

# XXIV Large and Small Wind Energy Facility Ordinance

## Adopted 5/13/2008

### A. Wind Energy Facilities

The following regulations shall apply to all wind energy facilities as defined in Section C of this ordinance hereinafter constructed or developed within the Town of Morrison.

### B. Purpose

The purpose of the Wind Energy Facility Ordinance is to provide a regulatory scheme for the construction and operation of wind energy systems in the Town of Morrison, subject to reasonable restrictions, which will preserve the public health and safety. This ordinance will distinguish between a large wind energy system and a small wind energy system.

### C. Definitions

- a. Commission: The Town of Morrison Planning Commission.
- b. Decommissioning: The process of use termination and removal of all or part of a large wind energy facility by the owner or assigns of the large wind energy facility.
- c. Good Utility Practice: Good Utility Practice means any of the practices, methods and acts with respect to the safe operation of a Large Wind Energy Facility engaged in or approved by a significant portion of the electric utility industry and, in particular, those portions of the industry with experience in the construction, operation and maintenance of wind turbines during the relevant time period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.
- d. Inhabited Structures: A permanent building existing prior to the conditional use application, used for human or animal habitation.
- e. Karst Feature: An area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include areas with soils less than 60 inches thick over bedrock, caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps, swallets, and depressional areas with no surface drainage.
- f. Landowner: The person who owns the property on which a wind energy system is located.
- g. MET Tower: A meteorological tower used for the measurement of wind speed.
- h. Total Height: When referring to a wind turbine, the distance measured from ground level to the blade extended at its highest point.
- i. Non-Participating Property: Real property that has no wind energy system.
- j. Owner: The person or entity who develops, operates or owns a wind system, whether an individual, proprietorship, corporation, association, partnership, limited liability entity or any other legal entity. For purposes of this ordinance Owner also includes the applicant.
- k. Shadow Flicker: Moving shadows caused by the rotation of the turbine blades passing in front of the sun.
- l. Town: Town of Morrison, Brown County, Wisconsin.
- m. Use Termination: The time in time at which a large wind energy facility owner provides notice to the Town of Morrison that the large wind energy facility or individual wind turbines are no longer used to produce electricity unless due to

- repairs. Such notice of use termination shall occur no less than 30 days prior to actual use termination.
- n. Wind Energy Facility, Large: An electricity generating facility consisting of one or more wind turbines under common ownership or operating control, and includes substations, MET towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity to off-site customers.
  - o. Wind Energy System, Large: A wind energy system of one (1) wind tower and turbine that has a nameplate capacity of more than one hundred (100) kilowatts and a total height of more than one hundred seventy (170) feet and less than five hundred (500) feet and is used to generate energy for commercial sale.
  - p. Wind Energy System, Small: A wind energy system of one (1) wind tower and turbine that is used to generate electricity with a total height of 170 feet or less and has a name plate capacity of 100 kilowatts or less.
    - q. Wind Turbine: A wind energy conversion system, which converts wind energy into Electricity, through the use of a wind turbine generator, and includes the turbine, blade, tower, base and pad transformer.

## D. Regulatory Framework

### 1. Zoning

- a. Large wind energy facilities may only be constructed in areas zoned Agriculture with an approved conditional use and building permit from the Town of Morrison.
- b. Small wind energy systems may be constructed in areas zoned Estate Residential, Agriculture, Business, or Industrial with an approved conditional use and building permit from the Town of Morrison.

2. An applicant for a large wind energy facility may request, at applicant's expense, a pre-application public meeting with the Town Board and Planning Commission, at which no official Town action shall be taken. A pre-application public meeting may be held in order for the applicant to:

- a. Inform Town residents of the project and provide answers to Town residents with questions.
- b. Provide informational displays of the areas of the Town that meet the requirements of the Town ordinance and are likely locations for a wind turbine tower.
- c. Town residents not able to attend the meeting shall have the option to provide written comments or questions to the applicant and/or Town.
- d. In no instance shall this meeting take the place of a formal public hearing for the conditional use permit.

