

**TOWN OF FOREST  
ST. CROIX COUNTY  
ORDINANCE NO. 2011 - 3**

**WIND ENERGY SYSTEMS LICENSING ORDINANCE**

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**TOWN OF FOREST  
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WIND ENERGY SYSTEMS LICENSING ORDINANCE**

**RECITALS**

WHEREAS, the Town of Forest has carefully studied Wis. Stat. 66.0401 regarding the rules and procedures for a municipality to regulate wind energy systems.

WHEREAS, the Town of Forest has studied proposed PSC 128, the proposed rules for siting and regulating wind energy systems, and considered the impact application of those rules would have if wind turbines were to be located in the Town of Forest.

WHEREAS, the Town of Forest adopted a temporary stay concerning the construction of wind energy systems to give the Town time to research and develop an appropriate ordinance regulating the siting, operation, and decommissioning of wind energy systems in the Town of Forest.

WHEREAS, the Town of Forest has held a public hearing on July 27, 2011 to hear public comment on the proposed ordinance.

WHEREAS, the Town Plan Commission has researched and reviewed many documents related to the siting of wind turbines, including, but not limited to the documents, reports and studies that are noted within the ordinance, which documents have been determined by the Town Plan Commission to be reasonably accurate, reliable and relevant to the health and safety effects of wind turbines.

NOW THEREFORE, based on the information concerning the health and safety effects of large wind turbines on the community presented in the public hearings and in the reports and documents reviewed referenced herein, and based upon the recommendation of the Town Plan Commission, the Town Board finds and ordains as follows:

**I. FINDINGS**

**(a) General Findings:**

1. Wind energy is a potential renewable and nonpolluting energy resource of the Town of Forest and its conversion to electricity may reduce dependence on nonrenewable, conventional energy sources and decrease the pollution that results there from. However, wind energy facilities should be sited in a way that protects the health and safety needs of the Town of Forest residents residing near the large wind turbines, as well as the general public.

2. The regulation of the siting and installation of large wind turbines is necessary to protect the health, safety and welfare of the residents of the Town of Forest and the general public. Adverse health and safety issues are likely to arise if appropriate standards and setbacks are not followed in the siting and installation of large wind turbines.
3. It is appropriate to consider as relevant recommended standards for large wind turbines from international organizations that have more experience with the use, siting and installation of large wind turbines than the U.S.
4. Wind turbine accidents have occurred involving ice throws, blade disintegration, fire and tower failure. According to the Caithness Wind Farm Information Forum, from 1999 through June 2008 there were over 500 accidents around the world, including North America, involving ice throws, blade disintegration, fire, and tower failure from large wind turbines. Even as recently as March 14<sup>th</sup> 2011, a bolt failure led to the rotor and blades falling from a wind turbine in North Dakota.
5. If improperly sited, wind energy systems produce electro-magnetic radiation that can interfere with broadcast communications and signals.
6. Heavy equipment used for the construction of large wind turbines can damage local roads.

(b) Findings Regarding Wind Turbine Noise Impacts:

The Town of Forest concludes that a) the sound pressure level ("SPL") of 50 dBA daytime and 45dBA night time set forth in the State of Wisconsin by proposed Chapter PSC 128 does not adequately protect town residents from the adverse health effects associated with large wind turbine noise; and b) a maximum outside audible SPL of 35 dBA or 5 dBA over ambient night time, or 45 dBA or 5dBA over ambient day time, whichever is lower, in the Town of Forest is necessary to protect residents from the adverse health effects associated with large wind turbine noise, based on the following findings:

1. Large wind turbines are significant sources of noise, which, if improperly sited, can negatively impact the health of residents, particularly in areas of low ambient noise levels.
2. Large wind turbines emit two types of noise -- 1) Aerodynamic noise from the blades passing through the air, which can generate broadband noise, tonal noise and low frequency noise; and 2) Mechanical noise from the interaction of the turbine components. A dBA scale is commonly used to measure audible wind turbine noise. Low frequency noise from large wind turbines is not adequately measured with a dBA weighting. For a better assessment of the health effects from low frequency noise, the World

Health Organization ("WHO") suggests using a dBC weighting. (See Rogers 1/2006; Alberts 11/20/2005; WHO 1999)

3. Noise is an annoyance that can negatively impact health, producing negative effects such as sleep disturbance and deprivation, stress, anxiety and fatigue. WHO defined annoyance as a feeling of displeasure associated with any agent or condition believed by an individual to adversely affect him or her. According to WHO, health should be regarded as a state of complete physical, mental and social wellbeing, and not merely the absence of disease or infirmity. Under this definition, noise has a significant impact on the quality of life and noise annoyance is an adverse health effect. (See WHO 1999, Ch. 3.7; Dr. Harry 2/2007; Pedersen & Waye 2/27/08)
4. Large wind turbines create a noise annoyance that can hinder physical and mental healing and can cause adverse health effects associated with sleep disturbance and deprivation, psychological distress, stress, anxiety, depression, headaches, fatigue, tinnitus and hypertension. Wind turbine noise can affect each person differently. Some people are unaffected by wind turbine noise, while others may develop adverse health effects from the same noise. At low frequencies, wind turbine noise may not be heard but rather felt as a vibration. Medical research reported complaints from people who felt the noise from large wind turbines, similar to symptoms that can be associated with vibroacoustic disease. (See Pedersen et al 3/1/2007, 8/2003, 1/11/2008 and 6/3/2008; Pedersen 2007; Mariana Alves-Pereira and Nuno Castelo Branco 9/20/2007; WHO 1999; Kamperman & James; reports by Dr. Pierpont, Dr. Harry and Dr. Leventhal)
5. The risk for adverse health effects resulting from noise annoyance such as headaches, stress, anxiety, fatigue, depression, pain and stiffness, and decreased cognitive ability associated with sleep deprivation from wind turbine noise increases with increasing A-weighted sound pressure levels. According to wind turbine noise studies, few respondents were disturbed in their sleep by wind turbine noise at SPL less than 35 dBA; however, at SPL greater than 35 dBA respondents were increasingly disturbed in their sleep by wind turbine noise. (See Pedersen et al 6/3/2008 and 8/2003)
6. Wind turbine noise greater than 5dB over ambient increases the risk for adverse health effects because a change of 5 dB is clearly noticeable. (See Kamperman and James)
7. Studies show that prolonged exposure to wind turbine noise resulted in adverse health effects at SPLs below those from other sources of community noise, such as road traffic noise. Sound generated by wind turbines has particular characteristics and creates a different type of noise

having different health impacts than compared to urban, industrial or commercial noise. (See Pedersen et al 6/3/2008 and 8/2003; Soysal 2007)

8. Living in a rural environment, in comparison with a suburban area, increases the risk of residents being impacted by noise from nearby large wind turbines because of the low ambient SPL in rural environments. (See Pedersen and Wayne, 3/1/2007, p. 485)
9. The International Standards Organization recommended community noise limits for rural areas be set at an SPL of 35 dBA during the day, 30 dBA during the evening and 25 dBA at night. (See Table 9: ISO 1996-1971 Recommendations for Community Noise Limits as cited by Acoustic Ecology Institute and Daniel Alberts of Lawrence Technological University)
10. In order to reduce the risk of negative health impacts from large wind turbine noise, acoustical engineers George Kamperman and Richard James recommend a) audible sound limits based on pre-existing background sound levels plus a 5dB allowance for wind turbine noise or b) SPL not to exceed 35 dBA within 100 feet of any occupied structure, whichever is lower; and c) a dBC limit not to exceed 20 dB above ambient background levels. These sound levels are in line with numerous published guidelines such as the sound limits proposed by the United Kingdom Business Enterprise and Regulatory Reform Department, which suggest for quiet, rural areas and low noise environments, the outside levels of the L A90, 10 min. of wind farm noise should be limited to an absolute level of 35 – 40 dBA. (See Kamperman & James; United Kingdom Business Enterprise & Regulatory Reform Department document "Onshore Wind: Noise" 7/17/2008)

(c) Findings Regarding Setback Distances from Wind Turbines

The Town of Forest concludes that a) the setbacks set forth in proposed Chapter PSC 128 are not based on empirical evidence relating to health effects and do not adequately protect town residents from the impacts of large wind turbines; and b) the setbacks as provided in this ordinance necessary to protect the health and safety of the Town of Forest residents, based on the following findings:

1. Minimum setbacks from dwellings are necessary to mitigate noise impacts not predicted with sound models. Pre-construction sound models fail to accurately predict wind turbine noise impacts due to factors such as atmospheric conditions, temperature inversions, wind layers, geography and low frequency noise which travels further with less loss of intensity than higher frequency noise. In addition, at night when air stabilizes, wind turbine noise can travel further than expected and can be 5-15 db(A) louder than predicted. (See Kamperman & James; Acoustic Ecology Institute Special Report: Wind Energy Noise Impacts 2008)

2. A dBC requirement is needed to minimize adverse health effects from low frequency noise. A dBC requirement will likely result in setbacks between large wind turbines and nearby dwellings of 1km (.62 miles) or greater for 1.5 to 3 MW wind turbines if wind turbines are located in rural areas where L90A background levels are 30 dBA or lower. (See Kamperman & James; WHO 1999; Bajdek Noise-Con 2007; Pedersen and Wayne 1/11/2008)
  
3. Noise diminishes with distance. According to a sound propagation formula in the Wind Turbine Acoustic Noise White Paper by the University of Massachusetts Renewable Energy Research Lab, an SPL of 35 dBA is reached at approximately ½ mile from a wind turbine based on a sound power at 102 dBA at hub height as applied to a 1.5 – 3 MW wind turbine. Therefore, at a distance of less than ½ mile, a wind turbine will create an SPL that exceeds safe levels. (See Rogers pg. 18 Figure 11; Burton 2001)

<b><i>Wind Turbine Sound Propagation at the example of 102 dBA sound power at hub</i></b>	
<b>Distance in Ft.</b>	<b>dBA reduction -6 per doubling of distance</b>
1	102 dBA
2	96 dBA
4	90 dBA
8	84 dBA
16	78 dBA
32	72 dBA
64	66 dBA
128	60 dBA
256	54 dBA
512	48 dBA
1024	42 dBA
2048	36 dBA
4096	30 dBA
8192	24 dBA
16384	18 dBA
32768	12 dBA
65536	6 dBA
131072	0 dBA

While this model of sound propagation is descriptive of the noise generated by the machinery at the hub, the noise produced by the turbine blades is not accounted for in this model and has been found to travel further. Therefore, this ordinance requires siting based not only on setbacks, but also on sound studies.

