

WIND ENERGY SYSTEMS LICENSING ORDINANCE

The Town Board of the Town of Stockbridge, Calumet County, Wisconsin, does ordain as follows:

WIND ENERGY SYSTEMS LICENSING ORDINANCE

I. FINDINGS OF FACT.

- A. These regulations are adopted under the authority granted pursuant to Wis. Stats. § 66.0401, which provides:

Wis. Stat. § 66.0401 (2002)

Regulation relating to solar and wind energy systems.

- (1) **AUTHORITY TO RESTRICT SYSTEMS LIMITED.** No county, city, town, or village may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined in s. 13.48(2)(h) 1.g., or a wind energy system, as defined in s. 66.0403(1)(m), unless the restriction satisfies one of the following conditions:

- (a) Serves to preserve or protect the public health or safety.
- (b) Does not significantly increase the cost of the system or significantly decrease its efficiency.
- (c) Allows for an alternative system of comparable cost and efficiency.

- B. It is necessary and appropriate to protect the Niagara Escarpment, which is a unique geological formation. Regarding the protection of the Niagara Escarpment and other important natural resources and natural areas in the Town of Stockbridge, the Town Board incorporates by reference the East Central Wisconsin Regional Planning Commission's *Outdoor Recreation and Open Space Plan for East Central Wisconsin, March 1977* (currently being updated), the 2005 *Calumet County Outdoor Recreation Plan*, and the 2006 Wisconsin Department of Natural Resources Report *Land Legacy Report*.
- C. The geological features of the Niagara Escarpment make the groundwater more susceptible to degradation by blasting and related industrial/commercial construction activity because the soil is unable to perform its normal filtration process due to the numerous cracks in the bedrock. Unregulated wind energy systems may have an adverse, direct impact on local drinking water resources.

- D. The Town Board finds that Wind Energy Systems operating in the Town require special licensing by the Town in order to protect and preserve the health, safety, and welfare of the citizens of the Town and people in general. In this regard, the Town Board adopts and incorporates by reference a recent report issued by the National Research Council entitled *Environmental Impacts of Wind-Energy Projects, May 2007* (“2007 NRC Report”). The Town Board further finds that the Calumet County Wind Energy Ordinance is insufficient to protect the public health and safety of Town residents and property owners.
- E. Licensing is a legitimate and reasonable means of accountability to ensure that the construction of and operation by employees of Wind Energy Systems comply with reasonable regulations and to ensure that operators and employees do not allow their establishments to be hazardous to the public health or safety.
- F. It is not the intent of this ordinance to significantly increase the cost of the system or significantly decrease the efficiency of any Wind Energy System proposed to be located in the Town.

II. PURPOSE AND INTENT.

Based upon the findings stated above, it is the intended purpose of the Town to regulate Wind Energy Systems to promote the health, safety, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations for the operation thereof so as to minimize potentially dangerous effects of these Systems on the community.

III. DEFINITIONS.

The following terms have the meanings indicated:

1. “Applicant” means the individual or business entity that seeks to secure a license under this section of the Town municipal code.
2. “Board” means the Town Board for the Town of Stockbridge, Calumet County, Wisconsin.
3. “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 Systems.
4. “Good Utility Practice” means any of the practices, methods and acts with respect to the safe operation of the Wind Energy System Facility (“WESF”) 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 time period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light

of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

5. "Non-Participating Resident" means all residences located within 1/3 of a mile measured from the foundation of the residence to the center of the WESF turbine, provided the non-participating land owner owned the property in fee simple and applied for a building permit on or before the issuance of a license pursuant to this Ordinance.
6. "Operator" means the Person who is designated on the license application to be the Person in charge of the daily operation of the premises and who is to be the Wind Energy Systems contact Person for the municipality.
7. "Person" means an individual, proprietorship, corporation, association, partnership, limited liability entity, or other legal entity.
8. "Stray Voltage" 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.
9. "Wind Energy Systems" means equipment that converts and then stores or transfers energy from the wind into usable forms of energy on a large, industrial scale for commercial or utility purposes. Small scale wind systems of less than 170 feet in height with a 60-foot rotor diameter and a nameplate capacity of less than 100 kilowatts or less are exempt from this definition and the provisions of this Ordinance.
10. "Wind Energy Systems Facility" or "Facility" means all of the land and equipment used by the wind energy system and its support facilities including the wind turbine, tower, access roads, control facilities, meteorological towers, maintenance and all power collection and transmission systems.
11. "Wind Energy System Tower" means any structure that is designed and constructed primarily for the purpose of supporting the Wind Turbine.
12. "Wind Energy System Tower Site" means the land area encompassing a tower and all related equipment, structures paved or graveled areas, safe clearance areas, fencing and other items used in connection with said tower.

