machine with an output rating greater than 100 kilowatts (kW) and with a total height of greater than 170 feet that converts wind energy into electrical power for the primary purpose of sale, resale, or off-site use. The WECU includes the tower, turbine, footings, and all equipment associated with individual units including the land beneath encompassing the equivalent area of the circumference of the rotors. Also known as a Wind Turbine.

**Wind Energy Conversion System (WECS):** Means all WECUs, related transformers, electrical conductors substations, and connection points to transmission or distribution lines.

**Wind Energy Conversion System Facility or Facility:** Means all of the land and equipment used by the wind energy conversion system and its support facilities including the wind turbine, tower, access roads, control facilities, meteorological towers, maintenance and all power collection and transmission systems.

**Wind Energy Conversion System Tower:** Means any structure that is designed and constructed primarily for the purpose of supporting the Wind Energy Conversion Unit.

**Windmill:** Means a wind-driven machine that does not produce electricity.

**Wind Test Tower:** Means the tower on which meteorological equipment is located to measure wind speed, direction, strength, etc., for the purpose of evaluating a potential for WECS siting.

**Wind Turbine:** Means a wind driven machine that converts wind energy into electrical power, also known as a Wind Energy Conversion Unit (WECU) or turbine.

**WDNR:** Means the Wisconsin Department of Natural Resources.

### **III. LICENSING**

**A. License Required.** After the effective date of this ordinance, no WECS of 170 feet in height or greater shall be constructed, operated or maintained in the Town without a license issued by the Town of Ridgeville Town Board, pursuant to this ordinance. However, WECS of under 170 feet in height and less than 100 kilowatts are exempt from the licensure requirements of this ordinance.

**B. Effect of Other Licenses.** The fact that an applicant possesses any other valid license or permit required by law does not exempt the applicant from the requirement of obtaining a WECS license under this ordinance.

**C. Non-Assignment.** A license issued under this ordinance may not be assigned or transferred to any other Person than the Licensee, without the express prior written consent of the Town. Such consent shall not to be unreasonably withheld within one year after issuance of a license, provided the Licensee and the Person who the license is proposed to be assigned or transferred to shall both submit affidavits to the Town demonstrating the following:

1. The new Person who will hold the license wholly owns the new entity.
2. The new entity is properly formed and authorized to do business in the State of Wisconsin.
3. The written assignment requires the new entity to assume all of the Licensee's rights, duties and obligations under the License including but not limited to the letter of credit requirements and the certificate of insurance requirements.

#### **IV. LICENSE APPLICATION PROCEDURE FOR WECS**

**A. Application.** Any person desiring to secure a WECS license from the Town shall file a complete application, together with two additional copies, with the Town Clerk. The application shall be on a form approved by the Town Board and shall be provided to the applicant by the Town Clerk.

**B. Required Information.** The following information shall be required of each Applicant and shall be provided with the application. The Person(s) filing the application shall sign it under oath or affirmation as witnessed by a Notary Public:

1. Name, address, and phone number of Applicant(s).
2. If the Applicant is a corporation, partnership, limited liability company, limited liability partnership, or other entity recognized by law, the application shall include: the name of the business entity; the date of incorporation, registration or organization; the state in which the entity was incorporated, registered or organized; the name and address and home phone numbers of the registered agent(s) where applicable; the names and addresses of all officers and directors; operating or managing partners or general partners, managing members or managers, whichever is applicable for the particular form of business entity.
3. Name and address of any other current or past WECS developed or operated by the Applicant, whether in the State of Wisconsin or any other state or nation.

4. Name, address and phone number of the individual(s) responsible for the day-to-day operation of the proposed WECS, who will be deemed the Operator for purposes of this section, and who will be the contact Person for the Town.
5. Evidence that the Applicant is the owner of the underlying real estate and other property necessary for the WECS project or that the Applicant has the written permission of the owner(s) of such real estate and other property to make such an Application.
6. A signed statement by the underlying landowner(s) acknowledging that the landowner(s) will be financially responsible if the owner/operator fails to reclaim the site as required, and that any removal and reclamation costs incurred by the Town shall become a lien on the real estate and other property and may be collected from the landowner(s) in the same manner as property taxes.
7. A statement that the Applicant is familiar with, and in compliance with, the provisions of this ordinance, including the responsibility to reimburse all reasonable costs and professional fees associated with the processing, examination and analysis of the application for a license and such further expenses associated with monitoring the WECS and enforcing the terms of the license.
8. Proof of continuous liability insurance in the minimum amount of five million dollars (\$5,000,000.00) per occurrence shall be submitted to the Town of Ridgeville indicating coverage for potential damages or injury to landowners, occupants, Town property and Town roads, and other third parties. The Town shall be named as an additional insured on the policy.

**C. Additional Information.** Each Application shall be accompanied by:

1. Detailed Site Plan. A site plan which meets all the requirements of this Section and applicable provisions of the County Zoning Code pertaining to Land Use Permits, as well as any additional site specific requirements of the Town in accordance with the technical requirements in this ordinance. Each application shall be accompanied by a site plan showing the location of the proposed WECS Tower Site(s), including:
  - a. Total acreage occupied by the facility;
  - b. A detailed map of the area showing parcel boundaries and individual Wind Turbine locations and their distances to existing structures;
  - c. Existing structures and proposed facilities;
  - d. Location of existing and proposed transmission lines, substations, driveways, access and maintenance roads, etc. All proposed electric transmission and distribution lines shall shown and shall be placed underground;
  - e. Location of meteorological or wind testing towers; and



f. Location of wells, abandoned and active, within a half-mile radius of project boundary.

2. Specific Information. The applicant shall provide specific information on WECS including:

a. The type, size, total installed height, rotor material, rated power output, performance history, safety history, and noise characteristics of each type of WECS, tower and electrical transmission equipment. Identify the length of service of the proposed components.

b. A structural safety certificate shall be provided from a professional engineer stating that the structure is of new construction and not refurbished or rebuilt and has been designed to operate in cold weather conditions and is safe.

c. Photographs or detailed drawings of each wind turbine model including the tower and foundation. Provide design and specifications for all proposed structures and foundations. (Foundation at and around the tower base shall be designed so that no surface water or runoff can access subsurface aquifer at any time during construction, operation or decommissioning.)

d. Detailed computer and photographic simulation(s) overlaid on the existing environment showing the proposed WECS project area fully developed with all proposed wind energy conversion units and related facilities. The format shall be subject to the approval of the Town.

3. Timeline. The applicant shall provide a proposed timeline showing all aspects of construction with a starting and final completion date.

4. Affected Property Owners. The applicant shall submit the name and address of property owners within WECS setback areas. Considering that development rights of adjacent property owners may be forfeited due to these setbacks as per this ordinance, a written agreement for non-development within the specified setback must be obtained and recorded on the affected properties' deeds. Copies of the agreements must be submitted with the application.