4. The closer people live to wind turbines the more likely they will experience noise annoyance or develop adverse health effects from wind turbines' noise. Further, the degree of difficulties resulting from the sound of wind turbines seems clearly related to the distance from the turbines, though the literature has studied a variety of turbine sizes in a variety of locations. A setback of 2640 feet from dwellings would eliminate most noise complaints. Research conducted by Christopher Bajdek showed that at approximately 0.8 km (1/2 mile) from wind turbines, 44% of the population would be considered highly annoyed from wind turbine noise. At a distance of approximately 1.62 km (1 mile) from wind turbines, the percent of highly annoyed people is expected to drop to 4%. George Kamperman and Richard James reviewed several studies to determine the impact of wind turbine noise on nearby residents. Their review showed that some residents living as far as 2 miles complained of sleep disturbance from wind turbine noise and many residents living 1000 feet from wind turbines experienced major sleep disruption and other health problems from nighttime wind turbine noise. G.P. Van den Berg studied a wind farm in northwestern Germany and discovered that residents living 500 m (1640 feet) from the wind turbines reacted strongly to wind turbine noise and residents up to 1900 m (1.18 miles) distance expressed annoyance. A survey conducted by Pedersen and Wayne revealed that less than 10% of the respondents experienced sleep disturbance at distances of 1,984 feet to 3,325 feet and found that the sound from wind turbines was of greater concern in rural environments because of the lower ambient noise. (Bajdek, Noise-Con 2007; Van den Berg 2004; Pedersen & Wayne 2/27/08; Kamperman & James)
5. Multiple wind turbines complicate matters further. From relatively long distances, an assembly of machines appears as a point source. Closer to the turbines, they begin to act as a line source. The decay rate for line source is 3-dB, not 6-dB for true spherical propagation. (Paul Gipe). The standard wind turbine computer model used to estimate sound levels for Wind Project assumes "Spherical Propagation" not "Line Propagation" even though turbines are arranged in rows. This error means that the tables of sound levels and the contour maps grossly underestimate the true impact of the sounds on adjacent properties located along the rows. (Richard R. James presentation Nov. 4, 2010.)
6. Documents reviewed recommend wind turbines should be located distances ranging from 1/2 mile to over 1 mile from dwellings. To avoid adverse noise impacts, the Western Australia Planning Commission Bulletin recommends that wind energy systems include sufficient buffers or setbacks to dwellings of 1 km (.62 mile). The National Wind Collaborating Committee stated that an appropriate setback distance may be up to 1/2 mile. The National Research Council stated noise produced



by wind turbines generally is not a major concern for humans beyond 1/2 mile or so because various measures to reduce noise have been implemented in the design of modern turbines. The Minnesota Department of Health, May 22, 2009 states that low frequency noise from a wind turbine is generally not easily perceived beyond 1/2 mile. However, if a turbine is subject to aerodynamic modulation because of shear caused by terrain (mountains, trees, buildings) or different wind conditions through the rotor plane, turbine noise may be heard at greater distances. The Wisconsin towns of Woodville, Clay Banks, Magnolia, Wilton and Ridgeville recently adopted large wind turbine ordinances with setbacks of 1/2 mile from dwellings. The Town of Forest, Fond du Lac county, adopted a one mile set back from residences. The French National Academy of Medicine and the UK Noise Association suggest a 1.5 km (approximately 1 mile) distance between large wind turbines and dwellings. Dr. Amanda Harry, Dr. Nina Pierpont, and Frey and Hadden recommend a setback greater than 1 mile. (See UK Noise Association 6/2006; French National Academy of Medicine 3/14/2006; reports by Dr. Harry, Dr. Pierpont, and Frey and Hadden; NWCC 1998, NRC report 5/2007, AEI report, Wind Turbine Noise impacts, 11/17/09)

7. Adverse health effects from wind turbine noise can be exacerbated by the rotating blades and shadows from the wind turbines. As wind turbine blades rotate in sunny conditions, they cast strobe-like shadows on the windows of nearby homes and buildings causing shadow flicker that cannot be avoided by occupants. Shadow flicker can cause some people to become dizzy, nauseated or lose their balance when they see the movement of the shadow. Shadow flicker from wind turbines at greater than 3Hz poses a potential risk of inducing photosensitive seizures. Therefore, wind turbines should be sited such that shadows from wind turbine blades do not fall upon the windows of nearby dwellings or within 100 feet of dwellings for any considerable period. The Wind Energy Handbook recommends a setback of 10 rotor diameters to avoid shadow flicker on occupied structures. (See Acoustic Ecology Institute special report 2008; Burton 2001; UK Noise Association 6/2006, Graham Harding 2008 and Dr. Nina Pierpont 3/2/2006 and 8/1/2006)
8. If placed too close to a road, the movement of the wind turbine blades and resulting shadow flicker can distract drivers and lead to accidents. (See NRC May 2007 report, pg. 263)
9. Wind turbines have been known to throw ice and debris from the turbine blades. According to Professor Terry Matilsky from the Department of Physics and Astronomy at Rutgers University, ice throws from large wind turbines can reach up to a distance of 1750 feet and blade throws can reach 2500 feet.

## II. PURPOSE AND INTENT

The purposes and intent of this ordinance is to protect the public health and safety of the residents and property owners of the Town of Forest who may be affected by the development and operation of a WECS (Wind Energy Conversion System). Such purposes and intent shall be accomplished by regulating noise, protecting emergency communications, regulating shadow flicker, ensuring adequate fire protection, establishing adequate setbacks, protecting water quality, preventing soil erosion, regulating visual obstructions, preventing conflicts between incompatible land uses, ensuring proper installation of WECS, and ensuring safe and complete decommissioning of a WECS.

## III. DEFINITIONS

The following terms have the meanings indicated:

- (a) Aerodynamic Sound means a noise that is caused by the flow of air over and past the blades of a WES.
- (b) Ambient Sound. Ambient noise encompasses all sound present in a given environment, being usually a composite of sounds from many sources near and far. It includes intermittent noise events, such as, from aircraft flying over, dogs barking, wind gusts, mobile farm or construction machinery, and the occasional vehicle traveling along a nearby road. The ambient also includes insect and other nearby sounds from birds and animals or people. The near-by and transient events are all part of the ambient sound environment but are not to be considered part of the background sound. If present, a different time or location should be selected for determining the L90 background sound levels.
- (c) Anemometer means a device for measuring the speed and direction of the wind.
- (d) Applicant means the individual or business entity that seeks to secure a license under this Ordinance.
- (e) A-Weighted Sound Level (dBA). A measure of over-all sound pressure level designed to reflect the response of the human ear, which does not respond equally to all frequencies. It is used to describe sound in a manner representative of the human ear's response. It reduces the effects of the low with respect to the frequencies centered around 1000 Hz. The resultant sound level is said to be A-weighted and the units are dBA. Sound level meters have an A-weighting network for measuring A-weighted sound levels (dBA) meeting the characteristics and weighting specified in ANSI Specifications for Integrating Averaging Sound Level Meters, S1.43-1997 for Type 1 instruments and be capable of accurate readings (corrections for internal noise and microphone response permitted) at 20 dBA or lower.

- (f) Background Sound (L90) refers to the sounds that would normally be present at least 90% of the time. Background sounds are those heard during lulls in the ambient sound environment. That is, when transient sounds from flora, fauna, and wind are not present. Background sound levels vary during different times of the day and night. Because a WES operates 24/7, the background sound levels of interest are those during the quieter periods which are often the evening and night. Sounds from near-by birds and animals or people must be excluded from the background sound test data.

Background Sound Level (dBA and dBC (as L90)) is the sound level present for at least 90% of the time during a period of observation that is representative of the quiet time for the soundscape under evaluation and with duration of ten (10) continuous minutes. Several contiguous ten (10) minute tests may be performed in one hour to determine the statistical stability of the sound environment. Longer term tests, such as 24 hours or multiple days are not appropriate since the purpose is to define the quiet time background sound level. It is defined by the L90A and L90C descriptors. It may be considered to be the quietest one (1) minute during a ten (10) minute test. L90A results are valid only when L10A results are no more than 10 dBA above L90A for the same time period. L10C less L90C should not exceed 15 dBC to be valid.

Measurement periods such as at dusk when bird and insect activity is high or the early morning hours when the 'dawn chorus' is present are not acceptable measurement times. Further, background L90 sound levels documenting the pre-construction baseline conditions should be determined when the ten minute average wind speed is 2 meters per second (4.5 mph) or less at the ground level/microphone location.

- (g) Blade Glint means the intermittent reflection of the sun off the surface of the blades of a single or multiple WECS.
- (h) Blade Passage Frequency (BPF) means the frequency at which the blades of a turbine pass a particular point during each revolution (e.g. lowest point or highest point in rotation) in terms of events per second. A three bladed turbine rotating at 28 rpm would have a BPF of 1.4 Hz. [E.g. ((3 blades times 28rpm)/60 seconds per minute = 1.4 Hz BPF)]
- (i) Board means the Town Board for the Town of Forest, St. Croix County, Wisconsin.
- (j) Broadband Noise means the "swishing" or "whooshing" sound emitted as a function of a WECS(s) operation.
- (k) C-Weighted Sound Level (dBC). Similar in concept to the A-Weighted sound Level (dBA) but C-weighting does not de-emphasize the frequencies below 1k Hz as A-weighting does. It is used for measurements that must include the

contribution of low frequencies in a single number representing the entire frequency spectrum. Sound level meters have a C-weighting network for measuring C-weighted sound levels (dBC) meeting the characteristics and weighting specified in ANSI S1.43-1997 Specifications for Integrating Averaging Sound Level Meters for Type 1 instruments.

- (l) Decibel (dB). A dimensionless unit which denotes the ratio between two quantities that are proportional to power, energy or intensity. One of these quantities is a designated reference by which all other quantities of identical units are divided. The sound pressure level (Lp) in decibels is equal to 10 times the logarithm (to the base 10) of the ratio between the pressure squared divided by the reference pressure squared. The reference pressure used in acoustics is 20 MicroPascals.
- (m) Distance attenuation means the reduction of a sound or attenuation by distance. The effect of distance attenuation depends on the type of sound sources. Most sounds or noises we encounter in daily life are from sources which can be characterized as either point or line sources. If a sound source produces spherical spreading of sound in all directions, it is a point source. For a point source, the noise level decreases by 6 dB per doubling of distance from the source. If the sound source produces cylindrical spreading of sound such as a stream of motor vehicles on a busy road at a distance, it may be considered as a line source. For a line source, the noise level decreases by 3 dB per doubling of distance from the source.
- (n) FAA means Federal Aviation Administration
- (o) Frequency. The number of oscillations or cycles per unit of time. Acoustical frequency is usually expressed in units of Hertz (Hz) where one Hz is equal to one cycle per second.
- (p) Good Utility Practice means any of the practices, methods and acts with respect to the safe operation of a 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 is made, could be 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.
- (q) Health means a state of complete physical and mental well being, not merely the absence of disease or infirmity. This definition was adapted from the World

Health Organization definition of health in "Guidelines for Community Noise", pages 19 and 20.