3. Application for a conditional use permit for a large or small wind energy facility shall be submitted to the Zoning Administrator with the following information:

- a. The name, address, legal corporate status and telephone number of the applicant responsible for the accuracy of the application and site plan.
- b. The name, address, legal corporate status and telephone number of the owner of the proposed large wind energy facility.
- c. A signed statement indicating that the applicant has legal authority to construct, operate, and develop the wind energy system(s) under state, federal and local laws and regulations, including Federal Aviation Administration (FAA), state and local building codes. The FAA will issue a signed statement when the precise location has been determined. Building permits will not be issued prior to receiving all signed statements, but a conditional use permit may be granted.
- d. The applicant shall also provide copies of the Proof of a Certificate of Authority from the Public Service Commission of Wisconsin and the Public Service Commission of Wisconsin Environmental Assessment, if applicable.
- e. A description of the number and kind of wind energy system(s) to be installed.

- f. A description of the large or small wind energy system(s)' height and design, including a cross section, elevation, and diagram of how the wind energy system will be anchored to the ground.
  - g. A site plan, drawn to a scale of not less than 1 inch to 100 feet, showing the parcel boundaries and a legal description, 2 foot contours for the subject site and 100 feet beyond the subject site, karst features, support facilities, access, proposed landscaping or fencing.
  - h. Photo exhibits visualizing the proposed wind energy system.
  - i. A statement from the applicant that all wind energy system(s) will be installed in compliance with manufacturer's specifications, and a copy of those manufacturer's specifications.
  - j. A copy of the Memorandum of the Lease, or recorded document, with the landowner if the applicant does not own the land for then proposed large wind energy facility(s). A statement from the landowner of the leased site that he/she will abide by all applicable terms and conditions of the conditional use permit, if approved. If the applicant does not have a signed lease with the landowner, but the landowner has given the applicant written permission to include their parcels in the applicant's request for a conditional use permit, the Town may grant a conditional use permit to land not leased by the applicant.
  - k. A statement indicating what hazardous materials will be used and stored on the site, and how those materials will be stored.
  - l. A statement indicating how the wind energy facility will be lit, if applicable.
4. A site grading, erosion control and storm water drainage plan will be submitted to the Zoning Administrator prior to issuing a building permit. At the Town's discretion, these plans may be reviewed by the Town's engineering firm. The cost of this review will be the responsibility of the Owner of the large wind energy facility.
5. The applicant shall acquire all other permits, including driveway/culvert permits and permits for work done in right-of-ways prior to construction.
6. Wind energy systems may not include offices, vehicle storage, or other outdoor storage. One accessory storage building may be permitted per wind turbine at Town Board discretion. The size and location of any proposed accessory building shall be shown on the site plan. No other structure or building is permitted unless used for the express purpose of the generation of electricity.
7. An applicant may submit one conditional use permit application for an entire large or small wind energy facility project located in the Town of Morrison, provided that a detailed map identifying parcel locations for all proposed wind turbines is provided to the Town of Morrison at the time a conditional use application is submitted.
8. No grading, filling, or construction may begin until the Town of Morrison Zoning Administrator issues a building permit. A separate building permit is required for each wind turbine to be constructed.
9. A certificate of insurance with a minimum of \$2,000,000 liability coverage per incidence, per occurrence shall be required. Each renewal period will require a copy of certificate of insurance be provided to the Town of Morrison. An expired insurance certificate or an unacceptable liability coverage amount is grounds for revocation of the conditional use permit. The insurance afforded to the Town as an additional insured shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the Town.
10. The Town of Morrison shall require an irrevocable letter of credit, bond, cash escrow, and/or personal guarantee, held in trust in favor of the Town of Morrison to recover the costs associated with removal of a use terminated wind generator and appurtenant facilities. The amount of the

irrevocable letter of credit, bond, cash escrow, and/or personal guarantee, shall be negotiated by the Town of Morrison prior to conditional use permit approval and shall remain in effect until released by the Town. The Morrison Town Board will determine which method will be allowed.

11. A wind energy facility authorized by conditional use permit shall be started within twenty four (24) months of conditional use permit issuance and completed within thirty six (36) months of conditional use permit issuance, or in accordance with a timeline approved by the Town Board. Upon request of an applicant, and for good cause, the Town Board may grant an extension of time.