5. Impermissible Interference Notification. The applicant shall deliver by certified mail or by hand a notice to the owner of any property, which the applicant proposes to be restricted by the permit. The applicant shall submit to the Town of Ridgeville a copy of a signed receipt for every notice delivered in addition to the following information:

a. The name and address of the applicant, and the address of the land upon which the WECS is or will be located.

- b. That the applicant has filed an application.
- c. That the permit, if granted, may affect the rights of the notified owner to develop his or her property and to plant vegetation.
- d. That any person may request a hearing within 30 days after receipt of the notice, and the address and procedure for filing the request.

6. Wind Access Agreements. Evidence (a signed statement from the applicant and countersigned by the landowner) that the applicant has negotiated with adjacent landowners and has obtained written agreements with all landowners whose wind rights may be affected by the WECS or who could otherwise potentially interfere with the applicant's wind access.

7. Easements, Leases & Property Rights. The applicant shall submit copies of signed letters of intent to grant easements, long-term leases or other property rights from all involved landowners and any governmental units responsible for right-of-ways for access, construction, electric transmission and distribution lines, etc.

8. Notifications. The applicant shall notify the following agencies, via certified mail upon submitting an Application to the Town. Copies verifying proof of delivery shall be provided to the town:

- a. Federal Aviation Administration;
- b. Wisconsin Bureau of Aeronautics;
- c. County Emergency Services Agencies;
- d. Local Fire Departments;
- e. County Planning & Zoning and Land Records Departments;
- f. County Highway Department;
- g. County Sheriff's Department;
- h. Local School Districts;
- i. Local Utilities and Electric Cooperatives;
- j. Wisconsin Public Service Commission;
- k. Wisconsin Department of Natural Resources; and
- l. U.S. Department of Defense facilities located within 50 miles of the proposed WECS.

9. Wind Study. A study documenting minimum, maximum, and average wind speeds and prevailing wind directions over the course of one year. Anemometers shall be calibrated regularly to ensure a measurement of error of 1% or less. All anemometers shall be placed at the expected hub height of the proposed wind turbines. Sufficient wind resources, as described by the U.S. Department of Energy, include areas with a wind power class 4 or higher. The town shall retain the services of an independent, recognized expert to review the results of the wind resources study prior to acting on the application. Said study shall indicate the long-term commercial economic viability of the proposed WECS project.

10. Critical Communications. The applicant shall provide a critical communication study prepared by a registered professional engineer showing that the proposed WECS will not interfere with emergency (fire, police/sheriff, ambulance) radio two-way communications (base stations, mobile, and hand held radios, including digital), paging, television, telephone (including cellular and digital), microwave, satellite (dish), navigational, internet or radio reception communications to and from neighboring areas. The applicant shall provide a signed affidavit stating that the applicant shall be responsible for the full cost of any removal of WECS facilities and any other remediation necessary to provide correct any problems; including relocation or removal of the WECS facilities and any and all related electric transmission lines, transformers, and other components related thereto. The applicant shall maintain equivalent communications throughout the life of the WECS even as future technologies may change.

11. Noise Study. The Applicant shall provide to the Town a pre-construction noise survey within a one mile radius of each proposed Wind Turbine location showing ambient background noise levels over a one year period prior to final layout and construction of the proposed WECS. The noise survey shall be conducted by a qualified person on behalf of the applicant, and shall be reviewed and approved by an independent consultant selected by the Town Board, at the Applicant's expense, prior to review and approval of the Application.

12. Shadow Flicker and Blade Glint. The applicant shall provide a shadow flicker and blade glint model for any proposed wind energy conversion unit. The study shall be conducted by a qualified person on behalf of the applicant, and shall be reviewed and approved by an independent consultant selected by the Town Board, at the Applicant's expense, prior to review and approval of the Application.

13. Ice Throw Calculations. A report from a Wisconsin professional engineer that calculates the maximum distance that ice from the turbine blades could be thrown. The basis of the calculation and all assumptions must be disclosed. The report shall be prepared by a qualified person on behalf of the applicant, and shall be reviewed and approved by an independent consultant selected by the Town Board, at the Applicant's expense, prior to review and approval of the Application.

14. Blade Throw Calculations. A report from a Wisconsin professional engineer that calculates the maximum distance pieces of the turbine blades could be thrown. The report shall be prepared by a qualified person on behalf of the applicant, and shall be reviewed and approved by an independent consultant selected by the Town Board, at the Applicant's expense, prior to review and approval of the Application.

15. Ground Water. An environmental study specifically indicating the impact the project will have on the groundwater beneath and in the vicinity of the proposed Wind Turbine sites. If a Wind Turbine foundation is proposed in a bedrock area, a baseline of all wells and certified public drinking sources in a half-mile radius shall be established and provided to the Town as part of the application. The study shall be prepared by a

qualified person on behalf of the applicant, and shall be reviewed and approved by an independent consultant selected by the Town Board, at the Applicant's expense, prior to review and approval of the Application.

16. Travel Route. The applicant shall provide the town, county and state notice of intended travel routes to proposed WECS site. The applicant shall provide, at is expense, a pre-construction inventory of road conditions performed by a certified Wisconsin professional engineer. The applicant shall abide by all town, county and state laws and ordinances that may affect travel and/or ingress or egress to the WECS facilities.

17. Soils Report. A geotechnical report that shall at a minimum include the following:

a. Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing;

b. Slope stability analysis;

c. Grading criteria for ground preparation, cuts and fills, soil compaction; and

d. Certification from a registered geotechnical engineer that the soils can support a WECS.

18. Site Preparation & Erosion Control. The applicant shall submit the following:

a. A site preparation plan that has been approved by the County Land Conservation Department. The plan shall show planned storage and retention of topsoil, and all types of subsoil for later site restoration.

b. A construction site erosion plan and storm water runoff control plan that has been approved by the County Land Conservation Department. The plan shall comply with all state statutes and county ordinances. The plan shall be prepared so as to minimize the potential adverse impacts on sinkholes, wetlands, streams and the banks and vegetation along those streams and wetlands, and to minimize erosion or sedimentation.

19. Hazardous Waste. A plan shall be submitted showing compliance with all laws applicable to the generation, storage, clean up, transportation and disposal of hazardous wastes generated during any phase of the proposed WECS life.

20. Fire Prevention, Emergency Rescue Plan. The applicant shall submit a plan to outline preventative measures, and to identify, train and fund fire and rescue personnel to ensure readiness and appropriate response. This plan shall also identify potential fire, rescue, and hazardous materials scenarios over the life of the WECS.