- (r) Height means the total distance measured from the grade of the property as it existed prior to the construction of the wind energy system, facility, tower, turbine, or related facility at the base to its highest point.
- (s) Hertz (Hz). Frequency of sound expressed by cycles per second.
- (t) Hub Height means the distance to the center of the wind turbine hub as measured from ground level.
- (u) Impulsive Sound refers to short-term acoustical impulses typically lasting less than one second each. It may be the only sound emitted from a noise source or it may be a component of a more complex sound. For evaluation of wind turbines, impulsive sound includes swishing or thumping sounds.
- (v) INCE means Institute of Noise Control Engineers. The Institute of Noise Control Engineering of the USA ("INCE/USA") is a non-profit professional organization incorporated in Washington, DC. A primary purpose of the INCE/USA is to promote engineering solutions to environmental, product, machinery, industrial and other noise problems. INCE/USA is a Member of the Society of the International Institute of Noise Control Engineering, an international consortium of organizations with interest in acoustics and noise control.
- (w) Infra-Sound. Sound with energy in the frequency range of 20 Hz and below is considered to be infrasound and is normally considered to not be audible unless in relatively high amplitude. The most significant exterior noise-induced dwelling vibration occurs in the frequency range between 5 Hz and 50 Hz. Moreover, even levels below the threshold of audibility can still cause measurable resonances inside dwelling interiors. Conditions that support or magnify resonance may also exist in human body cavities and organs under certain conditions, although no specific test for infrasound is provided in this document, its presence will be accounted for in the comparison of dBA and dBC sound levels for the complaint test provided later in this document. See low-frequency sound (LFN) for more information.
- (x) Large Wind Energy System means a wind energy conversion system that has a total installed nameplate capacity of more than 100 kilowatts or has Wind Energy Conversion Unit or Units that exceed 110 feet in height.
- (y) Livestock Facility means a confinement area designed specifically for raising, controlling, feeding, and providing care for livestock. This may include but is not limited to: dairy barns, pastures, feedlots, free stall barns, calf hutches, horse barns, veal barns, feed storage areas, brooder and laying barns, farrowing and finishing barns, veterinary care.

- (z) Low Frequency Sound (LFN) refers to sounds with energy in the lower frequency range of 20 to 200 Hz. LFN is deemed to be excessive when the difference between a C-weighted sound pressure level and an A-weighted sound pressure level is greater than 20 decibels at any measurement point outside or inside a noise sensitive receptor site, residence, or other occupied structure. E.G. C-A>20 dB.
- (aa) Measurement Point (MP) means location where sound and/or vibration measurements are taken such that no significant obstruction blocks sound and vibration from the site. The Measurement Point should be located so as to not be near large objects such as buildings and in the line-of-sight to the nearest turbines. Proximity to large buildings or other structures should be twice the largest dimension of the structure, if possible.
- (bb) Measurement of Wind Speed. For measurements conducted to establish the background sound pressure levels (dBA, dBC, L90 10 min, and etc.) the wind speed at the microphone's Measurement Point shall average 2 m/s (4.5 mph) or less for valid background measurements. For valid measurements conducted to establish the post-construction sound level the wind speed at the microphone's Measurement Point shall not exceed 4 m/s (9 mph) average and the wind speed at the WES blade height shall be at or above the nominal rated wind speed. For purposes of enforcement, the wind speed and direction at the WES blade height shall be selected to reproduce the conditions leading to the enforcement action while also restricting wind speeds at the microphone to 4 m/s (9 mph).
- For purposes of models used to predict the sound levels and sound pressure levels of the WES to be submitted with the Application, the Wind Speed shall be the speed that will result in the worst-case dBA and dBC sound levels in the community adjacent the nearest WES. For the purpose of constructing the model the wind direction shall consider the dominant wind direction for the seasons from the late Spring to early Fall. If other wind directions may cause levels to exceed those of the predominant wind direction at nearby sensitive receptors, these levels and conditions shall be included in the Application.
- (cc) Mechanical Noise means sound produced as a byproduct of the operation of the mechanical components of a WES(s) such as the gearbox, generator and transformers.
- (dd) Meteorological Tower means a tower used for the measurement of wind speed and direction, also known as a MET tower or wind test tower.
- (ee) Nameplate capacity means the nominal generating capacity of a wind energy system, as listed in the wind turbine specifications provided by the wind turbine manufacturer.

- (ff) Noise means any unwanted sound. Not all noise needs to be excessively loud to represent an annoyance or interference.
- (gg) Non-participating Parcel means a parcel of real estate that is neither a Project Parcel nor a Participating Parcel.
- (hh) Non-participating Residence means a residence located in or adjacent to the project that is not contracted to have a WECU or related project infrastructure.
- (ii) Occupied Structure means a building in which people live, work or frequent.
- (jj) Operator means the person who is designated on the license application to be the person in charge of daily operation of the premises and who is to be the Wind Energy Conversion System contact person for the Town.
- (kk) Owner means:
  - (a) a person with a direct ownership interest in a wind energy system, regardless of whether the person was involved in acquiring the necessary rights, permits and approvals or otherwise planning for the construction and operation of a wind energy system.
  - (b) At the time a wind energy system is being developed, a person who is acting as a wind energy system developer by acquiring the necessary rights, permits and approvals for or by planning for the construction and operation of a wind energy system, regardless of whether the person will own or operate the wind energy system.
- (ll) Participating Parcel means a parcel of real estate that is not a Project Parcel, but is subject to an agreement between the property owner and the applicant allowing the construction of all or part of a WESF closer to a Participating Parcel property line or structure on the Participating Parcel than would be permitted under this Ordinance in the absence of such an agreement. To qualify as a Participating Parcel, the agreement between the property owner and the applicant must be approved by the Town Board under this Ordinance.
- (mm) Project Boundary means the boundaries of the WESF as shown on the site plan submitted to and approved by the Town in accordance with this Ordinance.
- (nn) Project Parcel or Project Parcels means the parcel or parcels of real estate on which all or any part of a WESF will be constructed.
- (oo) Property Line means the recognized and mapped property parcel boundary line.

- (pp) Pure Tone. A sound for which the sound pressure is a simple sinusoidal function of the time, and characterized by its singleness of pitch. Pure tones can be part of a more complex sound wave that has other characteristics.
- (qq) Qualified Independent Acoustical Consultant. Qualifications for persons conducting baseline and other measurements and reviews related to the application for a WES or for enforcement actions against an operating WES include, at a minimum, demonstration of competence in the specialty of community noise testing and Full Membership in the Institute of Noise Control Engineers (INCE). Certifications such as Professional Engineer (P.E.) do not test for competence in acoustical principles and measurement and are thus not, without further qualification, appropriate for work under this Ordinance. The Qualified Independent Acoustical Consultant can have no direct or indirect financial or other relationship to an Applicant.
- (rr) Residence means a person's home; where someone resides or lives, whether occupied or not, unless the applicant can show that the structure is permanently abandoned for use as a residence. Residence also includes any proposed residence for which a building permit has been issued.
- (ss) Sensitive Receptor means places or structures intended for human habitation, whether inhabited or not, public parks, state and federal wildlife areas, the manicured areas of recreational establishments designed for public use, including but not limited to golf courses, camp grounds and other nonagricultural state or federal licensed businesses. These areas are more likely to be sensitive to the exposure of the noise, vibration, shadow or flicker, etc. generated by a WES or WESF. These areas include, but are not limited to: schools, daycare centers, elder care facilities, hospitals, churches, places of seated assemblage, agricultural businesses and residences.
- (tt) Shadow Flicker means the effect when the blades of an operating wind energy conversion unit pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his/her immediate environment.
- (uu) Small Wind Energy System: A wind energy system that has both: 1) an installed nameplate capacity of not more than 100 kilowatts; and 2) Wind Energy Conversion Unit or Units not more than 110 feet total in height.
- (vv) Sound. A fluctuation of air pressure which is propagated as a wave through air
- (ww) Sound Power. The total sound energy radiated by a source per unit time. The unit of measurement is the watt. Abbreviated as Lw. This information is determined for the WES manufacturer under laboratory conditions specified by IEC 61400-11 and provided to the local developer for use in computer model construction. It cannot be assumed that these values represent the highest sound output for any operating condition. They reflect the operating conditions



required to meet the IEC 61400-11 requirements. The lowest frequency is 50 Hz for acoustic power (Lw) requirement in IEC 61400-11. This Ordinance requires wind turbine certified acoustic power (Lw) levels at rated load for the total frequency range from 6.3 Hz to 10k Hz in one-third octave frequency bands tabulated to the nearest 0.1 dB. The frequency range of 6.3 Hz to 10k Hz shall be used throughout this Ordinance for all sound level modeling, measuring and reporting.

- (xx) Sound Pressure. The instantaneous difference between the actual pressure produced by a sound wave and the average or barometric pressure at a given point in space.
- (yy) Sound Pressure Level (SPL). 20 times the logarithm, to the base 10, of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micronewtons per square meter. In equation form, sound pressure level in units of decibels is expressed as  $SPL (dB) = 20 \log p/pr$ .
- (zz) Spectrum. The description of a sound wave's resolution into its components of frequency and amplitude. The WES manufacturer is required to supply a one-third octave band frequency spectrum of the wind turbine sound emission at 90% of rated power. The published sound spectrum is often presented as A-weighted values. This information is used to project the wind farm sound levels at all locations of interest. Confirmation of the projected sound spectrum can be determined with a small portable one-third octave band frequency (spectrum) analyzer. The frequency range of interest for wind turbine noise is approximately 10 Hz to 10k Hz.
- (aaa) Statistical Noise Levels. Sounds that vary in level over time, such as road traffic noise and most community noise, are commonly described in terms of the statistical exceedance levels LAN, where LAN is the A-weighted sound pressure level exceeded for N% of a given measurement period. For example, L10 is the noise level exceeded for 10% of the time. Of particular relevance, are: LA10 and LC10 the noise level exceed for 10% of the ten (10) minute interval. This is commonly referred to as the average maximum noise level. LA90 and LC90 the noise level exceeded for 90% of the ten (10) minute sample period. The L90 noise level is described as the average minimum background sound level (in the absence of the source under consideration), or simply the background level. Leq is the frequency-weighted equivalent noise level (basically the average noise level). It is defined as the steady sound level that contains the same amount of acoustical energy as the corresponding time-varying sound.
- (bbb) Stray Voltage (Ground Current) means neutral-to-earth voltage measured from the electrical system neutral and/or any structure bonded to this neutral to earth that adversely affects humans or animals.