13. "Wind Turbine" or "Turbine" means a mechanical device which captures the kinetic energy of the wind and converts it into electricity. The primary components of a wind turbine are the blade assembly, electrical generator and tower.

IV. LICENSING

A. License Required.

From and after the effective date of this ordinance, no Wind Energy Systems shall be operated or maintained in the Town without first obtaining a license to operate issued by the Town. However, small scale wind systems of less than 170 feet in height with a 60-foot rotor diameter and a nameplate capacity of less than 100 kilowatts or less are exempt from the provisions of this Ordinance.

B. Effect of Other Licenses.

The fact that a Person possesses any other valid license or permit required by law, does not exempt that Person from the requirement of obtaining a Wind Energy Systems license under this Section.

C. Non-assignability of Licenses.

The license is not assignable or transferable to any other Person, without the express prior written consent of the Town, such consent not to be unreasonably withheld; provided, however, the Licensee may assign the License once to a new entity, upon notice to the Town, if the Licensee submits an affidavit demonstrating the following:

- (a) The new entity is wholly owned by the Licensee.
- (b) The new entity is properly formed and authorized to do business in Wisconsin.
- (c) 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.

V. LICENSE APPLICATION PROCEDURE FOR WIND ENERGY SYSTEMS

- A. Any Person desiring to secure a Wind Energy Systems license shall file an application together with two additional copies of the application with the Town Clerk.

- B. The application shall be on a form provided by the Town Clerk.
- C. The following information shall be required of each Applicant, and must be provided under oath or affirmation:
1. Name, address, and phone number.
 2. If the Applicant is a corporation, partnership, limited liability company or limited liability partnership, 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 numbers of the registered agent 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 Wind Energy Systems operated by the Applicant whether in this State or any other State or District within the United States.
 4. Name, address and phone number of an individual who is responsible for the day-to-day operation of the facility, who will be deemed the Operator for purposes of this section, and who will be the contact Person for the municipality.
 5. A statement that the Applicant is familiar and in compliance with the provisions of this section of the Town's municipal code, including the responsibility to reimburse all reasonable costs and professional fees associated with the processing, examination and analysis of the proposed facility.
- D. Each application shall be accompanied by:
1. A site plan which meets all the requirements of this Section and applicable provisions of the Calumet County Zoning Code pertaining to Land Use Permits, as well as any additional site specific requirements of the Town Board and/or the Town engineers in accordance with the technical requirements in this ordinance. Each application shall be accompanied by a site plan of the Wind Energy System Tower Site(s), including total acreage occupied by the facility. The application shall also be accompanied by a detailed map of the area showing parcel boundaries, individual Wind Turbine locations and accessory structures such as transmission lines and substations. The Town reserves the right to require the preparation of (a) a pre-construction noise survey for each proposed Wind Turbine location showing ambient background noise levels over a

reasonable period of time prior to final layout and construction, and (b) an environmental study evaluating the impact the project may have on groundwater in the vicinity of the proposed Wind Turbine sites.