21. Stray Voltage Test Results. The applicant shall perform at least two pre-construction stray voltage tests at all livestock facilities within the proposed project boundary and within a one-mile radius beyond the proposed project boundary. The tests shall be performed by a mutually acceptable Wisconsin certified stray voltage investigator and shall be conducted once in the spring and once in the fall of the year. The tests shall be performed according to the PSCW Phase II Stray Voltage Testing Protocol. A copy of the test results shall be sent to each of the following: property owners, PSCW, local utilities, Wisconsin Public Service Commission, and the Town. The applicant shall obtain written permission from property owners prior to stray voltage testing. If permission is denied, all responsibility for stray voltage problems shall be with the property owner.

22. Lighting Plan. The Applicant shall provide a plan showing lighting on and around all WECS and related facilities. Lighting on WECS shall be lit to FAA minimal standards only using red rather than white lights, if possible. Lighting shall be shielded from ground view to FAA maximum standards.

23. Avian and Bat Impact Study Plan. The applicant shall submit a plan for monitoring the avian and bat impact of the WECS to the Town for its review and approval. Such plan shall document and follow accepted scientific study procedures. In addition, the applicant shall submit a quarterly report to the Town which identifies the number of bird and bat fatalities found within 500 feet of all WECS facilities.

24. Abandonment, Removal and Site Restoration Plan. The applicant shall submit an abandonment, removal and site restoration plan, along with a cost estimate for removal and site restoration, to the Town with the application. The plan shall identify the specific properties it applies to and shall indicate the timeline and process to be used for removal of all materials above and below ground; road repair costs, if any; and all re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the WECS. The plan shall reflect the site-specific character including topography, vegetation, drainage, and any unique environmental features at the site. The plan shall reflect any standards set forth in this ordinance and shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.

25. Application Fees & Security. The following fees and financial security guarantees shall be paid to the Town by the applicant:

a. Application, Legal and Consultant Fees. The applicant shall pay an application fee of \$1,000 to the Town upon filing an application under this ordinance. In addition, within fourteen (14) days of filing an application the applicant shall deposit in a joint escrow account with the Town the sum of \$25,000, as partial payment for the appropriate Town expenses in hiring consultants and experts, as these authorities shall, at their discretion, deem desirable. At any time the balance of this fund shall fall below \$15,000, the applicant shall submit an additional \$15,000 so that the Town's full and actual expenses of examining and verifying the data presented by the applicant shall be

paid in full by the applicant. If at any time the balance of this fund shall fall below \$15,000 for a period of 30 days, the application shall be considered to have been withdrawn. The balance of the escrow account, after all the Town's expenses have been paid, shall be returned to the owner/operator after the decommissioning process is complete.

b. **Road Repair.** An amount to be determined by agreement of the applicant and the Town Board, to be used as security for Town road maintenance and repair, shall be deposited in a joint escrow account with the Town within fourteen (14) days of approval of a license under this ordinance. When determining the amount of such required security, the Town may require an annual escalator or increase based on current construction costs and/or the Federal Consumer Price Index. This security shall be kept in full force and effect during the entire time a WECS is in existence and shall be used to maintain roads during the construction, maintenance and decommissioning of the WECS facility. Such security shall be irrevocable or non-cancelable (except by written consent by both the Town Board and the owner of the WECS) for the life of the approved license. Failure to comply will subject the applicant to revocation of the license.

c. **Site Reclamation.** Advance payment for WECS site reclamation and restoration shall be placed in a joint escrow account or surety bond, the amount to be determined by the Town Board. Said amount shall be sufficient to fully remove the WECS and all components thereof. Such financial security shall be kept in full force and effect during the entire time while a WECS facility exists or is in place. This financial security shall be irrevocable and non-cancelable until such time as the Town Board certifies that reclamation and restoration are complete and release the obligation.

d. **Decommissioning.** An appropriate continuous renewal bond amount shall be established for each Wind Turbine for decommissioning should the Owner/Operator fail to comply with the Ordinance requirements or if a Wind Turbine is inoperable for a period of twelve (12) consecutive months.

## **V. LICENSING PERMIT PROCEDURE**

**A. Notice & Procedure.** After determining that an application is complete, the Town Board shall conduct a public hearing on the application after a class 2 hearing notice is published in the Town's official newspaper. The public hearing shall be held within ninety (90) days, after the Town Board determines that the application is complete. Within fourteen (14) days after the close of the public hearing, the Town Board shall meet in open session to deliberate and make a decision concerning the application. The deliberation meeting shall be noticed to the applicant and the public at least five (5) days prior to the deliberation meeting. The Town Board may have the assistance of legal counsel at the public hearing and the deliberation meeting.

**B. Decision on Application.** The Town Board shall approve and application and grant a WECS license if it determines that the requirements of this ordinance have been and shall be met by the applicant, and granting the license will not adversely affect

public health and safety. The Town Board may include conditions in the license which go beyond the minimum regulations set forth herein, if the conditions are reasonably necessary to protect public health and safety; do not significantly increase the cost of the system or significantly decrease its efficiency; or allow for an alternative system of comparable cost and efficiency. In addition to other provisions and standards set forth in this ordinance, the Town Board may consider the following factors when establishing such conditions:

1. The proposed ingress and egress;
2. The proximity to transmission lines to link the system to the electric power grid;
3. The number of wind turbines and their proposed locations;
4. The nature of land use on adjacent and nearby properties;
5. The surrounding topography;
6. The proximity to residential structures, residential zoning districts, and areas identified for future residential use;
7. Design characteristics that may reduce or eliminate visual obtrusiveness and the distraction of motorists on nearby roads;
8. Possible adverse effects on migratory birds, raptors, and other animals and plants;
9. Possible adverse effects of stray voltage, interference with broadcast signals, shadow and flicker effects, and noise;
10. Impacts on the orderly development, property values, and aesthetic conditions of the Town as they may also relate to public health and safety and other factors under Wis. Stat. § 66.0401;
11. Effects on public roads;
12. Recommendations from the town boards of adjacent towns, which may be affected by a WECS;
13. Any other factors which are relevant to the proposed WECS.

**C. Request for Waiver of Standards by Applicant.** If requested by an applicant, the Town Board may waive or reduce the burden on the applicant of one or more of the standards and requirements of this ordinance, if it concludes that the purpose of this ordinance will be met, that any requested waiver(s) by an applicant are justified based on credible evidence or information submitted to the Town Board by the applicant with the application, and that the requested waiver(s) will not adversely affect public

health and safety. The installation and continued operation of a WECS is otherwise contingent on compliance with all standards of this ordinance and all conditions established by the Town Board relative to the approval or conditional approval of an application and licensing permit.

**D. Recording & Notice of Decision.** The Town Board's decision to approve, conditionally approve or deny an application, the reason(s) for its decision, and any conditions established by the Town Board relative to a conditional approval of an application and license shall be recorded in the Town Board's minutes. The Town Board and Town Clerk shall issue a license to the applicant or inform the applicant that the application for a licensing permit has been denied within thirty (30) days of the Town Board's final action on the completed application. At the same time, the Town Clerk shall publicly post a notice of the final decision of the Town Board at the Town Hall.