- (ccc) Structures. Residences, livestock facilities, communication towers, commercial businesses, and all sensitive receptors.
- (ddd) Tonal Sound (sometimes referred to as Pure Tone). A sound for which the sound pressure is a simple sinusoidal function of the time, and characterized by its singleness of pitch. Tonal sound can be simple or complex.
- (eee) Total Height means the distance between the ground at normal grade and the highest point of the installed WECU (being the tip of the blade when the blade is in the full vertical position).
- (fff) Town means Town of Forest
- (ggg) Town Board means Town Board of the Town of Forest
- (hhh) Wind Energy Conversion Systems (WECS) means all WECUs, related transformers, electrical conductors, substations, and connection points to transmission or distribution lines
- (iii) Wind Energy Conversion System Facility means all of the land and equipment used by the wind energy conversion system and its support facilities including the wind turbine, tower, access roads, control facilities, meteorological towers, maintenance and all power collection and transmission systems.
- (jjj) Wind Energy Conversion Unit (WECU) means a wind driven machine that converts wind energy into electrical power for the primary purpose of sale, resale, or off-site use. The WECU includes the tower, turbine, footings, and all equipment associated with individual units including the land beneath encompassing the equivalent area of the circumference of the rotors. Also known as a Wind Turbine.
- (kkk) Wind Energy Systems (WES) means equipment and associated facilities that convert and then store or transfer energy from the wind into usable forms of energy.
- (III) Wind Energy Systems Facility License or WESF License means a license to construct and operate a Wind Energy System issued by the Town of Forest in accordance with the Ordinance.
- (mmm) Wind Mill means a wind-driven machine that does not produce electricity
- (nnn) Wind Test Tower means the tower on which meteorological equipment is located to measure wind speed, direction, strength, etc., for the purpose of evaluating a potential for WECS siting.

(ooo) Wind Turbine (WTi) 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.

(ppp) WDNR means the Wisconsin Department of Natural Resources.

#### **IV. LICENSE OR PERMIT REQUIRED**

A. (1) After the effective date of the ordinance, no Large Wind Energy System shall be constructed, operated, or maintained in the Town without a license issued by the Town Board. The Town Board shall hold a public hearing and meeting on the application to obtain public comments on and to inform the public about the proposed Wind Energy System, before any application is approved and license issued.

(2) After the effective date of the ordinance, no Small Wind Energy Systems of 110 feet in height or less, and less than 100 kilowatts shall be constructed, operated, or maintained in the Town of Forest without a permit issued by the Town Board. The application fee shall be \$125.00 per wind turbine. Small Wind Energy systems are exempt from the requirements of the ordinance except that the requirements regarding shadow flicker, audible noise limits, notification to the adjacent property owners, and a set back of two (2) times the total height of the small energy system from a neighboring property line shall all apply, and the ordinance requirements for paying all costs the Town incurs in reviewing the application shall also apply.

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

C. Non-Assignment. A license or permit issued under this ordinance may not be assigned or transferred to any person other than the Licensee or Permittee, without the express prior written approval of the Town Board. Approval shall not be unreasonably withheld, provided the Licensee or Permittee and the proposed Assignee shall both submit affidavits to the Town Board demonstrating the following:

1. The new person/entity who will hold the license wholly owns the new entity
2. The new entity is properly formed and authorized to do business in the State of Wisconsin
3. The written assignment requires the new entity to assume all of the Licensee's rights, duties and obligations under the License including but not limited to the letter of credit / bonding requirements and the certificate of insurance requirements.
4. The assignee has provided a Letter of Credit, certificate of insurance, and any required bond, all of which are satisfactory to the Town.

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

**A. Pre-Application notice.** At least 90 days before an Owner files an application to construct a WECS, an Owner shall provide written notice, by certified mail return receipt requested or other method that provides proof of receipt of the planned WECS to all of the following:

- a) Land owners within one mile of a planned WECS.
- b) The Town of Forest.
- c) Emergency first responders and air ambulance service providers serving the Town of Forest.
- d) The Wisconsin Department of Transportation.
- e) The DNR.
- f) The Wisconsin department of agriculture, trade and consumer protection.
- g) The office of the deputy undersecretary of the U.S. Department of Defense.

Each of the notices shall include:

- a) A complete description of the WECS including the number and size of the planned turbines.
- b) A map showing the planned locations of all the components of the WECS.
- c) Contact information of the owner.
- d) A list of all potential permits or approvals the owner anticipates may be necessary for construction of the WECS.
- e) Whether the owner is requesting a joint application with another political subdivision and the name of each political subdivision.

**B. Application** Any person/entity desiring to secure a WECS license or WECS permit from the Town shall file a complete application, together with ten (10) additional copies, with the Town Clerk. The application shall be on a form approved by the Town Board.

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

1. Name, address, phone number, fax, and e-mail address, if any, of Applicant(s).
2. If the Applicant is a corporation, partnership, limited liability company, limited liability partnership, or other entity recognized by law, the application shall include: the name of the business entity; the date of incorporation, registration of organization; the state in which the entity was incorporated, registered or organized; the name and address and home phone numbers of the registered agent(s) where applicable; the names and addresses of all officers and directors; operating or managing partners or general partners, managing members or

managers, whichever is applicable for the particular form of business entity.

3. Name and address of any other current or past WECS developed, owned, or operated by the Applicant, whether in the State of Wisconsin or any other state or nation.
4. Name, address, phone number, fax, and e-mail address of the individual(s) responsible for the day-to-day operation of the proposed WECS, who will be deemed the Operator for purposes of this section, and who will be the contact person for the Town.
5. Evidence that the applicant is the owner of the Project Parcel(s) (the underlying real estate) and other property necessary for the WECS project or that the Applicant has the written permission of the owner(s) of such Project Parcel or Project Parcels and other property to make such an Application.
6. A signed statement by each owner of any Project Parcel acknowledging that the Project Parcel Owner shall be financially responsible if the WECS Owner/Operator fails to decommission and reclaim the site as required, and that any removal and reclamation costs incurred by the Town shall become a lien on the real estate and other property and may be collected from the Project Parcel(s) owner in the same manner as property taxes.
7. A statement that the Applicant is familiar with, and in compliance with, the provisions of the ordinance, including the responsibility to reimburse all costs and professional fees incurred by the Town associated with the processing, examination and analysis of the application for a license and such further expenses associated with implementing and monitoring the WECS and enforcing the terms of the license.
8. Proof of continuous liability insurance in the minimum amount of five million dollars (\$5,000,000.00) per occurrence shall be submitted to the Town of Forest 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.
9. Proof that the Owner has a Power Purchase agreement or a signed Letter of Intent with an electric utility.
10. Evidence that the applicant has an emergency landing plan jointly agreed upon with the area air ambulance services and the applicant.

**D. Additional Information.** Each Application for a Large Wind Energy System shall be accompanied by:

1. Detailed Site Plan. A site plan which meets all the requirements of this Section and applicable provisions of the County and/or Town Zoning Code pertaining to Land Use Permits, as well as any additional site specific requirements of the Town in accordance with the technical requirements in the ordinance's Standards and Guidelines. Each application shall be accompanied by a site plan showing the location of the proposed WECS Tower Site(s), including:

- a. Total acreage occupied by the facility.
- b. A detailed map of the area showing parcel boundaries and individual Wind Turbine locations and their distances to existing structures;
- c. Existing structures and proposed WECS facilities;
- d. Location of existing and proposed transmission lines, substations, driveways, access and maintenance roads, etc. All proposed electric transmission and distribution lines shall be shown and shall be placed underground;
- e. Location of meteorological or wind testing towers; and the location of wells, abandoned and active, within a half mile radius of the project boundary.
- f. Listing of those roads in the Town that will be used prior to and during construction of the WECS.

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

- a. The type, manufacturer including manufacturer manuals, size, total installed height, rotor material, rated power output, performance history, safety history, and noise characteristics of each type of WECU, tower and electrical transmission equipment. Identify the length of service of the proposed components.
- b. A structural safety certificate shall be provided by a professional engineer stating that the structure is of new construction and not refurbished or rebuilt and has been designed to operate in cold weather conditions and is safe.
- c. Photographs or detailed drawings of each wind turbine model including the tower and foundation. Provide design and specifications for all proposed structures and foundations. (Foundation at and around the tower base shall be designed so that no surface water or runoff can access subsurface aquifer at any time during construction, operation or decommissioning.)
- d. Detailed computer and photographic simulation(s) overlaid on the existing environment showing the proposed WECS project area fully developed with all proposed wind energy conversion units and related facilities. The format shall be

subject to the approval of the Town.

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

4. Affected Property Owners. The applicant shall submit the name and address of property owners within WECS setback areas. Considering that development rights of adjacent property owners may be affected by construction of a WECS, a written agreement for non-development within the specified setback, unless the affected property owner has granted a written easement for lesser setback, shall be recorded against the affected properties at the St. Croix County Register of Deeds. Copies of the agreements or easements must be submitted with the application.

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

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

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

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

8. Wind Study. A study documenting minimum, maximum, and average wind speeds and prevailing wind directions over the course of one year. Anemometers shall be

calibrated regularly to ensure a measurement of error of 1% or less. All anemometers shall be placed at the expected hub height of the proposed wind turbines. Sufficient wind resources, as described by the U.S. Department of Energy, include areas with a wind power class 4 or higher. The Town shall retain the services of an independent, recognized expert to review the results of the wind resources study prior to acting on the application. Said study shall indicate the long-term commercial economic viability of the proposed WECS project.

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

10. Sound Modeling, Sound Standards and Sound-related Enforcement Procedures.

a. Applicant's Pre-licensing Sound Studies and Modeling.

An application for a WECS license shall include a sound prediction model that includes the information and meets the requirements in this chapter.