12. The applicant shall submit a copy of all “as built plans” including structural engineering and electrical plans for all towers following construction to the Town to use for removal of large wind energy facility, if large wind energy facility owner or its assigns fail to meet the requirements of this Ordinance.

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

14. The Town of Morrison will review any conditional use permits granted every five years to ensure that all conditions of the permit are being followed.

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

## E. Applicability

1. The requirements of this Ordinance shall apply to all large or small wind energy facilities proposed after the effective date of this Ordinance. Wind energy facilities for which a required permit has been properly issued prior to the effective date of this Ordinance shall not be required to meet the requirements of this ordinance; provided, however, that any such pre-existing wind energy facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Ordinance prior to recommencing production of energy. However, no modification or alteration to an existing wind energy facility shall be allowed without full compliance with this Ordinance.

## F. General Requirements for Wind Energy Facilities

### 1. Principal Accessory Use

- a. Wind energy systems may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of a large wind energy facility or a part of such facility on such lot. Large wind energy facilities constructed and installed in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.
- b. A building permit, issued by the Town of Morrison Zoning Administrator shall be required for each individual wind turbine prior to construction of said wind turbine.

### 2. Design and Installation

- a. Wind turbines shall be painted a non-reflective, non-obtrusive color, such as grey, white, or off-white.
- b. At large wind energy facility sites, the design of the building and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the large wind energy facility to the natural setting and

- existing environment.
- c. Owner is responsible for properly maintaining all landscaping, including grass cutting.
  - d. Wind energy facilities shall not be artificially lighted, except to the extent required by the FAA.
  - e. No form of advertising shall be allowed on the pole, turbine, blades, or other buildings or facilities associated with the use, except for reasonable identification of the manufacturer or operator of the large wind energy facility.
  - f. All wind energy facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a failsafe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.
  - g. To the extent applicable, all wind energy facilities shall comply with all applicable building codes and standards. To ensure the integrity of the wind turbines, the owner shall maintain the wind turbines in compliance with Good Utility Practice for wind turbines. If, upon inspection by and advice to such effect from a qualified expert in Good Utility Practice, the Town reasonably concludes that any of the wind turbines fail to comply with Good Utility Practice or constitute a danger to persons or property, then upon notice being provided to the Owner, the Owner shall have 30 days to bring the non-compliant wind turbines into compliance with such standards, or if the 30 days is insufficient time to cure the non-compliance, the Owner will present a plan to the Town describing the reason for the delay and the timeframe for the cure to be put in place.
  - h. Electrical controls, 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.
  - i. All electrical components of the wind energy facility shall conform to relevant and applicable local, state, and national codes, and relevant and applicable international standards.
  - j. At the discretion of the Town, the Town may hire an Electrical Engineering Consultant, to oversee the installation of the turbines. The cost of the Electrical Engineer will be the responsibility of the owner of the large wind energy facility.
  - k. The owner of a wind energy facility shall defend, indemnify, and hold harmless the Town of Morrison and their officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever including attorney fees arising out of the acts or omissions of the operator concerning the operation of the large wind energy facility without limitation, whether said liability is premised on contract or tort.
  - l. The owner of the wind energy facility (applicant) shall reimburse the Town and/or County for any and all repairs and reconstruction to the public roads, culverts, and natural drainage ways resulting directly from the construction of the large wind energy facility. A qualified independent third party, agreed to by the Town and/or County and applicant, and paid for by the applicant, shall be hired to inspect the roadways to be used during construction. This third party shall be hired to evaluate, document, videotape, and rate road conditions prior to the construction of the large wind energy facility and again upon notification of completion of the wind energy facility project is complete. Any road damage done by the applicant or subcontractors shall be repaired or reconstructed at the applicant's expense. The Town of Morrison may require a bond or cash escrow, held in trust in favor of the Town of Morrison to recover the costs associated with the repair of roadways damaged by the construction of any turbines.
  - m. Where wind energy facility construction cuts through a private or public drain tile field, the drain tile must be repaired and reconnected to properly drain the site to the satisfaction of the landowner.
  - n. Any recorded access easement across private lands to a wind energy facility shall in

addition to naming the wind energy facility owner as having access to the easement shall also name the Town of Morrison as having access to the easement for purposes of inspection or decommission.

