

XXIV Large, Medium, and Small Wind Energy System Ordinance
 Adopted 5/13/2008
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A. Wind Energy Systems

The following regulations shall apply to all Wind Energy Systems as defined in Section C of this ordinance hereinafter constructed or developed within the Town of Morrison. Certain requirements apply to all sizes of Wind Energy Systems (WES), others may apply to only Large Wind Energy Systems (LWES) and others may apply to only Medium (MWES) or Small Wind Energy Systems (SWES). The distinctions will be noted in this chapter. When a distinction as to “Large” “Medium” or “Small” is not indicated, the requirement applies to all sizes.

B. Purpose

The purpose of the Wind Energy System Ordinance is to provide a regulatory scheme for the construction and operation of Wind Energy Systems in the Town of Morrison, subject to reasonable restrictions, which will preserve the public health and safety. This ordinance is meant to regulate Wind Energy Systems only. This ordinance does not apply to other activities or

structures in our farm community whether or not they affect our Comprehensive Plan or our main activity and supportive infrastructure which is farming.

C. Definitions

1. Ambient Sound: The lowest sound level present at a location for which ninety per cent of the time louder sounds were measured during the nighttime hours between 10 p.m. and 4 a.m.
2. Commission: The Town of Morrison Planning Commission.
3. Decommissioning: The process of use termination and removal of all or part of a Large Wind Energy System by the Owner or assigns of the Large Wind Energy System.
4. Good Utility Practice: Good Utility Practice means any of the practices, methods and acts with respect to the safe operation of a Large Wind Energy System 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. Inhabited Structures: A permanent building existing or with an approved permit to construct prior to the conditional use application and intended for the use of human or animal habitation for either a full-time or a part-time basis.
6. Karst Feature: An area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include areas with soils less than 60 inches thick over bedrock, caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps, swallets, and depressional areas.
7. Landowner: The person who owns the property on which a Wind Energy System is located or person(s) who own property on which no Wind Energy is planned. The wording in this ordinance will differentiate which is the case if not obvious in its use.
8. MET Tower: A meteorological tower used for the measurement of wind speed and/or wind direction.
9. Non-Participating Property: Real property that has no Wind Energy System.
10. Owner: The person or entity who develops, operates or owns a Wind Energy System, whether an individual, proprietorship, corporation, association, partnership, limited liability entity or any other legal entity. For purposes of this ordinance, Owner also includes the applicant and any assignees.
11. Participating Property: Real property that has a Wind Energy System within its property lines and is owned by the Landowner of the property, or is subject to an agreement between the Landowner and the Owner of the Wind Energy System, allowing the construction and operation of the Wind Energy System.
12. Shadow Flicker: Moving shadows caused by the rotation of the turbine blades passing in front of the sun.
13. Total Height: When referring to a Wind Turbine, the distance measured from ground level at normal grade to the blade extended at its highest point.
14. Town: Town of Morrison, Brown County, Wisconsin.
15. Use Termination: The point in time at which a Large Wind Energy System Owner provides notice to the Town of Morrison that the Large Wind Energy System or individual Wind Turbines

are no longer used to produce electricity unless due to repairs. Such notice of use termination shall occur no less than 30 days prior to actual use termination.

16. Wind Energy System: An energy conversion facility consisting of one or more Wind Turbines under common ownership or operating control, and includes substations, MET towers, cables/wires and other buildings accessory to such facility, whose main purpose is to convert and then store or transfer energy from wind into usable forms of energy.

17. Wind Energy System, Large: A Wind Energy System which has a total installed nameplate capacity of more than 300 kilowatts or of which any one Wind Turbine has a nameplate capacity of the equivalent of more than 100 kilowatts or a Total Height of more than 170 feet and less than five hundred (500) feet.

18. Wind Energy System, Medium: A Wind Energy System which has a total installed nameplate capacity of 300 kilowatts or less and any one Wind Turbine has a nameplate capacity of the equivalent of no more than 100 kilowatts but more than 25 kilowatts or a Total Height of no more than 170 feet but more than 110 feet.

19. Wind Energy System, Small: A Wind Energy System which has a total installed nameplate capacity of 300 kilowatts or less and any one Wind Turbine which has a name plate capacity of the equivalent of 25 kilowatts or less or a Total Height of 110 feet or less.

20. Wind Turbine: The portion of a Wind Energy System, which converts wind energy into electricity or other forms of energy, through the use of a Wind Turbine generator or convertor, and includes the turbine, blade, tower, base, and equipment immediately adjacent to the tower such as a pad transformer or energy storage device.

D. Regulatory Framework

1. Zoning

a. Large Wind Energy Systems may only be constructed in areas zoned Agriculture with an approved conditional use permit and a building permit from the Town of Morrison.

b. Medium Wind Energy Systems may only be constructed in areas zoned Agriculture, Business, or Industrial with an approved conditional use permit and a building permit from the Town of Morrison.

c. Small Wind Energy Systems may be constructed in areas zoned Estate Residential, Agriculture, Business, or Industrial with an approved conditional use permit and a building permit from the Town of Morrison.

d. No Wind Energy System consisting of a Wind Turbine with a Total Height of 500 feet or more shall be constructed in the Town. The Town may provide a waiver if no landowners of property within one mile object to the construction and if the Public Service Commission of Wisconsin approves the Wind Energy System and all conditional use requirements including those considered necessary by the Town for safety, health, and general welfare of the residents even those over and above the provisions contained in this ordinance are met.