Information regarding the make and model of the wind turbines, sound Power levels (Lw) for each one-third octave band from 6.3 Hz up through 10,000 Hz, and a projection showing the expected dBA and dBC sound levels computed using the one-third octave band sound power levels (Lw) with appropriate corrections for modeling and measurement accuracy tolerances and directional patterns of the WTi for all areas within and to one (1) mile from the project boundary for the wind speed, direction and operating mode that would result in the worst case WTi sound emissions.

The prediction model shall assume that the winds at hub height are sufficient for the highest sound emission operating mode even though the enforcement test will be with ground level winds of 10 mph or less. This is to accommodate enforcement under weather conditions where there is significant difference in the wind speed between ground and hub heights. This condition often occurs during summer evenings when wind shear is affected by the reduction in solar heating of the earth's surface between sunset and sunrise.

The projection may be by means of computer model but shall show history of accuracy and include a description of all assumptions made in the model's construction and



algorithms. If the model does not consider the effects of wind direction, geography of the terrain, and/or the effects of reinforcement from coherent sounds or tones from the turbines these should be identified and other means used to adjust the model's output to account for these factors. These results may be displayed as a contour map of the predicted levels, but should also include a table showing the predicted levels at noise-sensitive receptor sites and residences within the model's boundaries. The predicted values must include dBA and dBC values but shall also include un-weighted octave band sound pressure levels from 8 Hz to 10k Hz in data tables.

The Town will refer the applicant's information and sound studies to the Town engineer (if qualified in acoustics) or a Qualified Independent Acoustical Consultant for review and a determination whether the proposed WECS will, based on pre-licensing studies and sound modeling, comply with the sound limits set forth in the Ordinance.

*b. Independent Pre-licensing Sound Modeling.*

In any case in which a WECS is located within one mile of a Sensitive Receptor the Town shall, and in other cases the Town may, require the preparation of an independent preconstruction noise study for each proposed Wind Turbine location conducted by a Qualified Independent Acoustical Consultant, in accordance with the procedures provided in this section and showing background dBA and dBC sound levels (L90 (10 min)) over one or more valid ten (10 ) minute continuous measurement periods. The preconstruction baseline studies shall be conducted by an Independent Qualified Acoustical Consultant selected by the Town. The Qualified Independent Acoustical Consultant shall be selected and retained by the Town. The applicant shall be responsible for paying the Independent Qualified Acoustical Consultant's fees and all costs associated with conducting the study. The applicant shall provide financial security and reimburse the Town for the cost of the study in accordance with Section XIII of this Ordinance.

*c. Sound Study and Measurement Requirements.*

1. All instruments must meet ANSI or IEC type 1 Precision integrating sound level meter performance specifications.
2. Procedures must meet all ANSI standards including but not limited to S12.9 Part 3, S12.18. Where a standard's requirements may conflict with other standards the most stringent requirement shall apply.
3. Measurements for background sound levels shall be made when ground level winds are 2 m/s (4.5 mph) or less with wind speeds at the hub at or above nominal operating requirements and for other tests when ground level winds are 4 m/s (9 mph). Weather in the night often results in low ground level wind speed and nominal operating wind speeds at wind turbine hub heights.

4. IEC 61400-11 procedures are not suitable for enforcement of these requirements except for the presence of tones.

*d. Post-construction Sound Measurements.*

Within twelve months after the date when the project is fully operational, and within four weeks of the anniversary date of the pre-construction background noise measurements, the Licensee shall repeat the existing sound environment measurements taken before the project approval. Post-construction sound level measurements shall be taken both with all WECUs running and with all WECUs off. At the discretion of the Town, the preconstruction background sound level (L90A) can be substituted for the "all WECS off" tests if a random sampling of 10% of the pre-construction study sites shows that background L90A and C conditions have not changed more than +/- 5 dB (dBA and dBC) measured under the preconstruction nighttime meteorological conditions. The post-construction measurements shall be reported to the Town (and available for public review) using the same format as used for the preconstruction sound studies. Post-construction noise studies shall be conducted by a firm chosen by the Town. Costs of these studies shall be reimbursed by the Licensee. The security required by chapter V shall include these costs. The Licensee's consultant may observe the Town's consultant. The WECS Licensee shall provide all technical information and wind system data required by the Independent Qualified Acoustical Consultant before, during and/or after any acoustical studies required by this document and for local area acoustical measurements.

11. Shadow Flicker and Blade Glint Assessment and Requirements. Shadow Flicker occurs when the blades of a Wind Turbine pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his or her immediate environment. An application for a WECS license shall include a detailed shadow flicker and blade glint assessment model and plan containing the following information and meeting the following requirements.

a. The model shall be prepared by a registered professional regularly engaged in this type of work with not less than three years experience.

b. The model study area will examine areas where shadow flicker will occur within a one mile radius of the Project Parcels.

c. The model will be calculated using the following minimum inputs:

1. Turbine locations (proposed and existing)
2. Shadow flicker receptor locations
3. Existing topography (elevation contours and vegetation)
4. Rotor diameter and hub height
5. Joint wind speed and direction distribution (wind rose table)
6. Hours of sunshine (long term monthly references)

d. All existing occupied structures, planned structures for which building permits have been issued, all Sensitive Receptors, and all roadways shall be identified within the model as receptors. Each individual receptor that is a residential parcel shall be defined by the perimeter of the building plus an additional 100 foot boundary around the building. Schools, churches, and other public building receptors shall be defined by the entire outdoor area routinely utilized in their operation.

e. The model may be prepared by use of current aerial photography and topographical maps. A site visit by the preparer is required to identify receptors and verify the existing conditions.

f. The model shall calculate the locations and durations of shadow flicker caused by the proposed WECS within the study area. The model shall clearly indicate the duration of shadow flicker at each receptor and across the entire study area showing the total number of hours per year anticipated.

g. Problem zones where shadow flicker will interfere with existing and future receptors and which is not allowable under this section shall be identified, and measures to mitigate problems shall be described, including but not limited to siting changes, operational procedures, grading or landscaping.

h. Blade glint, defined as the intermittent reflection of the sun off the surface of the blades of a Wind Turbine, is prohibited. The applicant shall submit a paint sample that demonstrates the color, texture and gloss of the proposed surface coating. The applicant shall also submit a certification by the manufacturer stating that the proposed surface coating will not create a reflective surface conducive to blade glint.

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

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

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

independent consultant selected by the Town Board, at the Applicant's expense, prior to review and approval of the Application.

15. Road Use and Risk Assessment Plan and Road Impact Requirements.

a. An application for a WECS License shall include a road use and risk assessment plan containing the following information and meeting the following requirements:

1. A description and map of all public roads in the Town to be used in connection with the construction of the WECS (haul roads) including a description of how and when such roads will be used in connection with the construction of the WECS.

2. A description of the type and length of vehicles and type, weight and length of loads to be conveyed on all public roads in the Town.

3. A complete assessment of the proposed use of roads in the Town in connection with the construction of the WECS, including the adequacy of turning radii; the ability of the roads to sustain loads without damage; the need to remove (permanently or temporarily) signs, trees, utilities, or anything else; any reasonably foreseeable damage to roads or other property; any reasonably foreseeable costs the Town may incur in connection with the use of roads in the Town, including but not limited to costs relating to traffic control, public safety, or damage to roads or property. The pre-construction inventory of road conditions shall be performed by a Wisconsin certified professional engineer at the cost of the applicant.

4. A traffic control and safety plan relating to the use of roads in the Town in connection with the construction of the WECS.

5. Any additional information the Town may request that is reasonably related to the use of roads in the Town in connection with the WECS.

6. Applicant shall abide by all Town, county and state laws and ordinances that may affect travel and/or ingress or egress to the WECS facilities.

a. The Town will evaluate the road use and risk assessment plan with assistance from such consultants it deems appropriate. The Town may document the condition of all roads to be used in connection with the construction of the WECS in such manner as it deems appropriate. The Town may require changes to the road use and risk assessment plan it deems appropriate to protect public safety, to protect Town roads, and to address anticipated costs to the Town associated with applicant's use of roads in the Town.

b. The Town may require the applicant to enter into an agreement relating to the use of roads in the Town. The Town may require the applicant to provide a deposit or letter of credit in an amount the Town determines appropriate to secure any obligations under the agreement, including but not limited to any obligation relating to alterations or improvements to roads needed in connection with applicant's use of roads in the Town, and the reimbursement of the Town for any costs the road use and risk assessment indicates the Town may incur in connection with applicant's use of the roads in the Town.

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

- a. Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing;
- b. Slope stability analysis;
- c. Grading criteria for ground preparation, cuts and fills, soil compaction; and
- d. Certification from a registered geotechnical engineer that the soils can support the WECU's.

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

- a. A site preparation plan that has been prepared by a licensed engineer. The plan shall show planned storage and retention of topsoil, and all types of subsoil for later site restoration.
- b. A construction site erosion plan and storm water runoff control plan that has been prepared by a licensed engineer. The plan shall comply with all state statutes and county ordinances. The plan shall be prepared so as to minimize the potential adverse impacts on sinkholes, wetlands, streams and the banks and vegetation along those streams and wetlands, and to minimize erosion or sedimentation.
- c. Applicant must submit an approved DNR storm water permit if required.

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

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

## 20. Stray Voltage Assessment and Requirements.

a. An application for a WECS License shall include reports of stray voltage analyses in accordance with this section. The applicant shall conduct and include a report of a preconstruction stray voltage test on all livestock facilities located within a one-mile radius of the Project Parcels. The tests shall be performed by a Wisconsin certified stray voltage investigator approved by the Town. The tests shall be performed according to PSCW Phase II Stray Voltage Testing Protocol. A report of the tests shall be provided with the WECS License application and shall be provided to the owners of all property included in the study area. Applicant shall seek written permission from property owners prior to conducting testing on such owners' property. Applicant shall not be required to perform testing on property where the owners have refused to grant permission to conduct the testing.

b. Following construction of the WECS, the applicant shall conduct a post-construction stray voltage test on all livestock facilities located within a one-mile radius of the Project Parcels. The tests shall be performed by a Wisconsin certified stray voltage investigator approved by the Town. The tests shall be performed according to PSCW Phase II Stray Voltage Testing Protocol. A report of the tests shall be provided to the Town and to the owners of all property included in the study area. Applicant shall seek written permission from property owners prior to conducting testing on private property. Applicant shall not be required to perform testing on property where the owners have refused to grant permission to conduct the testing.