**E. Appeal to Circuit Court.** The Town Board's final decision on approval, conditional approval or denial of an application may be appealed to Circuit Court by anyone aggrieved by the decision, including but not necessarily limited to the applicant or any aggrieved resident or property owner of the Town, within thirty (30) days of the issuance of the decision, and the posting of public notice of the decision, by the Town Clerk. In addition, any revocation of a license or other enforcement action by the Town Board under this ordinance may be appealed to Circuit Court by the applicant or any other aggrieved party within (30) days of actual notice to the applicant or other aggrieved party of such revocation or enforcement action.

## **VI. DEVELOPMENT & PERFORMANCE STANDARDS FOR LICENSING**

**A. Development & Performance Standards.** All WECS and testing structures shall comply with the Development & Performance Standards set forth in this section. It is recognized that the standards herein are neither exclusive, nor exhaustive. In instances where a health or safety concern is identified with regard to any application for a WECS, additional or more restrictive conditions may be included in the license to address such concerns. The Town reserves the right to impose additional standards as circumstances warrant. Such additional and more restrictive standards may include, but are not limited to: a) longer setbacks from nearby property lines, roads, electric transmission and distribution lines, residences, businesses and other inhabited structures; b) more restrictive noise limitations, and c) more restrictive limitations to protect surface water and groundwater.

**B. Design.** Each Wind Turbine shall consist of a tower, generator(s), nacelle and blades. Each WECS site shall have access roads, underground transmission cabling to connect the generators to a local utility's electric distribution lines, and underground fiber optic lines. The application shall disclose the nature, type, make and model of the proposed Wind Turbines. Detailed product literature, specifications, and safety guidance for maintenance of the turbines shall accompany the application. Each Wind Turbine shall also comply with the following design requirements:



1. Wind Turbines shall be painted a non-reflective, non-obtrusive color.
2. Each WECS site, 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 WECS to the natural setting and the existing environment.
3. Wind Turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority; strobe or other intermittent lights are prohibited.
4. Wind Turbines shall not be used for displaying any advertising.
5. Wind Turbines shall not display any name or logo.
6. Electrical controls and control wiring and power-lines must be wireless or not above ground, except where wind farm collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.
7. The clearance between the ground and the Wind Turbine blades shall be at least 75 feet.

**C. Aircraft Protection.** The wind turbine generator towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the outside of the tower other than as required by the FAA or other applicable authority, or as otherwise agreed in connection with the issuance of the license. Notwithstanding the foregoing, this restriction shall not apply to infrared heating devices used to protect the monitoring equipment. The tower shall be connected to an uninterruptible back-up power source to ensure continuous compliance with FAA regulations. To the extent consistent with FAA regulations, shrouding for the lights shall direct reflection of light up. Aircraft safety and protection shall also be accomplished by establishing sufficient setbacks between all Wind Turbines and adjoining properties in order to allow for safe crop-dusting of agricultural fields, and safe emergency medical aircraft landings on all adjoining properties.

**D. Blasting.** Licensee shall not undertake any blasting in connection with the construction of the Facility unless Applicant shall have notified the Town and submitted a blasting plan consistent with applicable laws and regulations. The plan must be submitted by the Licensee, reviewed and approved by the Town Board, before any blasting may take place. The plan shall, at a minimum, provide that:

1. Blasts must comply with the State ground vibration limitations.
2. Fly-rock traveling in the air or along the ground must remain in the controlled blasting area site owned or controlled by the applicant.
3. All blasting must be performed by or under the direct supervision of a State-licensed blaster.

4. A blasting log for each blast will be kept on-site at the WECS office for not less than 5 years, and copies of the required blasting log will be promptly submitted to the Town upon its request.

5. A resident call list must be established for the purpose of notifying neighbors at homes in the vicinity of the WECS of eminent blasting activity. This call list must be maintained and utilized on a “request basis only” for all residents in the vicinity of the WECS who asked to be notified prior to any blast.

6. The storage of explosives will be in accordance with Wisconsin law.

**E. Communications Interference.** WECS shall be sited and operated so that they do not interfere with emergency (fire, police/sheriff, ambulance) radio two way communications (base stations, mobile, and hand held radios, including digital) and/or paging, television, telephone (including cellular and digital), microwave, satellite (dish), navigational, internet or radio reception to neighboring areas. The applicant and/or operator of the facility shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or correct any problems; including relocation or removal of the facility caused or exacerbated by the operation of such equipment and any and all related transmission lines, transformers, and other components related thereto. The applicant shall maintain equivalent communications throughout the life of the WECS even as future technologies may change.

1. The owner/operator of the WECS shall respond within five business days to any request for communications interference investigation by a property owner within the project boundary and a three-mile radius beyond the project boundary. Testing will commence within ten working days of the request. The owner/operator is responsible for mitigating within ten working days from the determination of interference cause attributed to the operation of the WECS.

2. The owner/operator of the WECS shall respond within one business day to any request for communications interference investigation by any emergency agency (fire, police/sheriff, ambulance). Testing will commence within two working days of the request. The owner/operator is responsible for mitigating within two business days from the determination of interference cause attributed to the operation of the WECS.

**F. Electromagnetic Interference.** WECS shall be sited and operated so that they do not interfere with television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to neighboring areas. The applicant and/or operator of the facility shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or correct any problems; including relocation or removal of the facility, caused or exacerbated by the operation of such equipment and any and all related transmission lines, transformers, and other components related thereto. The owner/operator of the WECS shall respond within five business days to any request for a communications interference investigation by a

property owner within the project boundary and a three-mile radius beyond the project boundary. Testing shall commence within ten working days of the request. Owner/operator is responsible for mitigating within ten working days from determination of interference cause attributed to the operation of the WECS.

**G. Groundwater Protection.** Licensee shall construct and operate the Facility so as not to cause groundwater contamination in violation of applicable law. Nothing contained in the license is intended to authorize or permit any degradation of the quantity or quality of the groundwater in connection with the WECS.

1. No excavations deeper than nine (9) feet below the surface of the soil shall be allowed in the construction of any Wind Energy Facility or Wind Turbine unless the applicant submits evidence of increased cost or design necessity based on actual foundation designs. Any change in foundation design shall maintain the water quality standards of this ordinance.
2. Wells shall not be drilled within the boundaries of a WECS site.
3. The applicant shall complete a plan for managing surface water runoff to prevent pollution of groundwater through sinkholes, wetlands and infiltration through the soil and underlying bedrock within a 1,000-foot radius of each Wind Turbine site and along all access roads and driveways leading to Wind Turbine sites. The plan shall provide for surface water management so that the water flows away from the Wind Turbine sites and known sinkholes rather than toward them.
4. If a Wind Turbine foundation is proposed in a bedrock area, a baseline of all wells and certified public drinking sources in a half-mile radius shall be established and permanent remedies shall be the responsibility of the developer if contamination occurs.