2. At least 90 days before an Owner files an application to construct a Wind Energy System, an Owner shall hand-deliver or use commercially reasonable methods with an acknowledged receipt to provide written notice of the planned Wind Energy System with a project description and construction timeline to all of the following:

For Large Wind Energy Systems-

a. Landowners and political subdivisions within one mile of a planned Wind Energy System host property which is referred to as the Participating Property in this Chapter. In addition, an Owner

shall provide any landowner with whom the Owner may be seeking an agreement to use or affect the landowner's property or be seeking waivers for impacting the landowner with written information describing the landowner's rights and considerations for negotiating land use and the possible effects of Wind Energy Systems as prescribed by the Town. A landowner who agrees to a waiver does not waive any rights or protections granted to a Non-participating landowner unless specifically waived in the agreement.

b. Town of Morrison

c. Emergency first-responders and air ambulance service providers serving a political subdivision within one mile of where the Wind Energy System may be located.

d. Wisconsin Department of Transportation.

e. Public Service Commission of Wisconsin, if required.

f. Wisconsin Department of Natural Resources.

g. Wisconsin Department of Agriculture, Trade and Consumer Protection.

h. The office of the deputy undersecretary of the U.S. Department of Defense.

i. Electric utility serving the area.

j. All public libraries in the county and adjacent counties.

For Medium Wind Energy Systems-

a. All landowners of real property adjacent to the Participating Property along with those with property within 1500 feet of the Wind Energy System.

b. Town of Morrison

c. Electric Utility serving the area.

For Small Wind Energy Systems

a. All landowners of real property adjacent to the Participating Property along with those with property within 600 feet of the Wind Energy System.

b. Town of Morrison

c. Electric Utility serving the area.

3. An applicant for a Large Wind Energy System shall request, at applicant's expense, a pre-application public meeting with the Town Board and Planning Commission, at which no official Town action shall be taken. Notice of the meeting shall be sent to all landowners within one mile of the proposed boundary of the Wind Energy System. If the Owner does not contact each landowner directly but instead sends the notice by mail, the Owner shall provide the Town with a certificate of mailing for each landowner. The Owner shall send the notice twenty business days prior to the date of the meeting. A pre-application public meeting shall be held in order for the applicant to accomplish the following:

a. Inform Town residents of the project and provide answers to Town residents with questions.

b. Provide informational displays of the areas of the Town that meet the requirements of the Town ordinance and are likely locations for a Large Wind Energy System.

c. Town residents who are

not able to attend the meeting shall have the option to provide written comments or questions to the applicant and/or Town.

d. In no instance shall this meeting take the place of a formal public hearing for the conditional use permit.

4. Application for a conditional use permit for a Large, Medium, or Small Wind Energy System shall be submitted to the Zoning Administrator with information as follows:

- a. Name, address, any legal corporate status and telephone number of the applicant, which by definition herein is the Owner, responsible for the accuracy of the application and site plan.
- b. Name, address, legal corporate status and telephone number of the future Owner of the proposed Wind Energy System if it is known that the future Owner will be different from the Owner making the application.
- c. For a Large Wind Energy System, a signed statement indicating that the Owner has legal authority to develop, construct, and operate the Large Wind Energy System(s) under state, federal and local laws and regulations, including Federal Aviation Administration (FAA). The FAA will issue a signed statement when the precise location has been determined. Building permits will not be issued prior to receiving all signed statements, but a conditional use permit may be granted.
- d. For a Large Wind Energy System, an applicant shall also provide copies of the Proof of a Certificate of Authority or Certificate of Public Convenience and Necessity from the Public Service Commission of Wisconsin and the Public Service Commission of Wisconsin Environmental Impact Assessment, if applicable and when available.
- e. Description of the number and kind of Wind Energy System(s) to be installed.
- f. Description of the Wind Energy System's Total Height and design, including a cross section, elevation, and diagram of how the Wind Energy System will be anchored to the ground.
- g. Site plan, drawn to a scale of not less than 1 inch to 100 feet, showing the parcel boundaries and a legal description, 2 foot contours for the subject site and 100 feet beyond the subject site, karst features, support facilities, access, and proposed landscaping or fencing. An Owner of a Medium or Small Wind Energy System may provide less detail as determined by the Town.
- h. Photo exhibits visualizing the proposed Wind Energy System.
- i. Statement from the Owner that all Wind Energy System(s) will be installed in compliance with manufacturer's specifications and a copy of those manufacturer's specifications.
- j. Information regarding the impact of the Wind Energy System as to local infrastructure, anticipated noise, anticipated shadow flicker, line-of-sight communication, airports, aircraft landing fields and airspace, including aerial spraying.
- k. Information regarding use and modifications of roads and other public property during construction, operation, and decommissioning.
- l. For Large Wind Energy Systems, copy of all emergency plans prepared in collaboration with appropriate first-responders.
- m. Plan for decommissioning and site restoration.
- n. Evidence (a signed statement from the Owner and countersigned by the Participating Property Landowner) that the Owner has negotiated with adjacent Landowners and has obtained written agreements with all Landowners whose wind rights may be affected by the Wind Energy System's conditional use or who could otherwise potentially interfere with the Owner's wind access.
- o. Copy of the Wisconsin Distributed Generation Application Form and the Wisconsin Distributed Generation Interconnection Agreement
- p. Copy of the Statement indicating what hazardous materials will be used and stored on the site, and how those materials will be stored and disposed.
- q. A statement indicating how the Large Wind Energy System will be lit with the latest technology to minimize on-time, if lighting is required.
- r. A list of all potential permits or approvals the Owner anticipates may be necessary for construction of the Wind Energy System.

5. After the Owner notifies the Town in writing that all application materials have been filed, the Town shall notify the Owner no later than 45 days whether or not the application is considered complete. If considered incomplete, the Town will state the reasons for that determination. The day after the Town receives responses to all items that were considered incomplete, another 45-day completeness review period begins. If the Town fails to determine whether the application is complete or incomplete within 45 days after the application is filed, the application is considered to be complete. The Town may request additional information after the application is considered complete. The Town shall approve or disapprove the application no later than 90 days after the day on which the Town notified the Owner that the application was complete. Within the 90-day approval period, the Town may authorize an extension of the approval period for reasons allowed by Wisconsin statute s. 66.0401 (a) 4. The Town shall make a record of its decision-making proceedings as required by s. 66.0401 (a) 4.