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

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

23. Decommissioning, Abandonment, Removal and Site Restoration Plan. The applicant shall submit an abandonment, removal and site restoration plan, along with a cost estimate for removal and site restoration, to the Town with the application. The plan shall identify the specific properties it applies to and shall indicate the timeline and process to be used for removal of all materials above and below ground; road repair costs. All re-grading and re-vegetation of subject property shall be returned to its original state or a state that is jointly agreed upon in writing by the property owner and the Owner of the WECS at the time of decommissioning. The plan shall reflect the site-specific character including topography, vegetation, drainage, and any unique environmental features at the site. The plan shall reflect any standards set forth in this ordinance and shall include a certified estimate of the total cost (by element) of

implementing the removal and site restoration plan.

24. Application Fees & Security. The applicant shall pay the following fees and provide the following financial security guarantees to the Town:

a. Application, Legal and Consultant Fees. The applicant shall pay an application fee of \$1,000 to the Town upon filing an application under the ordinance. In addition, within (14) days of filing an application the applicant shall deposit in a joint escrow account with the Town the sum of \$25,000, as partial payment for the expenses the Town incurs in reviewing the application, examining and verifying the data presented by the applicant, conducting all necessary studies or inspections relating to the application, and, if the application is approved, implementing and enforcing any license that may be issued under this ordinance. Such expenses include, but are not limited to, all professional fees such as legal, engineering, inspection and other consultants, and all costs identified in Section XIII of this ordinance. If at any time the balance of this fund shall fall below \$15,000, the applicant shall submit an additional \$10,000 so that the Town's full and actual expenses related to the application shall be paid in full by the applicant. If at any time the balance of this fund shall fall below \$15,000 for a period of 30 days, the application shall be considered to have been withdrawn. The balance of the escrow account, after all the Town's expenses have been paid, shall be returned to the owner/operator after the decommissioning process is complete. These fees may be adjusted by the Town Board based on current consultations rates and/or the Federal Consumer Price Index.

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

c. Decommissioning and Site Restoration Security. Upon approval of an application, the applicant shall provide to the Town, a cash deposit, irrevocable letter of credit or other similar financial security in form and substance satisfactory to the Town Board, to provide financial guarantee for decommissioning and site reclamation and restoration. The amount of the security or cash deposit shall be at least \$100,000 per WECU or such greater amount as determined by the Town Board to be necessary to fully remove the WECS and all components thereof, and to restore the site to its pre-existing condition. Such financial security shall be kept in full force and effect during the entire

time while a WECS facility exists or is in place, and is an express and material condition of any license issued under this ordinance. This financial security shall be irrevocable and non-cancelable until such time as the Town Board certifies that decommissioning, reclamation and restoration are complete and releases the obligation. Any decommissioning and site restoration and reclamation shall comply with all requirements of this Ordinance and with the Decommissioning and Site Restoration Plan approved by the Town Board.

## **VI. LICENSING PERMIT PROCEDURE**

### **A. Application Filing, Notice & Procedure.**

1. Applications for a license or permit for a WECS shall be submitted to the Town Clerk. The application shall include a completed application form as provided by the Town Clerk, and shall include all of the information, documents, plans, deposits, copies of notices, all payments and other things required under this ordinance to be submitted with an application.
2. The Town Board shall, with assistance from such staff, consultants, committees or commissions as it deems appropriate, determine whether the application is complete and contains all of the materials, information agreements, deposits and payments required under this ordinance.
3. The Town Board shall refer the application to the Plan Commission for its review and recommendation regarding completeness of the application and also regarding recommended action on the application. The Plan Commission shall report back to the Town Board regarding completeness of the application within fifteen days, and regarding the substance and recommendation on the application within thirty (30) days unless otherwise stipulated by the Town Board.
4. No later than 45 days after the application is filed, the Town Clerk shall notify the applicant of the Town Board's determination regarding whether the application is complete. If the Town Board determines that the application is incomplete, the notice shall state the reason for the determination. An applicant may supplement and refile an application that the Town has determined to be incomplete. If the Town fails to determine whether an application is complete within 45 days after the application is filed, the application shall be considered complete.
5. On the same date that the applicant files an application under this ordinance, the applicant shall mail or deliver written notice of the application to the owners of land adjoining the site of the wind energy system.
6. As soon as possible after receiving the application for approval, the Town shall publish a Class I notice, under Wis. Stat. 985, stating that an application for approval of Wind Energy System license or permit has been filed with the Town.



7. **Public Hearing on Application.** Before making a final decision on an application for a license or permit under this section, the Town Board shall hold a public hearing on the application. The Town Board shall publish a Class 2 Notice of the date, time, and location of such public hearing. Said public hearing shall be recorded or transcribed.
8. .After the Town Board determines that an application is complete, and after receiving a timely recommendation from the Plan Commission, and holding a public hearing on the application, the Town Board shall determine whether the application meets all requirements of this ordinance. In determining whether the application meets all requirements of this ordinance, the Town Board may obtain assistance from such town staff, commissions or committees, and independent consultants as it deems appropriate. The Town Board's decision shall be based on written findings of fact that are supported by the evidence provided to the Town in its consideration of the application.
9. The Town Board shall approve or disapprove an application no later than 90 days after the date on which it notifies the applicant that the application is complete. The Town Board may extend the 90 day period, if it authorizes such extension in writing within the first 90 day period. The following extensions may be authorized, with the total amount of time for all extensions not to exceed 90 days:
  - a. an extension of up to 45 days if the Town Board needs additional information to determine whether to approve or deny the application.
  - b. An extension of up to 90 days if the applicant makes a material modification to the application.
  - c. An extension of up to 90 days for other good cause specified in writing by the Town Board.

**B. Decision on Application.** The Town Board shall approve an application and grant a WECS license if it determines that the application meets the requirements of this ordinance and granting the license will not adversely affect public health and safety. The Town Board may include conditions in the license which go beyond the minimum regulations set forth herein, if the conditions are reasonably necessary to protect public health and safety; do not significantly increase the cost of the system or significantly decrease its efficiency; or allow for an alternative system of comparable cost and efficiency. In addition to other provisions and standards set forth in the ordinance, the Town Board may consider the following factors when establishing such conditions:

1. The proposed ingress and egress;
2. The proximity to transmission lines to link the system to the electric power grid;

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

**C. Recording & Notice of Decision.** The Town Board's decision to approve, conditionally approve or deny an application, the reason(s) for its decision, and any conditions established by Town Board relative to a conditional approval of an application and license shall be recorded in the Town Board's minutes.

**1. License.** The Town Board shall require an applicant to enter into a WESF licensing agreement with the Town as a condition of approving a license. The WESF licensing agreement shall include all provisions deemed appropriate by the Town to assure that the WESF is constructed and operated, and that all fees, costs, and sureties are paid and provided as required by this ordinance. No license shall be issued until a licensing agreement is signed by the Town and the applicant. The Town Board may also require the owner of any Project Parcel to sign the License Agreement showing agreement with all obligations and responsibilities of Project Parcel owners under this Ordinance and under the License.

**2. Appeal.** An aggrieved person may appeal the decision of the Town Board to the Public Service Commission as provided in Wis. Stat. 66.0401 (5).

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

**A. Development & Performance Standards.** All WECSs and testing structures shall comply with the Development & Performance Standards set forth in this section. It is recognized that the standards herein are neither exclusive, nor exhaustive. In instances where a health or safety concern is identified with regard to any application for a WECS, additional or more restrictive conditions may be included in the license to address such concerns. The Town reserves the right to impose additional standards as circumstances warrant. Such additional and more restrictive standards may include, but are not limited to:

1. longer setbacks from nearby property lines, municipalities, roads, electric transmission and distribution lines, residences, businesses and other inhabited structures;
2. more restrictive noise limitations; and
3. more restrictive limitations to protect surface water and groundwater.

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

1. Wind Turbines shall be painted a non-reflective, non-obtrusive color.
2. Each WECS site, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the WECS to the natural setting and the existing environment.
3. Wind Turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority; strobe or other intermittent lights are prohibited.
4. Wind Turbines shall not be used for displaying any advertising or flags.
5. Wind turbines shall not have any cameras attached, except to monitor for security and to protect public health and safety.

6. Electrical controls and control wiring and power-lines must be wireless or not above ground, except where wind farm collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.

7. The clearance between the ground and the Wind Turbine blades shall be not less than 75 feet.

8. Wind Turbine total height shall not exceed 400' above grade.

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

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

1. Blasts must comply with the State ground vibration limitations.

2. Fly-rock traveling in the air or along the ground must remain in the controlled blasting area site owned or controlled by the applicant.

3. All blasting must be performed by or under the direct supervision of a State-licensed blaster.

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

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

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

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

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

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

**F. Electromagnetic Interference.** WECS's shall be sited and operated so that they do not interfere with telephone (including cellular and digital), microwave, satellite (dish), navigational, weather forecasting facilities, or radio reception to neighboring areas. The applicant and/or operator of the WECS facility shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or correct any problems, including relocation or removal of the component of the WECS facility, causing or exacerbating the operation of such equipment and any and all related transmission lines, transformers, and other components related thereto. The owner/operator of the WECS shall respond within five business days to any request for a communications interference investigation by a property owner within the project boundary and a three-mile radius beyond the project boundary. Testing shall commence within ten working days of the request. Owner/operator is responsible for mitigating within ten working days from determination of interference cause attributed to the operation of the WECS.

**G. Groundwater Protection.** Licensee shall construct and operate the Wind Energy Conversion System Facility so as not to cause groundwater contamination in violation of

applicable law. Nothing contained in the license is intended to authorize or permit any degradation of the quantity or quality of the groundwater in connection with the WECS.

1. No excavations deeper than nine (9) feet below the surface of the soil shall be allowed in the construction of a Wind Energy Conversion System Facility or Wind Turbine unless the applicant submits evidence of increased cost or design necessity based on actual foundation designs. Any change in foundation design shall maintain the water quality standards of this ordinance.

2. The applicant shall complete a plan for managing surface water runoff to prevent pollution of groundwater through sinkholes, wetlands and infiltration through the soil and underlying bedrock within a 1,000-foot radius of each Wind Turbine site and along all access roads and driveways leading to Wind Turbine sites. The plan shall provide for surface water management so that the water flows away from the Wind Turbine sites and known sinkholes rather than toward them.

3. If a Wind Turbine foundation is proposed in a bedrock area, a baseline of all wells and certified public drinking sources in a half-mile radius shall be established and permanent remedies shall be the responsibility of the developer if contamination occurs.

**H. Sound Limits.** No license shall be issued unless the pre-licensing information and sound modeling shows that the proposed WECS will comply with the following sound limits and requirements.