**H. Noise.**

1. Audible Sound Limit.

a. No Wind Turbine or group of turbines shall be located so as to cause an exceedance of the pre-construction/operation background sound levels by more than 5 dBA or dBC. The background sound levels shall be the L90 dB sound descriptor (both A and C weighting) measured during a pre-construction noise study during the quietest time of evening or night. Measurements shall be for ten (10) minutes or more. L90 results are valid when L10 results are no more than 15 dB above L90 for the same time period. Noise sensitive sites are to be selected based on wind farm's predicted sound emissions (in dBA, dBC and 1/3 octaves to blade passage frequency), which are to be provided by developer.

b. A 5 dB penalty is applied for pure tones or when the sound emissions fluctuate in amplitude or frequency over time in reasonable synchronicity with the blade revolution.

2. In-Audible (e.g., Low Frequency) Sound Limit.
  - a. Not to exceed dBC-dBA greater than 20 dB inside or outside any occupied structure.
3. General Clause.
  - a. Not to exceed 40 dBA or dBC within 100 feet of any occupied structure.
4. Requirements.
  - a. All instruments must meet ANSI Type 1 performance specifications.
  - b. Procedures must meet ANSI S12.9 and other applicable ANSI standards.
  - c. Measurements must be made when ground level winds are 10 mph or less. Background sound measurements are with winds of 5 mph or less. Wind shear in the evening and night often result in low ground level wind speed. At turbine fan heights, the wind is at or above nominal operating wind speeds.
  - d. IEC 61400 procedures are not suitable for enforcement of these requirements. ANSI standards shall be followed for testing procedures.

5. In the event the noise levels resulting from the WECS exceed the criteria listed above, a waiver to said levels may be granted by the Town Board provided that the following has been accomplished:

- (1) Written consent from the affected property owners has been obtained stating that they are aware of the WECS and the noise limitations imposed by this Ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and
- (2) If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement has been recorded in the Office of the County Register of Deeds which describes the benefited and burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this Ordinance may exist on or at the burdened property.

**I. Fire Protection.** The applicant shall prepare a plan in consultation with fire department having jurisdiction over the area prior to construction. The plan shall address all activities at the WES and site from the start of construction through the end of power generation and the final removal and restoration of the site, and shall result in a response plan to address all identified potential fire, rescue, hazardous materials scenarios.

1. The owner/operator shall assure that the WECS and site comply with the following control and prevention measures and incurs associated costs.

a. Fire proof or fire resistant building materials and buffers or fire retardant landscaping.

b. Incorporation of a self contained fire protection system to address nacelle fires and approved by NFPA or comparable underwriter.

c. Maintain firebreak areas cleared of vegetation and maintained as a fire/fuel break as long as the WECS is in operation. Firebreaks shall be 30 feet in width around the periphery of the proposed WECS site, 10 feet in width around all transformers, and 30 feet in width around all buildings.

d. Fire fighting and rescue services, including programs and costs associated with equipment and training, for local fire protection and rescue personnel.

e. Any additional fire fighting or rescue personnel, services, materials, and/or vehicles as may be required to address any call related to the WECS or site that is beyond the capabilities of local fire fighting and/or rescue services.

f. The owner/operator shall be responsible for compliance with all laws applicable to the generation, storage, clean up, transportation and disposal of hazardous wastes generated during any phase of the project's life.

**J. Public Roads.** Licensee shall, prior to the initiation of construction and use of haul roads, consult with the Town Board, County Highway Commissioner, the Wisconsin State Police and the County Sheriff's Office for load paths and restrictions on their respective roads or bridges. At Licensee's expense:

1. Licensee shall provide, the Town Board, a preconstruction evaluation and identification of road surface materials stating the type and amount of surface cover, PASER ratings, and photographic or video documentation of predetermined designated traffic route, performed by a Wisconsin certified professional engineer mutually agreed upon by applicant and municipality.

2. Licensee shall contract with qualified contractors, approved by the town, to repair any damage to the haul roads due to transportation of equipment and Facility components ('Road Repair Obligations').

3. In the event a hazardous road condition exists that is not immediately corrected by Licensee, the Town Board may order emergency road repairs, be performed by qualified contractors. Licensee shall promptly reimburse the Town for reasonable emergency road repair costs.

4. Licensee shall assure funding of the Road Repair Obligations by a letter of credit or guaranty prior to initiation of any construction.

5. Weather permitting, the final Road Repair Obligations shall be completed to the reasonable satisfaction of the Town Board within six (6) months after completion of construction of the Facility, or as soon thereafter as weather conditions permit.

**K. Shadow Flicker or Blade Glint.** WECS shall be designed such that shadow flicker or blade glint will not fall on or in any existing sensitive receptor. Shadow flicker or blade glint expected to fall on a roadway or a portion of a residential parcel may be acceptable under the following circumstances:

1. The flicker or glint will not exceed 10 hours per year.

2. The flicker or glint will fall more than 100 feet from an existing residence.

3. The traffic volumes are less than 500 vehicles per day on the roadway.

4. The flicker or glint shall not fall onto an intersection.

5. If shadow flicker or blade glint exceeds any of the conditions listed in this section, the source WECS shall be shut down until the flicker or glint problem has been remedied.

**L. Setbacks.** Setbacks shall be measured from the outermost edge of the closest of the circular path of the wind turbine rotor blade. The Town Board may increase the following minimum setbacks on a case-by-case basis, in order to protect public health and safety.

1. Participating Property Line: 1.1 times the total height of the Wind Turbine from the nearest property line of a participating property owner.

2. Non-Participating Property Line: Five (5) times the rotor diameter but not less than 1,300 feet from the nearest property line of a non-participating property, unless the owner of the non-participating property grants an easement for a lesser setback. The easement must be recorded with the County Register of Deeds and may not provide for a setback that is less than 1.1 times the total height of the Wind Turbine.

3. Public Roads and Highways: 1,300 feet or three (3) times the total height of the Wind Turbine, whichever is greater.

4. Above Ground Power/Telephone Lines: 1,300 feet or three (3) times the total height of the Wind Turbine, whichever is greater, from the nearest above-ground public electric power line or telephone line.

5. Residences & Other Buildings: 2,640 feet from the nearest residence, business, school, daycare facility, church, hospital and other sensitive receptors.

6. Wetlands: 1,000 feet from all sinkholes and wetlands.
7. Water Bodies Setbacks: 1,300 feet from the ordinary high water mark of all navigable water bodies.
8. Parks & Public Property: 2,640 feet from any town, county or state park, property, recreational or rest area.
9. Spacing and Density: Minimum setback distances between turbines shall be (2) times the total height of each WES.