- o. The owner of a large wind energy facility shall reimburse the Town of Morrison for any and all legal notices, meeting fees, and reasonable fees for consulting, legal advice, and engineering. The Town shall submit copies of all related Town paid invoices to the large wind energy facility owner for repayment to the Town.
- p. Any wind energy turbine or facility that does not produce energy for a continuous period of twelve (12) months, excluding time spent on repairs or improvements, shall be considered abandoned and shall be removed in accord with the removal provisions of this ordinance.
- q. The large wind energy facility owner and operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project. This information will be supplied to the Town Clerk.
- r. No blasting shall occur in connection with the construction of the facility unless the applicant has provided prior notification to the property owner, any abutting property owners, property owners within 1,500 feet of the blasting site, and the Town Board. All blasting shall be done in accordance with all applicable laws and regulations.
- s. At the discretion of the Town, the Town may consult with the Land Conservation Office of Brown County to review site plans prior to construction to ensure the least amount of impact on farm fields and sensitive areas. The large wind energy facility owner will be responsible for all costs associated with this.
- t. At the discretion of the Town, the Town may have Brown County Land Conservation and/or the DNR review site plans so sensitive areas can be identified. The wind energy facility operator will be responsible for any costs.

## G. Setbacks

### a. Inhabited Structures

- i. Each large wind turbine shall be set back from the nearest inhabited structure a distance of no less than the greater of two (2) times its total height or one thousand (1,000) feet

1. The Morrison Town Board may grant a waiver to this requirement for a participating and/or non-participating landowner to decrease the setback. In no instance shall the setback be decreased to less than 1.1 times the total height of the wind turbine. This waiver shall be signed by the impacted property owner(s) and recorded with the property with the Brown County Register of Deeds.

- c. Each small wind energy system must be set back the height of the tower plus twenty (20) feet from any inhabited structure, property line, public road, or communication and/or electrical lines. A minimum of one (1) acre per wind energy system is required.

### d. Property Lines

- i. Each wind turbine shall be set back from the nearest property line 1.1 times its total height.

1. The Morrison Town Board may grant a waiver to this provision where strict enforcement would not serve the public interest. This waiver shall be signed by the impacted owner(s) and recorded with the property with the Brown County Register of Deeds.

### e. Public Roads

- i. Each wind turbines shall be set back from the nearest public road right-of-way a distance no less than 1.1 times its total height.

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

- f. Communication and Utility Lines

- i. Owner of a wind energy facility must meet all utility company setbacks and/or easements. Owner of wind energy facility is responsible for contacting the appropriate utility to determine location of all above and underground utility lines including, but not limited to, electricity, natural gas, petroleum, propane, cable television, and fiber optic.
  - ii. Utility line and/or easement locations shall be provided to the Town of Morrison for verification.

## H. Karst Features and Ground Water

- a. The Town of Morrison recognizes how susceptible our ground water supply is to contamination due to karst features located in the Town. At the request of the Town, the owner/operator of the Large Wind Energy Facility may be required to run water tests on wells where wind turbines will be located, both prior and after construction of the turbine. The owner of the large wind energy facility will be financially responsible for any costs associated with the testing of wells. The Town Board will determine how large the test area needs to be based on factors such as where bedrock is located. The owner/operator of the large wind energy facility will be financially responsible for any contamination to wells, which tested acceptable prior to construction but are not acceptable after construction. The Town Board will determine the time period when the testing will take place.

## I. Noise and Vibration

- a. Audible noise due to large wind energy facility operations shall not exceed 50 dBA for ten percent of the time over a continuous 24 hour period, when measured at any inhabited structure existing on the date of approval of a large wind energy facility building permit.
  - i. If audible noise exceeds 50 dBA for ten percent of the time over a continuous 24-hour period, the offending wind turbine must be inoperable until repairs are completed, or a waiver is obtained from affected property owners.
  - ii. The Town of Morrison reserves the right to review the repair plan and evaluate its effectiveness.
- b. Wind Energy Facilities shall not create an audible steady, pure tone such as a whine, screech, hum, or vibration.
- c. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is succeeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior or potentially affected inhibited structures. Ambient noise level measurement techniques shall employ all practical means of reducing the affect of wind-generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise level measurement location.
- d. Any noise level emanating from a wind energy facility falling between two whole decibels shall be the higher of the two.