**1. Audible Sound Limit.**

a. No WTi or WECS shall be located so as to cause an exceedance of the preconstruction/operation background sound levels by more than 5 dBA. The background sound levels shall be the L90A sound descriptor measured during a preconstruction noise study during the quietest time of night (10 pm until 5 am). All data sampling shall be one or more contiguous ten (10) minute measurements. L90A results are valid when L10A results are no more than 10dBA above L90A for the same period and L10C less L90C is no more than 15 dBC. Noise sensitive sites are to be selected based on wind development's predicted worst-case sound emissions (in LeqA and LeqC) which are to be provided by applicant.

b. Test sites are to be located along the property line(s) of the receiving nonparticipating parcels.

c. A 5 dB penalty is applied for tones as defined in IEC 61400-11.

**2. Low Frequency Sound Limit.** The LeqC and L90C sound levels from the wind turbine at the receiving property shall not exceed the lower of either:

- a. LeqC-L90A greater than 20 dB outside any occupied structure, or
- b. A maximum not-to-exceed sound level of 50 dBC (L90C) from the wind turbines without contribution from other ambient sounds for properties located one mile or more away from state highways or other major roads or 55 dBC (L90C) for properties closer than one mile from a state highway or other major road.

These limits shall be assessed using the same nighttime and wind-weather conditions required in Ch. 7 H 1.a. Turbine operating sound emissions shall represent worst case sound emissions for stable nighttime conditions with low winds at ground level and winds sufficient for full operating capacity at the hub.

- c. General Standard. Not to exceed 35 dBA ( Leq 10 min) within 100 feet of any occupied structure.

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

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

- a. Fire proof or fire resistant building materials and buffers or fire retardant landscaping.
- b. Incorporation of a self contained fire protection system to address nacelle fires and approved by NFPA or comparable underwriter.
- c. Maintain firebreak areas cleared of vegetation and maintained as a fire/fuel break as long as the WECU is in operation. Firebreaks shall be 30 feet in width around the periphery of the proposed WECU site, 10 feet in width around all transformers, and 30 feet in width around all buildings.
- d. Fire fighting and rescue services, including programs and costs associated with equipment and training, for local fire protection and rescue personnel.
- e. Any additional fire fighting or rescue personnel, services, materials, and/or vehicles as may be required to address any call related to the WECS or site that

is beyond the capabilities of local fire fighting and/or rescue services.

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

**J. Public Roads.** Licensee shall, prior to the initiation of construction and use of public roads for use as haul roads, consult with the Town Board, County Highway Commissioner, the Wisconsin State Police and the County Sheriff's Office for load paths and restrictions on their respective roads or bridges. Any construction on public town roads shall comply with all state laws and local ordinances regarding such construction, including procedures for letting contracts for such construction.

At Licensee's expense:

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

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

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

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

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

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

1. The flicker or glint will not exceed 10 hours per year at any one receptor measured as the sum of those times during which shadow flicker occurs during any calendar year.



2. The flicker or glint will fall more than 100 feet from an existing residence or permitted residences.
3. The traffic volumes are less than 500 vehicles per day on the affected roadway.
4. The flicker or glint shall not fall onto an intersection.
5. If shadow flicker or blade glint exceeds any of the conditions listed in this section, the source WECU shall be shut down until the flicker or glint problem has been remedied.

**L. Setbacks.** Setbacks shall be measured as a straight line from the vertical centerline of the wind turbine tower to the nearest point of a building or residence or to the nearest point on the property line or feature as applicable. The Town board may increase the following minimum setbacks on a case-by-case basis, in order to protect public health and safety. Each WECU shall meet all the following setbacks as applicable:

1. Property Line: At least 1000 feet plus at least five (5) times the rotor diameter of the WECU from the property lines of any Non-Participating Parcel. No requirements for Participating Parcel property lines.
2. Public Roads and Highways: The greater of 1000 feet or 3 times the total height of the approved WECU.
3. Above Ground Power/Telephone Lines: The greater of 1000 feet or 3 times the total height of the approved WECU.
4. Non-participating residences: 5280 feet, or a distance that meets the sound requirements of this ordinance, whichever is greater, unless the owner grants an easement for a lesser setback.
5. Residence on a Participating Parcel: 1.1 times the total height of the WECU
6. Wetlands: 1.1 times the total height of the WECU from all sinkholes and wetlands.
7. Water bodies Setbacks: 1.1 times the total height of the WECU from the ordinary high water mark of all navigable water bodies.
8. Parks, Public Property and other Sensitive Receptors: 2640 feet from any town, county or state property, recreational or rest area.
9. Spacing and Density: Minimum setback distances between turbines shall be two (2) times the total height of each WECU and shall not impede the performance of adjacent WECU's.
10. Easement for a lesser setback: An owner of a Non-Participating Residence or other Sensitive Receptor may waive the applicable wind turbine setback distance for those

structures or area to a minimum set-back distance of 1.1 times the total height. The owner of a Non-Participating Parcel may waive the applicable wind turbine setback distance from a Nonparticipating Property Line.

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

1. No wind turbine, tower, building, or other structure associated with a wind energy system may be used to advertise or promote any product or service. No word or graphic representation, other than appropriate warning signs and owner or landowner identification, may be placed on a wind turbine, tower, building, or other structure associated with a wind energy system so as to be visible from any public road.

2. This prohibition shall include the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners or waving, fluttering or revolving devices, but not including weather devices.

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

1. Grounding of both the electrical transmission lines and the supply lines to the internal electrical systems of the turbines themselves, shall comply with Rule 92D, Current in Ground Conductors: "Ground connector shall be so arranged that under normal circumstances, there will be no objectionable flow of current over the grounding conductor."

2. Rule 215B: [It is not permissible] "to use the earth as a part of a supply circuit."

3. Under no circumstances shall any wind Turbine be connected directly to the grid; connection must be made through a substation or transformer properly grounded and filtered to keep harmonic distortion within recommended limits.

4. Bare, concentric neutrals are specifically prohibited in buried lines between turbines and in underground transmission lines to substations.

5. Electrical controls and control wiring and power-lines shall be wireless or not above ground except where wind farm collector wiring is brought together for connection to the

transmission or distribution network, adjacent to that network.

**O. Stray Voltage.** The Owner Operator shall respond within (3) three calendar days to any request for a stray voltage investigation by a property owner within the project boundary and a one-mile radius beyond the project boundary. The tests shall be performed by a mutually acceptable Wisconsin certified stray voltage investigator. The tests shall be performed according to PSCW Phase II Stray Voltage Testing Protocol. These tests shall be conducted by an independent third party acceptable to both the Owner/Operator and Property Owner.

Testing shall commence within (10) ten working days of the request. If testing cannot be initiated within (10) ten days, the Wind Turbine(s) in question shall be shut down until the testing can be started. The investigation shall be provided to the property owner at no cost up to a maximum of two investigations within a 12-month period.

At no time shall the operation of a WECS increase the measured cow contact voltage ( $V_{cc}$ ) or primary neutral to remote voltage ( $V_{pn}$ ) on a livestock facility within the project boundary and a one-mile radius beyond the project boundary, above the maximum pre-construction levels. The owner/operator agrees to abide by all rules, procedures, standards, and reporting established by the PSCW for stray voltage and related electrical phenomena.

Owner/operator is responsible for mitigating within five working days from determination any net increase in cow contact voltages ( $V_{cc}$ ) or primary neutral to remote voltages ( $V_{pn}$ ) attributed to the operation of the WECS. If corrections cannot be initiated within (3) three calendar days, the Wind Turbine(s) in question shall be shut down until the voltages in question are mitigated. A copy of the test results shall be sent to the property owner, PSCW Rural Electric Power Services staff, and the Town Board within (30) days of test completion.

**P. Emergency Shutdown.** The Licensee shall be required to immediately cease operations for the duration of any emergency. Emergency shall mean a proven condition or situation caused by the WECS Facility or by other conditions that present an imminent physical threat of danger to life or significant threat to property. A WECS that is found to present an imminent physical threat of danger to life or significant threat of damage to property shall be immediately shut down and repaired or otherwise made safe and certified so by a Wisconsin professional engineer prior to resumption of operation. The Town shall have the right, but not the obligation, to access all WECUs to verify conditions and/or repair progress with reasonable notice to the WECS owner/operator. Within 24 hours of an occurrence of a tower collapse, turbine failure, property damage or contamination, fires, thrown blade or hub, collector or feeder line failure, injured WECS worker or private person, the owner/operator shall notify the Town of the occurrence and proposed remedial action.

**Q. Decommissioning and Site Restoration Plan and Requirements.** An application for a WECS License shall include a decommissioning and site restoration plan

containing the information and meeting the requirements in this section.

1. The plan shall provide for the removal from the Project Parcels, and lawful disposal or disposition of all Wind Turbines and other structures above or below ground, hazardous materials, electrical facilities, and all foundations. To protect the environment, removal shall be done by mechanical means. Blasting is not an approved means for removal. The plan shall provide for the removal of all access roads that the owner of the Project Parcels wants removed. The restoration shall include public road repair, if any; and all re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the WECS facilities.

2. The plan shall provide for the decommissioning of the WECSF and restoration of the site upon the expiration or revocation of the WECS License, or upon the abandonment of the WECS. The WECS and WECU shall be deemed abandoned if its operation is ceased for 6 consecutive months.

3. The plan shall include provisions for the Applicant to submit financial security as provided in Section V C (24) (c) of this ordinance to the Town to secure completion of decommission and site restoration, in form and amount satisfactory to the Town. A cash deposit on account with a mutually agreed upon financial institution will be posted by the WECSF Owner or Operator with the Town of Forest being the custodian of the account. The amount of the financial security shall be equal to the estimated cost of completing the decommissioning and site restoration in accordance with the plan, as approved by the Town. The amount of financial security will be reviewed annually and will be increased no less than the COLA percentage annually.

4. The plan shall include written authorization from the WECS Licensee and all owners of all Project Parcels for the Town, in its sole discretion, to access the Project Parcels and implement the decommissioning and site restoration plan, in the event the WECS Licensee fails to implement the plan. The written authorization shall be in a form approved by the Town.

5. Owner of WECS and Underlying Project Parcel Owner Responsible for Decommissioning and Site Restoration. The Owner of a WECS and the owners of the applicable underlying Project Parcel shall be jointly and severally liable for the removal at their expense of all equipment associated with the Wind Energy Conversion System Facility upon expiration of the license or the end of the useful life of the facility, if earlier than license expiration; upon license revocation, if any; or when the facility is abandoned or otherwise out of operation for more than six (6) consecutive months. If the owner of a WECS fails to remove equipment and restore the site, the owner of the Project Parcel shall be responsible for said removal and restoration at the Project Parcel owner's expense.