6. A site grading, erosion control and storm water drainage plan shall be submitted to the Zoning administrator prior to issuing a building permit. At the Town's discretion, these plans may be reviewed by the Town's engineering firm. The cost of this review will be the responsibility of the Owner of the Large Wind Energy System.

7. The applicant shall acquire all other permits, including driveway/culvert permits and permits for work done in right-of-ways prior to construction.

8. Wind Energy Systems may not include offices, vehicle storage, or other outdoor storage. One accessory storage building may be permitted per Wind Turbine at Town Board discretion. The size and location of any proposed accessory building shall be shown on the site plan. No other structure or building is permitted unless used for the express purpose of the generation, storage or distribution of the converted energy.

9. An applicant may submit one conditional use permit application for an entire Large, Medium, or Small Wind Energy System project located in the Town of Morrison, provided that a detailed map identifying parcel locations for all proposed Wind Turbines is provided to the Town of Morrison at the time a conditional use application is submitted. Each Wind Turbine's characteristics and specific siting will be considered individually but not independently as to its impact on health and safety.

10. No grading, filling, or construction may begin until the Town of Morrison Zoning Administrator issues a building permit. A separate building permit is required for each Wind Turbine to be constructed.

11. All Owners shall maintain insurance coverage commencing upon construction of the facility and continuing in effect for the life of the project as follows:

a. The Owner 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 Owner'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.

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

c. Certificates of insurance evidencing compliance with these requirements shall be provided to the Town. The insurer will provide notice to the Town in the event there is any change in the policies' owner(s), provisions, terms or conditions. All policies other than worker's compensation shall be written on an occurrence and not on a claim-made basis.

d. Upon each renewal of any of these insurance policies, proof of continuous liability in the minimum amount of five million dollars (5,000,000.00) per occurrence shall be submitted to the Town of Morrison 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.

12. The Town of Morrison shall require an irrevocable letter of credit, bond, cash escrow, and/or personal guarantee, held in trust in favor of the Town of Morrison to recover the costs associated with removal of a use-terminated Wind Energy System and appurtenant facilities. The amount of the irrevocable letter of credit, bond, cash escrow, and/or personal guarantee shall be negotiated by the Town of Morrison prior to conditional use permit approval and shall remain in effect until released by the Town. The Morrison Town Board will determine which method of financial security will be allowed. The Town may solicit estimates from consultants or construction entities to determine the dollar amount required to dismantle and dispose of the Wind Energy System. Every five years the Town may evaluate whether the dollar amount of the decommissioning funds are still adequate and, if necessary, require an adjustment to the amount by requiring additional funds from the Owner.

13. On-site construction of a Wind Energy System authorized by conditional use permit shall be started within twenty-four (24) months of issuance of the conditional use permit and completed within thirty-six (36) months of issuance of the conditional use permit, or in accordance with a timeline approved by the Town Board. Upon request of an Owner and for good cause, the Town Board may grant an extension of time.

14. The Owner of a Large Wind Energy System shall submit a copy of all "as-built" plans including structural engineering and electrical plans for all towers following construction to the Town to use for decommissioning of Large Wind Energy System, if Large Wind Energy System Owner or its assigns fail to meet the requirements of this ordinance.

15. The Town may require additional conditions to ensure safety and proper land use fit to the surrounding area.

16. The Town of Morrison will periodically review any conditional use permits. The first review will be one (1) year after operation commences. Thereafter, a review will take place every five (5) years. The purpose of the review is to determine whether the Owner has complied with the terms and conditions of the conditional use permit. There will be a charge at the Owner's expense for the review process. The Town may alter the frequency of these reviews for Small and Medium Wind Energy Systems.

17. An Owner shall not make any material changes in an approved design, location, construction, or operation of a Wind Energy System without the prior written approval of the Town.

18. The conditional use permit issued to the Owner is not assignable (except as collateral to obtain financing) or transferable to any other person, firm or corporation, whether by operation of law or otherwise, without the express prior written consent of the Town, for which consent is not to be unreasonably withheld. In addition to any other requirement imposed by the Town with regard to a proposed assignment, the assignee must submit an affidavit demonstrating its agreement to assume all of the Owner's rights, duties and obligations under the conditional use permit, including, without limitation, the financial security provisions.

19. The Owner shall cooperate with any study of the effects of Wind Energy Systems coordinated by a state agency.

E. Applicability

1. The requirements of this ordinance shall apply to all Large, Medium, or Small Wind Energy Systems for which permit application have been accepted as complete after the effective date of this ordinance. Wind Energy Systems for which a required permit has been properly issued prior to the effective date of this ordinance shall not be required to meet the requirements of this ordinance; provided, however, that any such pre-existing Wind Energy System which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this ordinance prior to recommencing production of energy. No modification or alteration to an existing Wind Energy System shall be allowed without full compliance with this ordinance.

F. General Requirements for Wind Energy Systems

1. Principal Accessory Use

a. Wind Energy Systems may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of a Wind Energy System or a part of such facility on such lot provided that all requirements of this ordinance or, when allowed, requirements modified by the Town are met. Wind Energy Systems constructed and installed in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

b. A building permit, issued by the Town of Morrison Zoning Administrator, shall be required for each individual Wind Energy System structure prior to construction of any part of the Wind Energy System.