- e. The applicant or wind turbine facility owner shall pay for reasonable noise monitoring or measurements, with need determined by the Town in response to demonstrable problems.
- f. In the event the noise levels resulting from the Wind Energy Facility exceed the criteria listed above, a waiver to said levels may be granted by the Town provided the following has been accomplished.
  - i. Written consent from the affected property owners has been obtained stating that they are aware of the large wind energy facility and noise limitations imposed by this ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and,
  - ii. A permanent noise impact easement has been recorded in the Brown County Register of Deeds which describes the benefited and burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this Ordinance may exist on or at the burdened property.

## J. Minimum Ground Clearance

- 1. The blade tip of any large wind turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.
- 2. The blade tip of any small wind turbine shall, at its lowest point, have ground clearance of no less than thirty (30) feet.

## K. Signal Interference

- 1. The applicant shall mitigate any interference with electromagnetic communications, such as, but not limited to, radio, telephone, or television signals, including any public agency radio systems, caused by any large wind energy facility. (If the applicant is a public utility, s PSC 113.0707 also applies).

## L. Shadow Flicker

- 1. The wind energy facility owner/operator shall make reasonable efforts to minimize or mitigate shadow flicker to any inhabited structure on non-participating landowner's property.

## M. Ice Shedding

- 1. The wind energy facility owner/operator shall ensure that ice from the wind turbine blades does not impact any non-participating landowner's property.

## N. Avian Risk

- 1. The wind energy facility owner/operator shall make reasonable efforts to minimize avian mortality from the operation of a large wind energy facility. The Town of Morrison may require an avian risk study prior to issuance of a conditional use permit for a large wind energy facility. The owner/operator of the large wind energy facility may submit an Avian Risk study from another community in the state as long as the avian populations are similar and the study was not completed more than five (5) years prior to the conditional use permit request. The Owner is responsible for the cost of the study.

## O. Waste Management

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

## P. Safety

1. All electrical wires and lines connecting each turbine to the next turbine shall be installed underground. The wires and lines running from the last turbine in a string to any substation connecting to the electric utility shall also be run underground, unless the Town determines that overhead lines would best serve the intent of the ordinance.
2. Wind turbine towers shall not be climbable up to fifteen (15) feet above ground level and must be located inside of the tower.
3. All access doors to wind turbine towers and electrical equipment shall be locked when unattended.
4. Appropriate warning signage shall be placed on wind turbine towers, electrical equipment, and large wind energy facility entrances.
5. The large wind energy facility site and all structures shall have an annual inspection report of structural stability, at the cost of the large wind energy facility owner/operator, with a report filed with the Morrison Town Clerk.
6. The owner/operator of the large wind energy facility shall coordinate with the Wisconsin Public Service Commission (PSC) to test for stray voltage before, during and after construction if requested by the Morrison Town Board.
7. All Substations shall be fenced to prevent public access. Chain link fencing shall include vinyl or aluminum slats or other landscaping to create an opaque visual barrier.
8. The owner/operator of the large wind energy facility shall post and maintain at each facility a 24 hour a day manned telephone number in case of an emergency.
9. The owner/operator of the large wind energy facility shall provide qualified personnel to conduct training sessions to emergency responders whenever requested by the Town Board.
10. The owner/operator of the large wind energy facility shall provide a company representative to accompany the local Fire Department Inspector during site visits. The owner/operator of the large wind energy facility shall comply with all applicable laws regarding those inspections.
11. The owner/operator of the large wind energy facility shall be responsible for the total cost of any incident(s) that occur on or at their facilities and/or properties.