If the Owner/Operator and/or the Project Parcel owner(s) fail to decommission and restore the site as required in this ordinance and the approved Decommissioning and Site Restoration Plan, the Town shall provide written notice to the Owner/Operator and

the underlying Project Parcel owner(s) that such decommissioning and site restoration work needs to be done and shall provide a thirty (30) day period for the responsible parties to perform the work. If the WECSF Owner/Operator and the underlying property owners have not commenced the decommissioning and site restoration within such thirty day period, the Town shall have the authority, but not the obligation, to enter onto the Project Parcel to decommission the WECS and restore the site. The costs and expenses of the Town in taking said measures shall be deemed to be for the benefit of the property and shall be considered a special charge pursuant to Wis. Stat. 66.0627, which shall be charged back against the property tax bill of the property on which the decommissioning and site restoration was performed. The Town shall have no liability for property damage or personal injury that may result from the WECS remaining on the private property or from any such decommissioning or site restoration work performed by the Town, if in its sole discretion, the Town chooses to perform such work.

**R. Reporting Procedure/Requirements.** Licensee shall report to the Town as follows:

1. Quarterly Power Production Reports. The Licensee shall submit a quarterly power production report to the Town which shall cover the preceding calendar quarter and include actual net power production in kilowatt-hours for each commercial wind energy facility in the Town. This will be accomplished by providing a consumption meter and an output meter.
2. Annual Monitoring Reports. The Licensee shall submit an annual monitoring report to the Town, containing data on the operations and environmental impacts of the WECS site. Such reports shall describe all safety inspections of the WECS.
3. Extraordinary Events. Within 24 hours of any extraordinary event, Licensee shall notify the Town. "Extraordinary events" shall include but not be limited to tower collapse, catastrophic turbine failure, fires, leakage of hazardous materials, unauthorized entry to the tower base, thrown blade or hub, any injury to a Facility worker or other person that requires emergency medical treatment, or other event that impacts the public health and safety of the Town.
4. Post construction filing requirements. Within 90 days of the date a WECS commences operation, the owner shall file with the Town an as-built description of the WECS. This shall include an accurate map utilizing Global Positioning System (GPS) technology of the WECS showing the locations of all facilities, towers, underground cables and their proximity to any existing structure, property line or geographical feature.

## **VIII. COMPLAINTS AND MODIFICATION, SUSPENSION OR REVOCATION OF LICENSE**

A. Complaints and Modification, Revocation or Suspension. The Town board shall retain continuing jurisdiction to modify, suspend or revoke all WECS Licenses in accordance with this section. Such authority shall be in addition to the Town's authority to prosecute

violations and take other enforcement action.

1. In this section, "violation" means a violation of the Ordinance, or a violation of a WECS License issued under the Ordinance, or a violation of a WECS License Agreement entered into under the Ordinance.

2. Any resident of the Town or Town official may file a written complaint with the Town Clerk alleging that a WECS Licensee has committed or is committing a violation. Such complaints shall be forwarded to the Town Board.

3. The Town Board shall preliminarily review the complaint. In connection with its preliminary review, the Town Board may require the Town building inspector, engineer, attorney or other person or persons to conduct such investigations and make such reports as the Town Board may direct. The Town Board may request information from the holder of a WECS License, the complainant, and any other person or entity to assist with its preliminary review.

4. Following its preliminary review, the Town Board may:

a. Dismiss the complaint;

b. Refer the complaint to the Town attorney for prosecution; or

c. Conduct a hearing to determine whether the alleged violation(s) have occurred, and what remedial action should be taken. Prior to such hearing, notice of the hearing and a copy of the complaint stating the alleged violations shall be given to the holder of the WECS License, the owner of the property on which the WECS is located, and the complainant. The hearing shall be held in accordance with the Open Meeting Law. The holder of the WECS License and the complainant, and any other person, may appear at the hearing and may offer testimony and other relevant evidence, and may be represented by an attorney. If the Town Board concludes that Violations have occurred, the Town Board may:

(1) Impose conditions on the WECS License to the extent reasonably necessary to discontinue the violation(s) or avoid any recurrence thereof; or

(2) Suspend the WECS License until such time as the WECS License holder presents a plan, satisfactory to the Town Board that will discontinue the violation(s) or prevent any recurrence thereof, and on such further conditions as the Town Board deems appropriate to discontinue and prevent further violations; or

(3) Revoke the WECS License and direct the Owner/Operator to decommission the WECS if the Town Board concludes that no reasonable modification can be made to the WECS to discontinue or prevent

violations; or

(4) Refer the matter to the Town attorney for prosecution, subject to Town Board approval; or

(5) Take no action, if the Town board concludes that no further action is needed to discontinue or prevent violations, and that prosecution is unwarranted.

5. Following any such hearing, the Town Board's written decision shall be furnished to the WECS License holder and to the complainant.

## **IX. PROCEDURES FOR REVOCATON OF LICENSE**

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

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

a. The Licensee abandons the wind turbine generators located on the premises for a period of six (6) consecutive months or more.

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

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

such obligation within such 30 day period and is diligently proceeding to complete such performance.

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

3. As provided in this ordinance, including, but not limited to Section VII Q. 5, the owner of a WECS and the owner(s) of the underlying Project Parcel shall be jointly and severally liable for the removal of all equipment associated with the Wind Energy Facility at the end of the license period, the useful life of the facility, or when the facility is abandoned or otherwise out of operation for more than six (6) consecutive months, at their expense.

**B. Hearing.** The Town shall not revoke any License without first providing the Licensee a hearing, notice of the grounds/bases giving rise to the possible revocation, and the right to respond, including the right to be represented by an attorney, the right to present evidence regarding any defenses or extenuating circumstances regarding the alleged violations or public or private nuisance, right to cross-examine witnesses .

## **X. LICENSE EXPIRATION**

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

## **XI. INSURANCE AND INDEMNIFICATION**

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

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



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

3. Certificates of insurance evidencing compliance with these requirements shall be provided upon approval of a license and must be on file before any construction is commenced. 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. Indemnity**

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 issuance of the License, 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 immunities, liability limits or indemnification rights available under law.

## **XII. STANDARDS**

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

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

**C. State and Federal Standards.** Construction of WECS and Wind Turbines shall meet or exceed current standards and regulations, if any, of any other agency of the state or federal government with the authority to regulate wind powered generators. If such standards and regulations are changed and retroactive application is required for the change, then Licensee shall bring the Wind Turbine(s) into compliance with such applicable revised standards and regulations within 6 months of the effective date of

such standards and regulations, unless a different compliance schedule is permitted by the controlling state or federal agency or approved by the Town. A Determination of No Hazard for each Wind Turbine must be obtained from the FAA for each Wind Turbine as a condition precedent to the receipt of a license under the Ordinance.

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

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

**E. Repair & Replacement.** Licensee shall be authorized to repair and replace the wind turbine generator and associated equipment consistent with Good Utility Practice during the Term of the License as needed to keep the Wind Energy Conversion System 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 the License in the future, Licensee shall be required to apply for such extension or amendment of the License in accordance with the terms of the ordinance in effect at the time of the requested extension or amendment.

### **XIII. FEES AND EXPENSES**

**A. Reimbursement of Fees and Costs.** Licensee shall reimburse the Town for its actual fees and costs incurred in the application review, negotiation, administration and enforcement of the ordinance, including, without limitation, the Town's attorney fees, engineering, inspection and consultant fees, Town Board meeting and hearing fees, complaint resolution fees, and the costs of public notices relative to the review and consideration of each application filed by an applicant under the ordinance. The preceding fees are payable within 30 days of invoice. Unpaid invoices shall bear interest at the rate of 1.0% per month until paid. The Town may recover all reasonable costs of collection, including attorney fees.

**B. Government Services/costs.** The Town Board may require the WECS Licensee to pay the cost of Town governmental services reasonably related to the WECS and not otherwise paid by the WECS Licensee.

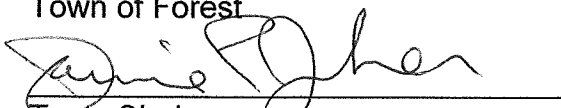
### **XIII. ADMINISTRATION, INSPECTIONS, ENFORCEMENT AND PENALTIES**

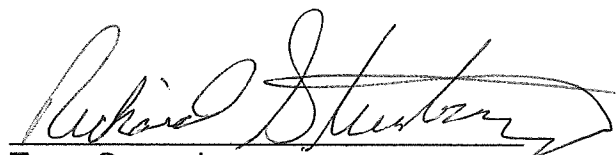
- A. Administration. The ordinance shall be administered by the Town Board or its designee.
- B. Inspections. The Town Board or its designee may enter upon any property for which a licensing permit has been issued under the Ordinance to conduct inspections to determine whether the conditions stated in the permit and other standards and requirements of the Ordinance are being complied with.
- C. Enforcement. The Town Board or its designee may issue orders to abate any violation of the ordinance or any condition attached to a licensing permit approved by the Town Board. The Town Board or its designee may issue a citation for any violation of the Ordinance. The Town Board may refer any violation of the Ordinance to the Town's legal counsel or to special counsel for enforcement through litigation. Nothing in the Ordinance shall be construed to prevent or limit the Town from using any other lawful means of enforcing the Ordinance.
- D. Penalties. Any person, applicant or licensee who fails to comply with any provision of the Ordinance or of any license issued pursuant to the Ordinance shall, upon conviction thereof, forfeit at least five-hundred dollars (\$500.00) but not more than one-thousand dollars (\$1,000.00) for each offence. Each day a violation occurs or continues shall be deemed a separate offense. Any person, applicant or Licensee who is in default of payment of forfeiture or costs may be imprisoned in the county jail until the forfeiture or costs are paid, except that the period of imprisonment may not exceed thirty (30) days.
- E. Severability. If any provision of this Ordinance rule(s), term(s) or conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other terms and conditions of the Ordinance which shall remain in full force and effect.

**XIV. EFFECTIVE DATE.** This ordinance shall be in effect upon adoption by the Town Board and publication and/or posting as required by law.

This Ordinance Number 2011- 3 was passed and adopted by the Town Board of the Town of Forest on this 11<sup>th</sup> day of August 2011.

Town of Forest

  
Town Chairman

  
Town Supervisor

Janice Anderson  
Attest: Town Clerk

Peter S. S.  
Town Supervisor

Published and posted this 17 day of August 2011.