**M. Signage and Fencing.** Licensee shall provide reasonable signage at the Facility, identifying the Premises as being part of the Facility and providing appropriate safety notices and warnings against trespassing. The no trespassing signs shall be posted around the entire premises at an appropriate distance for posting but no less than 2 conspicuous places for every 40 acre parcel within the Facility. Signs should be sized at a minimum to meet the provisions of Wis. Stat. § 943.013(2).

1. No wind turbine, tower, building, or other structure associated with a wind energy system may be used to advertise or promote any product or service. No word or graphic representation, other than appropriate warning signs and owner or landowner identification, may be placed on a wind turbine, tower, building, or other structure associated with a wind energy system so as to be visible from any public road.
2. This prohibition shall include the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners or waving, fluttering or revolving devices, but not including weather devices.

**N. Electrical Standards.** All wiring between Wind Turbines and the Wind Energy Facility substation shall be underground. All neutral grounding connectors from Commercial Wind Turbines shall be insulated from the earth and shall be sized to accommodate at least twice the peak load of the highest phase conductor, to absolutely prevent transient ground currents, in order to comply with the National Electric Safety Code and the IEEE Standard 519-1992, approved by the American National Standards Institute, as follows:

1. Grounding of both the electrical transmission lines and the supply lines to the internal electrical systems of the turbines themselves, shall comply with Rule 92D, Current in Ground Conductors: “Ground connector shall be so arranged that under normal circumstances, there will be no objectionable flow of current over the grounding conductor.”
2. Rule 215B: [It is not permissible] “to use the earth as a part of a supply circuit.”

3. Under no circumstances shall any Wind Turbine be connected directly to the grid; connection must be made through a substation or transformer properly grounded and filtered to keep harmonic distortion within recommended limits.
4. Bare, concentric neutrals are specifically prohibited in buried lines between turbines and in underground transmission lines to substations.
5. Electrical controls and control wiring and power-lines shall be wireless or not above ground except where wind farm collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.

**O. Stray Voltage.** The Licensee shall respond within (3) three calendar days to any request for a stray voltage investigation by a property owner within the project boundary and a one-mile radius beyond the project boundary. The tests shall be performed by a mutually acceptable Wisconsin certified stray voltage investigator. The tests shall be performed according to PSCW Phase II Stray Voltage Testing Protocol. Testing shall commence within (10) ten working days of the request. If testing cannot be initiated within (10) days, the Wind Turbine(s) in question shall be shut down until the testing can be started. The investigation shall be provided to the property owner at no cost up to a maximum of two investigations within a 12-month period. At no time shall the operation of a WECS increase the measured cow contact voltage (Vcc) or primary neutral to remote voltage (Vpn) on a livestock facility within the project boundary and a one-mile radius beyond the project boundary, above the maximum pre-construction levels. The owner/operator agrees to abide by all rules, procedures, standards, and reporting established by the PSCW for stray voltage and related electrical phenomena. Owner/operator is responsible for mitigating within five working days from determination any net increase in cow contact voltages (Vcc) or primary neutral to remote voltages (Vpn) attributed to the operation of the WECS. If corrections cannot be initiated within (3) three calendar days, the Wind Turbine(s) in question shall be shut down until the voltages in question are mitigated. A copy of the test results shall be sent to the property owner, PSCW Rural Electric Power Services staff, and the Town Board within (30) days of test completion.

**P. Reporting and Complaint Resolution Procedure.** Licensee shall report to the Town as follows:

1. Quarterly Power Production Reports: The Licensee shall submit a quarterly power production report to the Town which shall cover the proceeding calendar quarter and include actual power production in kilowatt-hours for each commercial wind energy facility in the Town.
2. Annual Monitoring Reports. The Licensee shall submit an annual monitoring report to the Town, containing data on the operations and environmental impacts of the WECS site. Such reports shall describe all safety inspections of the WECS.



3. Extraordinary Events. Within 24 hours of any extraordinary event, Licensee shall notify the Town. “Extraordinary events” shall include but not be limited to tower collapse, catastrophic turbine failure, fires, leakage of hazardous materials, unauthorized entry to the tower base, thrown blade or hub, any injury to a Facility worker or other person that requires emergency medical treatment, or other event that impacts the public health and safety of the Town.

4. Complaints. The Licensee shall, at the licensee’s expense and in coordination with the Town develop a system for detailed logging and investigation of all complaints related to the operation of the WECS. The Town will select a qualified individual to investigate complaints. The Licensee shall provide this qualified individual with direct phone contact and address information of the licensee representative. The reasonable cost and fees incurred by the Town in retaining said qualified individual shall be reimbursed by the owner of the WECS. After the investigation, if the Town Board reasonably concludes that operational violations or other public or private nuisances have been caused by the WECS, the Town shall require Licensee to use all reasonable efforts to mitigate or eliminate such problems on a case-by-case basis, as required by the Town Board. In order to address such complaints, the Town Board may require planting trees and installing awnings, limiting the hours of Wind Turbine operation, repair of WECS, removal and decommissioning of Wind Turbines.

**Q. Emergency Shutdown.** The Licensee shall be required to immediately cease operations for the duration of any Emergency. Emergency shall mean a proven condition or situation caused by the Facility or by other conditions that present an imminent physical threat of danger to life or significant threat to property. A WECS that is found to present an imminent physical threat of danger to life or significant threat of damage to property shall be immediately shut down and repaired or otherwise made safe and certified so by a Wisconsin professional engineer prior to resumption of operation. The Town shall have the right to access all WECS to verify conditions and/or repair progress with reasonable notice to the WECS owner/operator. Within 24 hours of an occurrence of a tower collapse, turbine failure, property damage or contamination, fires, thrown blade or hub, collector or feeder line failure, injured WECS worker or private person, the owner/operator shall notify the Town of the occurrence and proposed remedial action.

**R. Turbine Decommissioning and Site Restoration Plan.** Each Wind Turbine and all related improvements shall be removed in accordance with the Decommissioning and Site Restoration Plan submitted by the applicant and approved by the Town through the licensing process.

1. The owner of a WECS and the underlying property owners shall be jointly liable for the removal of all equipment associated with the WECS at the end of the permit period, the useful life of the facility, or when the facility is abandoned or otherwise out of operation for more than six months, at their expense.

2. Upon removal of a WECS facility, the owner of the facility and the underlying property owners shall be jointly liable for restoration of the site to its original condition at their expense. To protect the environment, removal shall be done by mechanical means. Blasting is not an approved means for removal. The restoration shall include removal of all materials above and below ground; public road repair, if any; and all re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the Wind Energy Facility. All hazardous materials shall be removed from the site and disposed of in accordance with state and federal laws.

3. The owner of a Wind Energy Facility and the underlying property owner shall provide proof of financial responsibility for the removal of the facility and restoration of the site in the form of a bond or an irrevocable standby letter of credit held in trust in favor of the Town, in a form to be approved by the legal counsel for the Town.