## Q. Removal

1. All Wind generators and appurtenances shall be removed from the site within seven (7) months or 210 days of use termination notice to the Town Board of Morrison by the owner of the facility or its assigns.
  - a. Upon request of the owner or assigns of the large wind energy facility, and for good cause, the Morrison Town Board may grant a reasonable extension of time.
2. The site shall be stabilized, graded, and cleared of any debris by the owner of the facility or its assigns. If site is not to be used for agricultural practices following removal, site shall be seeded to prevent soil erosion.
3. Any foundation shall be removed to a minimum depth of eight (8) feet below grade, or to the level of the bedrock if less than eight (8) feet below grade, by the owner of the facility or its assigns.
  - a. Following removal, the location of any remaining wind turbine foundation shall be identified on a map as such and recorded with the deed to the property with the Brown County Register of Deeds.
4. Any access roads shall be removed, cleared, and graded by the owner of the large wind energy facility or its assigns, unless the property owner wants to keep the access road. The Town of Morrison will not be assumed to take ownership of any access road unless through official action of the Town Board.
5. Removal shall conform to the contract between property owner and the owner/operator of the large wind energy facility, in addition to the requirements set forth in this ordinance.

## R. Forfeiture

- a. Any wind generation facility, turbine or appurtenant facility hereinafter significantly erected, moved or structurally altered in violation of the provisions of this ordinance

by any person, firm, association, corporation (including building contractors) or his or their agent shall be deemed an unlawful structure.

- b. Any wind generation facility that does not meet the requirements of this ordinance, including, but not limited to those dealing with noise or visual appearance, or does not meet the conditions attached to an approved conditional use permit shall provide grounds for revocation of the conditional use permit, thereby deeming the facility an unlawful structure.
- c. The Zoning Administrator shall report all such violations to the Town Board who may then refer the matter to the town attorney to bring action to enjoin the erection, moving or structural alteration of such facility or to cause such facility to be vacated or removed.
- d. Any person, firm, corporation, agent, employee, or contractor of such, who violates, destroys, omits, neglects, or refuses to comply with, or who resists enforcement of any provision of this ordinance; shall upon conviction thereof forfeit no less than \$1,000 and not more than \$5,000 per offense together with the costs of prosecution, and in default of payment of such forfeiture and cost shall be imprisoned in the county jail until payment of said forfeiture and costs of prosecution are made. Confinement to the county jail shall not exceed 30 days for each offense. Each violation and each day of violation shall constitute a separate offense.
- e. This section shall not preclude the Town of Morrison from maintaining any appropriate action to prevent or remove a violation of this section.

#### S. Review

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

#### T. Severability

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

#### U. Fees

- a. Owner shall reimburse the Town's actual reasonable fees and costs incurred in the preparation, negotiation, administration and enforcement of the conditional use permit, including, without limitation, the Town's attorneys' fees, engineering consultant fees, meeting/hearing fees and the costs of public notices. The preceding fees are payable within 30 days of invoice. Unpaid invoices shall bear interest at the rate of 1% per month until paid. The Town may recover all reasonable cost of collection, including attorney's fees.

#### V. Impact Fees

- a. The Town of Morrison retains the right to negotiate an Impact Fee on wind turbines with the owner/operator of a large wind energy facility.

#### W. Tax Hold Harmless

The parties acknowledge that the shared revenue payments payable to the Town under current state law may be revised or revoked by future legislatures. If the shared revenue payments payable to the Town are eliminated or reduced, the Owner will pay to the Town an amount not less than the amount payable at the time of the issuance of the conditional use permit. The Owner's obligation to make such payments shall cease if the state adopts or implements a new mechanism to replace the shared revenue payments, to the extent that the new payment mechanism produces revenue not less than the revenue payable under the predecessor program.

The parties further acknowledge that the shared revenue payments are paid to the Town Directly by the State of Wisconsin, not the Owner. Regardless, the Owner agrees to supplement the Town's annual shared revenue payments actually received by an amount equal to the annual percentage change of the Consumer Price Index as of January 1 of each calendar year beginning on the first January following the date that the Town receives its first payment from the State. For purposes of this escalator clause, the Consumer Price Index means the U.S. Department of Labor, Bureau of Statistics, Consumer Price Index for the United State, All Urban Consumers, all Items, unadjusted Index.

#### X. Defense of Land Use Decision

In addition to the indemnification described above, the Owner shall reimburse the Town its reasonable attorneys' fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of the conditional use permit. If the Town seeks reimbursement, it shall notify the Owner in writing promptly upon discovering any claim entitling it to a land use defense reimbursement, but in no event later than 60 days after receiving written notice of any action, lawsuit, proceeding investigation or other claim against it which may give rise to a claim for a land use defense reimbursement.

#### Y. Time is of the Essence:

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