2. Design and Installation

a. Wind Turbines shall be painted a non-reflective, non-obtrusive color, such as grey, white, or off-white to prevent sun glare.

b. At Large Wind Energy System sites, the design of the building and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the Large Wind Energy System to the natural setting and existing environment.

c. Owner is responsible for properly maintaining all landscaping, including grass cutting.

d. Wind Energy Systems shall not be artificially lighted, except to the extent required by the Federal Aviation Administration's (FAA) minimum standards using red lights, if possible. Lighting shall be shielded from ground view to the extent allowed by FAA's maximum

standards. Technology which turns-on lighting only when aircraft approaches the area shall be used by the Owner unless specifically not permitted by the FAA.

e. No form of advertising shall be allowed on the pole, turbine, blades, or other buildings or facilities associated with the use, except for reasonable identification of the manufacturer or operator of the Large Wind Energy System.

f. All Wind Energy Systems shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a failsafe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

g. To the extent applicable, all Wind Energy Systems shall comply with all building, mechanical, electrical, and industry codes and standards. To ensure the integrity of the Large Wind Energy Systems, the Owner shall maintain the Wind Energy Systems in compliance with Good Utility Practice for Wind Energy Systems. If, upon inspection and advice by a qualified expert in Good Utility Practice, the Town reasonably concludes that any of component of a Wind Energy System fail to comply with Good Utility Practice or constitute a danger to persons or property, then upon notice being provided to the Owner, the Owner shall have 30 days to bring the non-compliant Wind Energy Systems into compliance with such standards or, if the 30 days is insufficient time to cure the non-compliance, the Owner shall present a plan to the Town describing the reason for the delay and the timeframe for the cure to be put in place. The Town shall determine whether the plan is acceptable or has to be redone to avoid the decommissioning process as provided for in this Chapter.

h. Electrical controls, control wiring, and power lines shall be wireless or below ground except where wind farm collector wiring is brought together for connection to the transmission or distribution network adjacent to that network.

i. All electrical components of a Wind Energy System shall conform to relevant and applicable local, state, national, and international codes, including IEEE 1547, UL1741 and PSC 114.

j. At the discretion of the Town, the Town may hire a Wisconsin-licensed Professional Engineer or other expert as an electrical consultant to review the electrical system design, including those to eliminate stray voltage, and to oversee the installation of the Large Wind Energy System. The cost of the consultant will be the responsibility of the Owner of the Large Wind Energy System.

k. The Owner of a Wind Energy System shall defend, indemnify, and hold harmless the Town of Morrison and their officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever including attorney fees arising out of the acts or omissions of the Owner concerning the operation of the Wind Energy System without limitation, whether said liability is premised on contract or tort.

l. The Owner of the Wind Energy System shall reimburse the Town, County, and State for any and all repairs and reconstruction to the public roads, culverts, and natural drainage ways resulting directly from the construction of a Wind Energy System. A qualified independent third party, agreed to by the Town, County, or Owner, and paid for by the Owner, may be hired to inspect the roadways to be used during construction. This third party shall evaluate document, videotape, and rate road conditions prior to the construction of the Wind Energy System and again upon notification of the completion of the Wind Energy System project. Any road damage done by the Owner or subcontractors shall be repaired or reconstructed at the Owner's expense. The Town of Morrison may require a bond or cash escrow, held in trust in favor of the Town of Morrison, to recover the costs associated with the repair of roadways damaged by the construction of any Wind Energy System.

- m. Where Wind Energy System construction cuts through a private or public drain tile field, the drain tile must be repaired and reconnected to properly drain the site, at the Owner's expense, to the satisfaction of the Landowner or Town.
- n. Any recorded access easement across private lands to a Wind Energy System shall in addition to naming the Wind Energy System Owner as having access to the easement shall also name the Town of Morrison as having access to the easement for purposes of inspection or decommission.
- o. The Owner of a Large Wind Energy System shall reimburse the Town of Morrison for any and all legal notices, meeting fees, and reasonable fees for consulting, legal advice, and engineering. Fifty percent of the estimated fees related to the permit application and its review shall be paid in advance by the Owner before a written decision is issued. The Town shall submit copies of all related Town-paid invoices to the Large Wind Energy System Owner for timely repayment to the Town.
- p. Any Medium and Large Wind Energy System that does not produce energy or a component which is no longer needed for production of energy for a continuous period of twelve months, excluding time spent on repairs or improvements, shall be considered abandoned and shall be decommissioned in accord with the Decommissioning provisions of this ordinance. The Owner shall notify the Town when a Wind Energy System has not produced electricity for a continuous twelve months. Any person may ask the Town to investigate whether a Wind Energy System is still producing energy. If requested by the Town, the Owner shall provide evidence of energy production in a form acceptable to the Town.
- q. The Large Wind Energy System Owner shall maintain a toll-free phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project. This information shall be supplied to the Town Clerk and, if a Large Wind Energy System, posted at each facility site.
- r. No blasting shall occur in connection with the construction of the facility unless the Owner has provided prior notification to the property owner, any abutting property owners, property owners within 1,500 feet of the blasting site, and the Town Board. All blasting shall be done in accordance with all applicable laws, regulations and ordinances.
- s. At the discretion of the Town, the Town may consult with the Land and Water Conservation Office of Brown County and/or the Department of Natural Resources (DNR) to review site plans prior to construction to ensure the least amount of impact on farm fields and sensitive areas. Construction of structures and trenches shall be avoided in environmentally-sensitive areas. The Town or these two agencies shall require the identification of sensitive areas by the Owner. The Large Wind Energy System Owner will be responsible for all costs associated with this review.

G. Setbacks

1. The Owner shall work with the Town and landowners to site Wind Energy Systems so that hardships are minimized. Wind Energy Systems shall not negatively impact private air landing strips or aerial spraying activities unless compensation is agreed upon by those persons affected.

2. Inhabited Structures

a. Each Large Wind System shall be set back from the nearest inhabited structure a distance of the greater of two (2) times its total height or one thousand (1,000) feet

b. The Morrison Town Board may grant a waiver to this requirement for a Participating and/or Non-Participating Landowner to decrease the setback. In no instance shall the setback be decreased to less than 1.5 times the total height of the Wind Turbine. This waiver shall be signed

by the impacted property owner(s) and recorded with the property record at the Brown County Register of Deeds.

c. Each Small and Medium Wind Energy System shall be set back no less than 1.5 times the Total Height of the Wind Turbine from any inhabited structure.