## **VII. INSURANCE AND INDEMNIFICATION**

**A. Insurance.** All Licensees shall maintain the following insurance coverage commencing upon construction of the facility:

1. The owner/operator shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring Applicant and Participating Landowners against loss or liability caused by Applicant's occupation and use of the Property under the Lease, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. The Town shall be named as an additional insured on the policy.

2. Worker's compensation coverage in an amount required by Wisconsin law. Applicant shall require subcontractors and others not protected under its insurance to obtain and maintain worker's compensation and employers' liability insurance.

3. Certificates of insurance evidencing compliance with these requirements shall be provided upon request of the Town. The insurer will provide notice to the Town in the event there is a lapse in coverage exceeding thirty (30) days. All policies other than worker's compensation shall be written on an occurrence and not on a claim-made basis.

**B. Defense of Land Use Decision and Indemnity.** In addition to the indemnification described below, Licensee shall reimburse the Town its reasonable attorneys' fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of this ordinance or any portion thereof, or the issuance of a License by the Town pursuant to this ordinance.

1. If the Town seeks reimbursement, it shall notify Licensee in writing promptly upon discovering any claim entitling it to a land use defense reimbursement, but in no event later than 120 days after receiving written notice of any action, lawsuit, proceeding,

investigation or other claim against it which may give rise to a claim for a land use defense reimbursement.

2. Licensee shall not be obligated to reimburse the Town with respect to any such liability, action or claim if the Town fails to notify Licensee thereof in accordance with the provisions of this section in sufficient time including, without limitation, any responsive motion or answer to a complaint, petition, notice, or other legal, equitable action or claim, but only insofar as such knowing failure to notify Licensee has actually resulted in prejudice or damage to Licensee.

3. With respect to any third party action, lawsuit, proceeding, investigation or other claim which is subject to reimbursement under this section, Licensee shall be entitled to assume and control (with counsel of its choice) the defense of such action, lawsuit, proceeding, investigation or other claim at Licensee's expense; provided, however, that the Town shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose (the fees and expenses of such separate counsel to be borne by the Town) and to assert against any third party any and all cross claims and counterclaims the Town may have, subject to Licensee's consent, which consent shall not be unreasonably withheld. If Licensee elects to assume the defense of any such claim, it may settle such claim in its sole discretion so long as either (i) such settlement provides an unconditional release of the Town, or (ii) Licensee shall obtain the prior written consent of the Town (which consent shall not be unreasonably withheld). If Licensee elects to assume the defense of any claim, the Town shall fully cooperate with Licensee and its counsel in such defense.

4. Licensee shall defend, indemnify and hold harmless the Town and its officials, employees and agents from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorneys' fees (such liabilities together known as "Liability") arising out of Licensee's selection, construction, operation and removal of the Wind Turbines and affiliated equipment including, without limitation, Liability for property or personal injury (including death), whether said Liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the Town's other indemnification rights available under law.

## **VIII. STANDARDS**

**A. Construction Standards.** All WECS shall be constructed in compliance with Good Utility Practice for Wind Turbines. In the event after inspection by a qualified expert in Good Utility Practice, the Town concludes that any of the Wind Turbines were not constructed in compliance with Good Utility Practice or constitutes a danger to persons or property, then upon notice being provided, Licensee shall have 90 days to bring the non-compliant Wind Turbine(s) into compliance with such standards. If 90 days is insufficient time to cure the non-compliance, Licensee shall present a plan to the Town describing the reason for the delay and the time frame for the cure to be put in

place. Failure to bring such non-compliant Wind Turbine(s) into compliance or failure to provide a plan for compliance within 90 days shall constitute grounds for the Town Board to order immediate removal of said Wind Turbine(s) at Licensee's expense.

**B. Performance Standards.** All WECS shall be operated and maintained consistent with Good Utility Practice for comparable facilities.

**C. State and Federal Standards.** Construction of WECS and Wind Turbines shall meet or exceed current standards and regulations, if any, of any other agency of the state or federal government with the authority to regulate wind powered generators. If such standards and regulations are changed and retroactive application is required for the change, then Licensee shall bring the Wind Turbine(s) into compliance with such applicable revised standards and regulations within 6 months of the effective date of such standards and regulations, unless a different compliance schedule is permitted by the controlling state or federal agency or approved by the Town. A Determination of No Hazard for each Wind Turbine must be obtained from the FAA for each Wind Turbine as a condition precedent to the receipt of a license under this ordinance.

**D. Wind Turbine Safety Standards.** Licensee shall comply with the following safety standards:

1. All wiring between the Wind Turbines and substations shall be installed at least four (4) feet underground.
2. The outside of Wind Turbines shall not be climbable.
3. All access doors to the towers and electrical equipment shall be locked.
4. Appropriate warning signage shall be placed on each tower, all electrical equipment, and all entrances.

**E. Repair & Replacement.** Licensee shall be authorized to repair and replace the wind turbine generator and associated equipment consistent with Good Utility Practice during the Term of this License as needed to keep the Facility in good repair and operating condition. However, no such repair or replacement shall entitle Licensee to any extension of the Term of this License, even if it extends the useful life of the Facility. If Licensee desires to extend the term of this License in the future, Licensee shall be required to apply for such extension or amendment of this License in accordance with the terms of this ordinance.

## **IX. PROCEDURES FOR ALTERATION OR REVOCATION OF LICENSE**

**A. Amendment.** Following the granting of a license any licensee who wishes to materially alter any aspect of the licensed premises which was required to be described in the building plan or site plan required under this Section, shall apply to the

Town Board for an amendment to the license. The application shall explain the nature of the alteration and the reasons therefore and include a non-refundable application fee of \$600. The Applicant shall also be required to pay the reasonably necessary engineering expenses, if any, associated with the review. The Town Board shall act on the amendment application consistent with the terms of this ordinance.

**B. Revocation of License.** An unsafe WECS and an inoperable WECS is hereby declared an unsafe public nuisance, which shall be subject to abatement by repair, rehabilitation, demolition, or removal by the Town Board. An inoperable WECS shall not be considered a public nuisance provided the owner can demonstrate that modernization, rebuilding or repairs are in progress or planned and will be completed within a reasonable time as approved by the Town Board, provided periodic reports on the status of the repairs are provided to the Town Board as requested of the licensee.