2. Each application shall be signed by the Applicant.
3. Each application shall be accompanied by payment of nonrefundable application fee to be determined from time to time by separate resolution of the Town Board. Filing of the application does not occur until this fee has been paid.
4. The Town Clerk shall date the filing of the application in the face of the application.
5. Upon receipt of the application, the Town Clerk shall distribute a copy of the application to the Town Board, Building Inspector and Town Fire Departments.
6. The Town Board may refer the application to the Town engineer or a qualified consulting engineer for further review. The reasonably necessary costs associated with the engineering review shall be the responsibility of the applicant, in accord with the terms of this ordinance.
7. The Town Board may, but shall not be obligated, to refer the application to the appropriate committee for review and recommendation.
8. The Town Board may, but shall not be obligated to refer the application to a public hearing for purposes of receiving public comment.
9. Following review, the Town Board shall either grant the license or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance and under state law. A license may be granted with conditions.
10. If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day. A license may be revoked at any time by the Town Board for good cause, after first providing the Licensee with a hearing. If substantial construction has not begun within one year of the issuance of the license, the license shall expire and the Licensee shall be required to re-apply for a new license. The preceding one year deadline may be extended if the Licensee is able to demonstrate that the delay in construction is caused by circumstances beyond the Licensee's reasonable control. However, the Licensee shall not be excused from the preceding deadline if the delay arises from the Licensee's negligence or failure to reasonably anticipate ascertainable events or its failure to utilize commercially reasonable alternate solutions.

11. If the Town Board decides to deny the application for a license, the Board shall immediately notify the Applicant in writing of the reasons for denial. Such notice shall be sent to the Applicant within 5 days of the decision by certified mail, return receipt requested.
12. Any Applicant or other person aggrieved by such a decision of the Town Board, including any resident or owner of property in the Town, shall be entitled to immediately appeal the Board's decision in circuit court. Such an appeal must be made within 30 days of the date of the written decision by the Board. The Town explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, and to provide the review procedures described in this Section.
13. Each license issued for a Wind Energy System shall state on its face the name of the licensee, the name of the establishment, the street address of the establishment, the date of issue of the license and its expiration date.

VI. TECHNICAL REQUIREMENTS FOR LICENSING

This ordinance is intended to require implementation of restrictions through licensing regarding the design, construction and operation of Wind Energy Systems. It is recognized that the restrictions herein are neither exclusive, nor exhaustive. In instances where a health or safety concern is identified with regard to any application for a Wind Energy System, additional and/or more restrictive conditions may be included in the license to address such concerns. All rights are reserved to impose additional restrictions as circumstances warrant. Such additional or more restrictive conditions may include, without limitation (a) greater setbacks, (b) more restrictive noise limitations, or (c) additional groundwater or surface water protections.

A. Design.

Each Wind Turbine shall consist of a tower, generator(s), nacelle and blades. The total height of a Wind Turbine cannot exceed 430 feet above grade. Each WESF site must have access roads, underground transmission cabling to connect the generators to local utility electric distribution lines, and underground fiber optic lines. The application shall disclose the nature and type of the proposed Wind Turbine to be installed. Detailed product literature shall accompany the application. Each Wind Turbine shall also comply with the following design requirements (a) Wind Turbines shall be painted a non-reflective, non-obtrusive color; (b) at each WESF 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 WESF to the natural setting and the existing environment; (c) 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; (d) Wind Turbines shall not be used for displaying any advertising, except for reasonable identification of the manufacturer or operator of the WESF; and (e) 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.

B. Aircraft Protection.

The wind turbine generator tower shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the outside of the tower other than what is 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. The location of the Wind Turbines shall take into consideration the need to allow for safe crop-dusting of agricultural fields and safe emergency helicopter landings.

C. 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 blasting plan must be reviewed and approved by the Town Board before any blasting may take place. The plan shall provide, at a minimum, (a) all blasts must comply with the State ground vibration limitations; (b) flyrock traveling in the air or along the ground must remain in the controlled blasting area site owned or controlled by the applicant; (c) all blasting must be performed by or under the direct supervision of a State-licensed blaster; (d) a blasting log for each blast will be kept on-site at the WESF office for not less than 5 years, and copies of the required blasting log will be promptly submitted to the Town upon its request; (e) a resident call list must be established for the purpose of notifying neighbors at homes in the vicinity of the WESF 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 WESF who asked to be notified prior to any blast; and (f) the storage of explosives will be accordance with Chapter Comm. 7 of the Wisconsin Administrative Code.

D. Electromagnetic Interference.

The Licensee shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any WESF.

E. Emergency Shutdown.

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 that presents an imminent physical threat of danger to life or significant threat to property.