3. Property Lines

a. Each Large Wind Energy System shall be set back no less than 2640 feet from the nearest property line of a Non-Participating Property. Each Small and Medium Wind Energy System shall be set back no less than 1.5 times its Total Height from the nearest property line of a Non-Participating Property.

4. Public Roads

a. Each Large, Medium, and Small Wind Energy System shall be set back from the nearest public road right-of-way a distance no less than 1.5 times its Total Height.

b. The Morrison Town Board may grant a waiver to this provision where strict enforcement would not serve the public interest.

5. Communication and Utility Lines

a. The Owner of a Wind Energy System must meet all utility company setbacks and/or easements. The Owner of a Wind Energy System is responsible for contacting the appropriate utilities to determine location of all above and underground utility lines including, but not limited to, electricity, natural gas, petroleum, propane, cable television, and communications.

b. Owner of a Wind Energy System shall also contact Landowners for the location of private underground facilities in the area of excavations.

c. Utility line and/or easement locations shall be provided to the Town of Morrison for verification.

H. Karst Features and Ground Water

1. The Town of Morrison recognizes how susceptible our ground water supply is to contamination due to karst features located in the Town.

2. The Town may require consultation with the Brown County Land and Water Conservation Department, the Wisconsin Department of Natural Resources and/or any appropriate government agency. The Town may require the Owner to develop an excavation design and procedure plan which shall include, but not limited to, identification of bedrock areas within twenty-four inches of any excavation, determination of slope gradients, mapping of sensitive geological features, evaluation of trench and road access path options. The excavation design and procedure plan shall include avoidance of karsts, sinkholes, and other sensitive geological features and specify procedures for minimizing soil compaction, mixing of soil types, and damage to drainage systems. The plan shall include special design specifications and construction procedures for all excavations to prevent any possible migration of contamination via these excavations, including consideration of trench breakers and trench liners. The Town may hire a consultant, at the expense of the Wind Energy System Owner, to review the excavation design and procedure plan and may require changes based upon this review. In addition, the Town may hire an inspector to monitor that all excavations, material laying, backfilling and surface restoration are done according to the plan accepted by the Town.

3. The Owner shall complete a storm water and soil erosion control plan to prevent contamination of wetlands via surface runoff and groundwater via karsts, sinkholes, and other geological features during the construction and operation of any Wind Energy System. If state regulations do not require their approval of the plan, the Town may hire a consultant to review the plan at the Owner's expense.

4. At the request of the Town, the Owner of the Large Wind Energy System may be required to run water tests on wells where Large Wind Energy System structures and excavations such as, but not limited to, foundations and cable trenches will be located, both prior and after construction of the Large Wind Energy System. The Owner of the Large Wind Energy System will be financially responsible for any costs associated with the testing of wells. The Town Board will determine how large the test area needs to be based on factors such as where bedrock is located. The State Board of Health has recommended well-testing be done within one mile of pathways which includes excavations within 24 inches of bedrock. The Owner of the Large Wind Energy System will be financially responsible for any contamination to wells which tested acceptable prior to construction but are not acceptable after construction. The Town Board will determine the time period when the testing will take place. A consultant may be hired to develop and oversee the testing process. Any associated costs to the Town and any landowners shall be reimbursed by the Owner.

I. Sound and Vibration

1. An Owner shall procure or design a proposed Wind Energy System to minimize sound at an inhabited structure to the extent reasonably practicable.

2. An Owner shall design a Wind Energy System to comply with the sound standards in this section under all planned operating conditions.

3. The Owner shall provide the sound level specifications of the Wind Energy System's manufacturer. Sound modeling, pre-construction baseline testing and post-construction testing may be required by the Town. When required, any modeling or testing shall be performed by an independent qualified acoustical consultant selected by the Town Board at the Owner's expense. Results of the pre-construction modeling shall be submitted with the conditional use permit application. The Owner may be required to submit their own modeling study and test results for review by the Town's consultant. If the Owner submits their own study, data showing the historical accuracy of their modeling shall also be submitted. If any of the modeling shows that sound levels will exceed stated design limits listed below, setback must be adjusted to conform to the sound level limits. The sound modeling required will be determined by the Town and may include, but not be limited to, infra-sound, low frequency sound, broad spectrum and full spectrum testing at various wind speed conditions below turbine cut-in speed and between turbine cut-in speed and maximum sound speed, usually 6 mph and 13 mph, respectively, at five feet above ground level.

4. Ambient sound levels shall be measured at the closest exterior wall of all potentially affected inhabited structures and at the property line of all Non-Participating Properties adjacent to all of the Participating Properties. Ambient sound level measurement techniques shall employ all practical means of reducing the effect of wind-generated sound at the microphone. Ambient sound level measurements shall be performed before construction of a Large Wind Energy System. If and when ambient sound measurements are also performed after construction, the

Large Wind Energy System shall be shutdown during the test period. Ambient sound measurements may be taken when wind velocities at a proposed or existing project site are at sufficient levels which would allow operation of a Large Wind Energy System without the actual operation of such Large Wind Energy System, provided that the wind velocity does not exceed thirteen (13) mph at the ambient sound level measurement location.

5. When sound testing is required, sampling shall include LAeq, L10, and L90 metrics in both dB(A) and dB(C) scales. If the difference between dB(C) and dB(A) sound level measurements is more than 10 dB at any instance, a frequency analysis shall be required.

6. If the project consists of more than one Wind Turbine, the sound modeling and testing shall analyze the effects of the compounding of sound caused by multiple turbines and this effect upon inhabited structures and the property lines of adjacent Non-Participating Properties.

7. Sound testing, when required, shall conform to the applicable industry standards as provided by the American National Standards Institute such as, but not limited to, ANSI/ASA S12.9, S12.18, and S12.19 and by the International Electrotechnical Commission. Data sampling and sound level evaluations should consider the analysis outlined in "Baseline Environmental Sound Levels for Wind Turbine Projects" by George F. Hessler and David M. Hessler, published November 2006.