1. Each of the following occurrences shall constitute a violation of the terms and conditions of this License (a "Violation") and any such Violation shall be grounds for revocation of this License (whatever the reason for such an event of default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, order or regulation) after the expiration of the notice and cure period and revocation hearing as set forth below:

a. The Licensee abandons the wind turbine generators located on the premises for a period of six months or more.

b. The Licensee fails to observe or perform any material condition or provision of this License for a period of 30 days after it has received written notice of such failure from the Town; provided, however, that a Violation shall not occur if Licensee commenced performance of such obligation within such 30 day period and is diligently proceeding to complete such performance.

c. There is a material failure by Licensee to comply with any statute, regulation, rule, or license administered by any federal, state or county department, agency, or commission directly related to the operation of the wind turbine generator, and if Licensee fails to cure the material failure to comply for a period of 30 days after the date Licensee receives written notice of such failure from the Town or the federal, state or local governmental body or agency with jurisdiction; provided, however, that a Violation shall not occur if Licensee commences performance of such obligation within such 30 day period and is diligently proceeding to complete such performance.

2. Each Wind Turbine and all related improvements shall be removed in accordance with the Decommissioning and Site Restoration Plan submitted by the applicant and approved by the Town through the licensing process.

3. The owner of a WECS and the underlying property owners shall be jointly liable for the removal of all equipment associated with the Wind Energy Facility at the end of the license period, the useful life of the facility, or when the facility is abandoned or

otherwise out of operation for more than six months, at their expense. Upon removal of a Wind Energy Facility, the owner of the facility and the underlying property owners shall be jointly liable for restoration of the site to its original condition at their expense. To protect the environment, removal shall be done by mechanical means. Blasting is not an approved means for removal. The restoration shall include removal of all materials above and below ground; public road repair, if any; and all re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the WECS facilities. All hazardous materials shall be removed from the site and disposed of in accordance with state and federal laws.

**C. Hearing.** The Town shall not revoke any License without first providing the Licensee a hearing and the right to respond, including the right to present evidence regarding any defenses or extenuating circumstances regarding the alleged violations or public or private nuisance.

## **X. LICENSE EXPIRATION**

**A. Expiration.** Unless the Town Board authorizes a different term based upon analysis of the useful life of the WECS, every license issued pursuant to this ordinance shall terminate upon the expiration of twenty five years from the date of issuance if construction is commenced within one year of issuance. If construction is not commenced within one year of issuance, the license shall expire one year after the date of issuance and the applicant will be required to reapply if it still intends to develop a WECS project.

## **XI. FEES AND EXPENSES**

**A. Tax Hold Harmless.** In the event that the shared revenue payments payable to the Town are eliminated by the Legislature, Licensee shall be required to pay the Town an amount not less than \$1,667 per megawatt per year for Wind Turbines actually installed and operating within the Town. Such payments shall be on an annual basis and payable on the 180<sup>th</sup> day after notice from the Town of Licensee's obligation to pay under this paragraph. Licensee's obligation to make such payments shall cease if the State adopts or implements a new mechanism to replace the shared revenue payments, to the extent that the new payment mechanism produces revenue not less than the revenue payable under the predecessor program. The shared revenue payments referenced above are paid to the Town directly by the State of Wisconsin, not Licensee. Regardless, Licensee shall be required to supplement the Town's annual shared revenue payments actually received, by an amount equal to the annual percentage change of the Consumer Price Index as of January 1 of each calendar year beginning on the first January following the date the Town receives its first payment. For purposes of this escalator clause, the Consumer Price Index means the U.S. Department of Labor, Bureau of Statistics, Consumer Price Index for the United States, All Urban Consumers, all items, unadjusted index.

**B. Property Taxes.** If the property tax exemption for WECS under current state law is revised or revoked by future Legislatures, Licensee will be responsible for all related assessments and taxes associated with the license and WECS site. Failure to pay such tax obligation shall be considered a non-compliance with this ordinance.

**C. Reimbursement of Fees and Costs.** Licensee shall reimburse the Town for its actual reasonable fees and costs incurred in the application, negotiation, administration and enforcement of this ordinance, including, without limitation, the Town's attorney fees, engineering and consultant fees, Town Board meeting and hearing fees, and the costs of public notices relative to the review and consideration of each application filed by an applicant under this ordinance. The preceding fees are payable within 30 days of invoice. Unpaid invoices shall bear interest at the rate of 1% per month until paid. The Town may recover all reasonable costs of collection, including attorneys fees.

## **XII. WESF NEIGHBOR AGREEMENT**

**A. Neighbor Agreement.** Licensee may offer to non-participating landowners the opportunity to enter into a Windpower Facilities Neighbor Agreement, provided:

1. Landowner has not otherwise entered into a Ground Lease, Easement or Setback Waiver Agreement with Licensee;
2. Has a primary residence or private business located within the setbacks provided for under this ordinance; and
3. Owns the property in fee simple and has applied for a building permit on or before the issuance of a license pursuant to this ordinance. A landowner who enters into such an agreement is not a Participating Residence for purposes of this ordinance.

**B. Town Approval.** The terms and form of such agreements shall be subject to negotiation between the Licensee and non-participating landowners who may be interested in such an agreement. However, such agreements, once signed, shall be subject to review and approval by the Town Board.

## **XIII. ADMINISTRATION, ENFORCEMENT, PENALTIES, RELATIONSHIP TO OTHER ORDINANCES, SEVERABILITY & EFFECTIVE DATE**

**A. Administration.** This ordinance shall be administered by the Town Board or its designee.

**B. Inspections.** The Town Board or its designee may enter upon any property for which a licensing permit has been issued under this ordinance to conduct inspections to determine whether the conditions stated in the permit and other standards and requirements of this ordinance are being complied with.

**C. Enforcement.** The Town Board or its designee may issue orders to abate any violation of this ordinance or any condition attached to a licensing permit approved by the Town Board. The Town Board or its designee may issue a citation for any violation of this ordinance. The Town Board may refer any violation of this ordinance to the Town's legal counsel or to special counsel for enforcement through litigation. Nothing in this ordinance shall be construed to prevent or limit the Town from using any other lawful means of enforcing this ordinance.

**D. Penalties.** Any person, applicant or licensee who fails to comply with any provision of this ordinance or of any license issued pursuant to this ordinance shall, upon conviction thereof, forfeit at least five-hundred dollars (\$500.00) but not more than one-thousand dollars (\$1,000.00) for each offense. A separate offense shall be deemed committed on each day during which a violation occurs or continues. Any person, applicant or licensee who is in default of payment of a forfeiture or costs may be imprisoned in the county jail until the forfeiture or costs are paid, except that the period of imprisonment may not exceed thirty (30) days.

**E. Relationship to Other Ordinances.** This ordinance does not abrogate, annul, impair, interfere with, or repeal any existing ordinance of the Town or any other governmental body.

**F. Severability.** The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

**G. Effective Date.** This ordinance shall take effect upon passage and posting or publication as provided by law.

Adopted this \_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Town Chairman

\_\_\_\_\_  
Town Supervisor

\_\_\_\_\_  
Town Supervisor

\_\_\_\_\_  
Attest: Town Clerk

Date Posted: \_\_\_\_\_



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