F. Groundwater Protection.

Licensee shall 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 WESF. Furthermore, no wells may be drilled within the boundaries of the WESF site. In addition, the Licensee shall complete a plan for managing surface water runoff to prevent pollution of groundwater through sinkholes and infiltration through the soil and underlying bedrock in the vicinity of each Wind Turbine site.

G. Noise.

1. Audible noise due to WESF operations shall not exceed fifty (50) dBA for any period of time, when measured at any residence, school, hospital, church or public library existing on the date of approval of any WESF Siting Permit.
2. In the event audible noise due to WESF operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph (1) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.
3. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is succeeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residence, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind-

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

4. Any noise level falling between two whole decibels shall be the lower of the two.
5. In the event the noise levels resulting from the WESF exceed the criteria listed above, a waiver to said levels may be granted by the committee provided that the following has been accomplished:
 - a. Written consent from the affected property owners has been obtained stating that they are aware of the WESF 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
 - b. 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.

H. Public Roads.

Licensee shall, prior to the initiation of construction and use of haul roads, consult with the Town Road Superintendent, the Wisconsin State Police and the Calumet County Sheriff's Office for load paths and restrictions on their respective roads or bridges. At Licensee's expense, Licensee shall provide the Town Road Superintendent with a videotape documenting the condition of all haul roads in the Town prior to beginning and after completing construction of the Facility. At Licensee's expense, the Licensee shall contract with qualified contractors to repair any damage to the haul roads due to transportation of equipment and Facility components ("Road Repair Obligations"). In the event a hazardous road condition exists that is not promptly corrected by Licensee, the Town Road Superintendent may order emergency road repairs be performed by qualified contractors, and Licensee shall promptly reimburse the Town for reasonable emergency road repair costs. Licensee shall assure funding of the Road Repair Obligations by a letter of credit or guaranty from a contractor of Applicant.

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

I. Screening.

Licensee shall design the Facility so as to minimize visual impacts such as glare, reflection or shadow flicker. Complaint of such visual impacts occurring inside any residence exceeding 5 hours per year shall be dealt with in accordance with the Reporting and Complaint Resolution procedures herein.

J. Setbacks.

Wind Turbines shall comply with the following setbacks:

1. Setbacks. Each Wind Turbine must be set back:
 - a. at least 1.1 times the total height of the Wind Turbine from the property line of a participating property owner;
 - b. at least 1,000 feet from the 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;
 - c. at least 1.1 times the total height of the Wind Turbine or 500 feet, whichever is greater, from any public road or power line right-of-way; and
 - d. each Wind Turbine shall be set back from the nearest above-ground public electric power line or telephone line a distance of no less than 1.1 times its total height, determined from the existing power line or telephone line.
2. Definition of Participating and Non-Participating. For purposes of this Ordinance "Participating" shall mean a property owner or property (including a residence) that is subject to an agreement, authorization or lease with Licensee to place Wind Turbines upon or near such property. "Non-Participating" shall mean all property owners or property (including a residence) which are not Participating property owners or property.

3. Spacing and Density. A Wind Turbine must be separated from every other Wind Turbine by a sufficient distance so that it does not interfere with the other Wind Turbine.

K. 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 acres within the Facility. Signs should be sized at a minimum to meet the provisions of §943.013(2), Stats.

No advertising material or signage other than warning, equipment information or indicia of ownership shall be allowed on the Wind Turbines. 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.

L. Stray Voltage.

Licensee shall utilize Good Utility Practice to minimize, to the extent practicable, the impact, if any, of stray voltage caused by the Facility.

M. Reporting and Complaint Resolution Procedure.

Licensee shall report to the Town as follows:

1. Extraordinary Events. Within 24 hours of any extraordinary event, Licensee shall notify the Town. "Extraordinary events" shall include tower collapse, catastrophic turbine failure, 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 in Licensee's opinion reasonably impacts the public health and safety of the Town.
2. Complaints. The Licensee of the Wind Energy System Facility shall, at the Licensee's expense and in coordination with the Town develop a system for logging and investigating all complaints related to the operational standards set forth in Sections VI.B, D, E, F, G, I, L and VIII.B. If the Town determines that it is reasonably necessary, it may undertake an investigation of the alleged operational violation by a qualified individual mutually acceptable to the Town and the owner of the Wind Energy System Facility. The reasonable cost and fees incurred by the Town in retaining said qualified individual shall be reimbursed by the owner of the Wind Energy System Facility. After the investigation, if the Town Board

reasonably concludes that operational violations are shown to be caused by the Wind Energy System Facility, the Licensee shall use reasonable efforts to mitigate such problems on a case-by-case basis including measures such as planting trees and installing awnings.