8. If a pre-construction baseline sound study was required, within twelve (12) months after the Wind Energy System is operational, and within four (4) weeks of the one-year anniversary date of the pre-construction baseline sound study, the Owner shall perform post-construction sound studies. If complaints are received prior to the one-year anniversary, the Town may determine there is the necessity to require the Owner to conduct sound studies before, and in addition to, the one-year post-construction study. The town may decide to have any study data reviewed by an independent acoustical consultant at the Owner's expense.

9. Pre-construction and post-construction sound studies shall be filed with the Town Clerk. Findings shall be forwarded to the Town Board as soon as possible.

10. Audible sound due to a Wind Energy System shall not exceed the lesser of 35 dB(A) for nighttime and 40 dB(A) for daytime or ambient sound level for L90 plus 5 dB(A) at any time when measured outside an inhabited structure at an exterior wall. In addition, low frequency sound levels shall not exceed the lesser of 50 dB(C) L(90) or exceed a 20-dB difference between Leq(C) and L90(A) levels when Leq(C) is higher than L90(A).

11. Any Wind Energy System shall not create an audible steady, pure tone such as a whine, screech, or hum or a vibration, whether or not created on the Wind Energy System itself or created when a Wind Energy System causes another structure or device to emit such sound or vibration. Any of these sounds or vibrations which can then be heard or felt on a Non-Participating Property shall be eliminated within 2 days by repair or shutting down the offending Wind Turbine.

12. If audible sound exceeds the sound level criteria of paragraphs 10 and 11, immediately above, the offending Wind Energy System must be shut down or operated in such a way as to meet these sound level criteria until repairs are completed unless a waiver is obtained from affected property owners.

a. The Town of Morrison reserves the right to review any repair plan, evaluate its effectiveness, and require reasonable changes.

13. In the event the ambient sound level, measured when the Wind Energy System is not operating, exceeds the applicable standard given in paragraph 10, the applicable standard shall be adjusted so as to equal the ambient sound level. The ambient sound level shall be expressed in terms of the highest whole number sound pressure level in dB(A) and dB(C) for L90A. In this case, the Owner shall be allowed to have sound levels 5 dB(A) above ambient measured as required in this Chapter.

14. Any sound level emanating from a Wind Energy System falling between two whole decibels shall be rounded to the higher of the two for determining compliance with the applicable standard.

15. The Owner shall pay for reasonable sound monitoring or measurements whenever the need is determined by the Town in response to demonstrable problems.

16. In the event the sound levels resulting from the Wind Energy System exceed the criteria listed above, a waiver to said levels may be granted by the Town provided the following has been accomplished.

a. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy System and sound limitations imposed by this ordinance, and that consent is granted to allow sound levels to exceed the maximum limits otherwise allowed; and,

b. A permanent sound impact easement has been recorded in the Brown County Register of Deeds which describes the benefited and burdened properties and which advises all subsequent owners of the burdened property that sound levels in excess of those permitted by this ordinance may exist on or at the burdened property. Any continuing installment payment per a remuneration agreement stays with the property and is paid to whoever is the landowner at the time of the payment.

J. Minimum Ground Clearance

1. The blade tip of any Large Wind Energy System shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.

2. The blade tip of any Medium Wind Energy System shall, at its lowest point, have ground clearance of no less than forty-five (45) feet.

3. The blade tip of any Small Wind Energy System shall, at its lowest point, have ground clearance of no less than thirty (30) feet.

K. Signal Interference

1. A Wind Energy System shall be sited and operated so that it does not interfere with commercial, personal and government communications including, but not limited to, telephone (including cellular and digital), standard digital TV (antenna), microwave, satellite (dish), navigational, weather forecasting facilities, internet, broadband or radio communications and reception to and from neighboring areas. The Wind Energy System shall not interfere with any and all future electromagnetic communications and technological mediums for home and business operations. The Owner shall be responsible for the full cost of any remediation necessary to provide equivalent or better alternate service or correct any problems. Remediation

shall continue for the life of the project. Owner shall use the latest technology as it becomes available in situations were remediation still had some residual negative impacts. Should remediation not be completed within five (5) business days after the Owner receives notice of the interference, the Owner shall be required to cease operations until remediation is completed. If the interference is adversely affecting emergency communications, the Owner shall immediately eliminate the interference or cease operations.

2. The Owner of a Large Wind Energy System shall provide a pre-construction critical communications study prepared by an independent Wisconsin-licensed Professional Engineer, selected by the Town Board at the Owner's expense. The study shall show that the proposed Large Wind Energy System will not interfere with emergency (fire, police/sheriff, ambulance), radio, two-way communications (base stations, mobile, hand-held radios, including digital), paging, broadband, standard digital TV (antenna), telephone (including cellular and digital), microwave, satellite (dish), navigational, weather forecasting facilities, internet or radio communications and reception to and from neighboring areas. The Town may modify this list in order to encompass all future electromagnetic communications and technological mediums for home and business operations.

3. If the applicant is a public utility, Administrative Code PSC 113.0707 also applies.

L. Shadow Flicker

1. The Wind Energy System Owner shall make reasonable efforts, including the use of automatic shadow sensors to stop the operation of an offending Wind Turbine, to eliminate shadow flicker effects upon any inhabited structure on Non-Participating Property. This requirement also applies to an inhabited structure built on Non-Participating Property after construction of the Wind Energy System.

2. The Owner of a Large Wind Energy System shall provide a shadow flicker assessment utilizing the latest technology with the conditional use permit application. Also, an engineering analysis of the historical accuracy of the modeling program shall be provided. The Town may hire a professional consultant to evaluate the quality of the assessment at the Owner's expense.

3. Whenever an inhabited structure on a Non-Participating Property experiences shadow flicker and the Landowner files a complaint with the Owner and/or the Town, all reasonable mitigation techniques shall be offered to the Landowner and provided as chosen by the Landowner at the Owner's expense.

M. Ice Shedding and Debris Throw

1. The Wind Energy System Owner shall ensure that ice or debris from the Wind Turbine blades does not impact any Non-Participating Property. For a Large Wind Energy System, the latest technology shall be used to detect ice formation and detect imbalance to shut-down the Large Wind Energy System before ice or debris becomes a danger.

N. Avian and Bat Impact

1. The Large Wind Energy System Owner shall make reasonable efforts to minimize avian and bat mortality from the operation of a Large Wind Energy System. The Town of Morrison may require an avian and/or bat impact study prior to issuance of a conditional use permit for a Large

Wind Energy System. The Owner of the Large Wind Energy System may submit an Avian or Bat Impact study from another community in the state as long as the avian or bat populations are similar and the study was not completed more than five (5) years prior to the conditional use permit request. The Owner is responsible for the cost of the study.

O. Waste Management

1. All solid waste, whether generated from supplies, equipment, parts, packaging, or operating or maintenance of the facility, including old parts and equipment, shall be removed from the site in a timely manner consistent with industry standards at the Owner's expense.
2. All hazardous waste generated by the operation and maintenance of the facility, including, but not limited to lubricating materials, shall be handled in a manner consistent with all local, state, and federal rules and regulations.

P. General Safety

1. All electrical wires and lines running from each Wind Turbine or component to another Wind Turbine or component of the Wind Energy System shall be installed underground. The wires and lines running from a Wind Turbine or any component to any substation connecting to the electric utility shall also be run underground, unless the Town determines that overhead lines would best serve the intent of the ordinance.
2. Wind Turbine towers shall not be climbable up to fifteen (15) feet above ground level. When possible, ladders or steps shall be located inside of the tower. If the structure is a lattice design or such that it cannot be easily made unclimbable, a fence to prevent access shall be installed.
3. All access doors to Wind Turbine towers and electrical equipment shall be locked when unattended.
4. Appropriate warning signage shall be placed on any size Wind Turbine towers, electrical equipment, and at access points to Large Wind Energy System entrances.
5. The Large Wind Energy System site and all structures shall have an annual inspection report of structural stability done by a Wisconsin-licensed Professional Engineer, at the cost of the Large Wind Energy System Owner, with a report filed with the Morrison Town Clerk.
6. The Owner of a Large Wind Energy System shall submit an annual operations and maintenance report to the Town.
7. All substations shall be fenced to prevent public access. Chain link fencing shall include vinyl or aluminum slats or other landscaping to create an opaque visual barrier.
8. The Owner of the Large Wind Energy System shall post and maintain at each facility a 24-hour/7 days per week, manned telephone number in case of an emergency.
9. The Owner of the Large Wind Energy System shall provide qualified personnel to conduct training sessions to emergency responders before construction and whenever requested by the Town Board at the expense of the Owner.

10. The Owner of the Large Wind Energy System shall provide a company representative to accompany the local Fire Department Inspector during site visits. The Owner of the Large Wind Energy System shall comply with all applicable laws regarding those inspections.

11. The Owner of the Large Wind Energy System shall be responsible for the total cost of any incident(s) that occur on or at their facilities and/or properties.

Q. Stray Voltage

1. The Owner of the Large Wind Energy System shall work with the local electric distribution company to test for stray voltage at all dairy and confined animal operations within 0.5 mile of a Wind Energy System pursuant to the stray voltage protocol established by the Public Service Commission of Wisconsin (PSCW) before any Large Wind Energy System construction activity, which may interfere with testing, commences and again after construction of the Wind Energy System is completed.

2. The Town may hire a qualified consultant to review the stray voltage prevention plan with the expense paid by the Owner.

3. The Owner shall work with the electric distribution company and any farm owner to rectify any stray voltage problems attributable to the construction and operation of the Large Wind Energy System in compliance with the Public Service Commission's stray voltage protocol.

4. If corrections of problems affecting farm operations cannot be completed in 5 calendar days, the Wind Turbines or grid interconnections shall be shut down or disconnected as necessary until the proper repair is completed.

R. Complaint Process

1. Making a complaint

a. An aggrieved person may make a complaint regarding failure by an Owner to comply with an obligation under this ordinance.

b. A complaint shall be made first to the Owner of the Wind Energy System and, if the complaint relates to a Large Wind Energy System, pursuant to a complaint resolution process developed by the Owner and accepted by the Town.

c. A complainant may petition the Town for review of a complaint that is not resolved within 45 days of the day that the Owner receives the original complaint.

2. Complaint Process

a. An Owner shall use reasonable efforts to resolve complaints regarding a Wind Energy System and shall investigate complaints regarding a Wind Energy System at the Owner's expense.

b. Upon receipt of a complaint, an Owner shall provide the complainant with a verbal acknowledgement of receipt of the complaint within two business days and a written acknowledgement and response describing the proposed solution within five business days. Within 10 days of receiving a complaint, or sooner if required elsewhere in this ordinance, an Owner shall provide the complainant an explanation as to what was done to resolve the complaint or explain why it has not been resolved and what is the schedule for resolving the complaint.

c. An Owner shall make a good faith effort to resolve complaints within 30 days of receiving a complaint or sooner if required elsewhere in this ordinance. An Owner shall notify the town of

complaints that have not been resolved within 30 days of the date when the Owner received the original complaint.

d. An Owner of a Large Wind Energy System shall maintain a log of all complaints received regarding the Large Wind Energy System. The Owner shall include the name and address of each complainant in the log, the nature of each complaint, and the steps taken to resolve each complaint. The Owner shall provide a copy of a complaint log monthly, at no cost, to the Town or designated monitoring committee contact.