- N. **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, a copy of which is attached and incorporated by referenced marked Exhibit A.

VII. INSURANCE AND INDEMNIFICATION

A. Insurance.

All licensees shall maintain the following insurance coverages commencing upon construction of the facility.

1. Licensee 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.

1. Defense of Land Use Decision.

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. 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. 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. 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.

2. Indemnification.

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.

Wind Turbines 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 of 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 to request removal of said Wind Turbine(s) at Licensee's expense.

B. Performance Standards.

Any Wind Energy System or Wind Energy System Facility shall be operated and maintained consistent with Good Utility Practice for comparable facilities.

C. State and Federal Standards.

Construction of 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 as a condition precedent for the installation of each turbine.

D. Wind Turbine Safety Standards.

Licensee shall comply with the following safety standards:

1. All wiring between the Wind Turbines and the substation shall be underground;
2. The outside of Wind Turbines shall not be climbable;
3. All access doors to the towers and electrical equipment shall be locked;
and

4. Appropriate warning signage shall be placed on each tower, all electrical equipment, and all entrances.

IX. REPAIR AND 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.

X. PROCEDURES FOR ALTERATION OR REVOCATION OF LICENSED PREMISES.

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. The Applicant shall 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.

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:

1. if Licensee abandons the wind turbine generators located on the Premises for a period of one year or more; or
2. if 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; or

3. if 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.

C. Hearing.

The Town shall not revoke any License without first providing Licensee a hearing and the right to respond, including the right to present evidence regarding any defenses or extenuating circumstances (such as Applicant's prompt commencement of remedial measures that cannot reasonably be concluded within 30 days) regarding the alleged Violations.

D. Judicial Review.

Licensee shall have the right to appeal any revocation to Circuit Court within 30 days of the date of the revocation.

XI. LICENSE EXPIRATION

Unless the Town Board authorizes a different term based upon analysis of the useful life of the Wind Energy Systems Facility, every license issued pursuant to this Section will terminate upon the expiration of thirty years from the date of issuance.

XII. FEES AND EXPENSES

A. Tax Hold Harmless.

The parties acknowledge that the shared revenue payments payable to the Town under current state law may be revised or revoked by future Legislatures. In the event that the shared revenue payments payable to the Town are eliminated by the Legislature, Licensee will pay to the Town an amount not less than \$1667 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 180th 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 parties acknowledge that the shared revenue payments referenced above are paid to the Town directly by the State of Wisconsin, not Licensee. Regardless, Licensee agrees 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 that 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. Reimbursement of Fees and Costs.

Licensee agrees to reimburse the Town's actual reasonable fees and costs incurred in the preparation, negotiation, administration and enforcement of this Ordinance, including, without limitation, the Town's attorneys' fees, engineering consultant fees, Town Board meeting and hearing fees and the costs of public notices. The preceding fees are payable within thirty (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.

XIII. WESF NEIGHBOR AGREEMENT

Licensee shall offer to non-participating landowners the opportunity to enter into a Windpower Facilities Neighbor Agreement in the form substantially similar to that attached hereto as Exhibit B, provided that such landowner (1) has not otherwise entered into a Ground Lease, Easement or Setback Waiver Agreement with Licensee; (2) has a primary residence located within one-third (1/3) of a mile of a Project turbine measured from the foundation of the residence to the center of the turbine; and/or (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.

XIV. SEVERABILITY

If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect the remainder of this ordinance.

XV. EFFECTIVE DATE

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

This ordinance was passed and adopted by the Town Board this 15th day of September, 2007.

TOWN OF STOCKBRIDGE

By: Janna R. Morgan
Town Chairperson

Attest:

Jeanine Van Horn
Jeanine Van Horn, Town Clerk

Published and posted this 27th day of September, 2007.