3. Monitoring Committee

a. The town may establish a monitoring committee to oversee resolution of complaints regarding a Large Wind Energy System. A monitoring committee shall include on the committee a member who is a local employee of an Owner of a Large Wind Energy System and, if available, at least one Non-Participating Property landowner residing in the Town within 0.5 mile of a Large Wind Energy System that is located in the Town.

b. The monitoring committee, when established, may do any of the following:

(1) Maintain a record of all complaints brought to it.

(2) Require the Owner to provide the committee with information regarding the Owner's response to any complaint forwarded to the Owner by the committee.

(3) Recommend to the Town a reasonable resolution to a complaint based upon the information gathered by the committee.

S. Decommissioning of Large Wind Energy Systems

1. All Large Wind Energy Systems and appurtenances shall be removed from the site within seven (7) calendar months of the date of receipt of a use termination notice to the Town Board of Morrison by the Owner of the facility or its assigns. Upon request of the Owner or assigns of the Large Wind Energy System, and for good cause, the Morrison Town Board may grant a reasonable extension of time.

2. The site shall be stabilized, graded, and cleared of any debris by the Owner of the facility or its assigns. If site is not to be used for agricultural practices following removal, site shall be seeded to prevent soil erosion.

3. Any foundation shall be removed to a minimum depth of eight (8) feet below grade, or to the level of the bedrock if less than eight (8) feet below grade, by the Owner of the facility or its assigns. Following removal, the location of any remaining Large Wind Energy System's foundation shall be identified on a map as such and recorded with the deed to the property with the Brown County Register of Deeds.

4. Upon abandonment of underground cables, locations where cables were severed or disconnected from above-ground facilities shall be sealed in a way to prevent migration of storm water runoff or contaminates into the trench areas.

5. Any access roads shall be removed, cleared, and graded by the Owner of the Large Wind Energy System or its assigns at the Owner's expense, unless the Participating Property Landowner wants to keep the access road. The Town of Morrison will not be assumed to take ownership of any access road unless through official action of the Town Board.

6. Decommissioning shall conform to the contract between Participating Property Landowner and the Owner of the Large Wind Energy System, subject to the requirements set forth in this ordinance.

T. Forfeiture

1. Any Wind Energy System, its turbine or appurtenant facility hereinafter significantly erected, moved or structurally altered in violation of the provisions of this ordinance by any person, firm, association, corporation (including building contractors) or his or their agent shall be deemed an unlawful structure.

2. Any Wind Energy System that does not meet the requirements of this ordinance, including but not limited to, those dealing with sound or visual appearance, or does not meet the conditions attached to an approved conditional use permit shall provide grounds for revocation of the conditional use permit, thereby deeming the facility an unlawful structure.

3. The Zoning Administrator shall report all such violations to the Town Board who may then refer the matter to the town attorney to bring action to enjoin the erection, moving or structural alteration of such facility or to cause such facility to be vacated or removed.

4. Any person, firm, corporation, agent, employee, or contractor of such, who violates, destroys, omits, neglects, or refuses to comply with, or who resists enforcement of any provision of this ordinance; shall upon conviction thereof forfeit no less than \$1,000 and not more than \$5,000 per offense together with the costs of prosecution, and in default of payment of such forfeiture and cost shall be imprisoned in the county jail until payment of said forfeiture and costs of prosecution are made. Confinement to the county jail shall not exceed 30 days for each offense. Each violation and each day of violation shall constitute a separate offense.

5. This section shall not preclude the Town of Morrison from maintaining any appropriate action to prevent or remove a violation of this section.

U. Review

1. Nothing in the ordinance shall be construed as limiting an aggrieved person's right to a Certiorari Review in Circuit Court as permitted by Wisconsin Law.

V. Severability

1. The sections, paragraphs, sentences, clauses, articles and phrases of this ordinance are severable; if any provision is found to be unconstitutional, invalid or unenforceable, such find shall not affect the remaining portions of this ordinance.

W. Fees

1. Owner shall reimburse the Town's actual reasonable fees and costs incurred in the preparation, negotiation, review, inspection, administration and enforcement of the conditional use permit, including, without limitation, the Town's attorneys' fees, engineering and expert consultant fees, meeting/hearing fees and the costs of public notices. 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 cost of collection, including attorney's fees.

X. Impact Fees

1. The Town of Morrison retains the right to negotiate an Impact Fee on Large Wind Energy Systems with the Owner of a Large Wind Energy System.

Y. Tax Hold Harmless

1. The parties acknowledge that the shared revenue payments payable to the Town under current state law may be revised or revoked by future legislatures. If the shared revenue payments payable to the Town are eliminated or reduced, the Owner will pay to the Town an amount not less than the amount payable at the time of the issuance of the conditional use permit. The Owner’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.

2. The parties further acknowledge that the shared revenue payments are paid to the Town directly by the State of Wisconsin, not the Owner. Regardless, the Owner 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 from the State. For purposes of this escalator clause, the Consumer Price Index means the U.S. Department of Labor, Bureau of Statistics, Price Index for the United States, All Urban Consumers, all Items, unadjusted Index.

Z. Defense of Land Use Decision

In addition to the indemnification described above, the Owner shall reimburse the Town its reasonable attorneys’ fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of the conditional use permit. If the Town seeks reimbursement, it shall notify the Owner in writing promptly upon discovery of any claim entitling it to a land use defense reimbursement, but in no event later than 60 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.

AA. Time is of the Essence:

Time is of the essence in the performance of the requirements of the conditional use permit.

The above foregoing ordinance was duly adopted at a regular meeting of the Town Board of the Town of Morrison, Brown County, Wisconsin, held on the 12th day of May, 2011.

Ayes _____
Todd Christensen, Chairman

Nays _____
Kevin Collins, Supervisor

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Tim Harmann, Supervisor

Filed this 12th day of May, 2011
In the office of the Morrison Town Clerk

Colleen Magley, Clerk

Reviewed by:
Town of Morrison Planning Commission
and Glen Schwalbach as Consultant

Amended May 12, 2011