Model Documents

Protecting Township Roads

Two Model Documents for Wisconsin Town Boards Facing Large-Scale Construction Projects

Prepared in connection with the Silo Bend Wind Project briefing, Clark County, Wisconsin

Prepared by Farmland First

For the Clark County Towns Association

How to Use These Templates

These are starting-point drafting templates, not finished legal documents and not legal advice. Every town's roads, existing ordinances, and negotiating position with a developer are different. Before your town board adopts an ordinance or signs any agreement, have your town attorney review and tailor these documents — especially the bond amounts, haul route maps, and repair deadlines, which should be set using your own road inventory and an engineer's estimate, not the placeholder figures shown here.

What's Inside

- Part I — Model Ordinance Amendment: Large-Scale Energy Development Road Provisions (adopted once, applies to any future developer)
- Part II — Model Road Use Agreement (negotiated and signed with a specific developer before construction begins)

Building on What Towns Have Already Done

Several of the affected townships already took an important first step by encouraging and passing health and safety ordinances addressing wind energy systems — covering issues likc setbacks, noise, and shadow flicker. That was a good start, and it reflects real, sustained effort by town boards and residents. Protecting town roads is the next piece of that same work. Unlike siting and setback standards, road authority is not preempted by state law — it is squarely within the Town's own control, which makes it one of the most durable protections a town board can put in place.

Recommended Sequence

- 1. Adopt or amend your Driveway & Highway Access Permit Ordinance (Part I) now, before any construction traffic is proposed.
- 2. Commission a baseline engineering survey of any town roads a developer may use.
- 3. Require the developer to sign a bonded Road Use Agreement (Part II) as a condition of the access permit — before equipment moves.
- 4. Enforce both documents throughout construction; don't wait for residents to report damage.
- 5. Consider negotiating a broader host community agreement alongside the Road Use Agreement to address decommissioning security, tax or payment-in-lieu terms, and other project impacts; the model documents in this packet address road protection only.

PART 1

Model Ordinance

Large-Scale Energy Development Road Protection Provisions — (adopted under Wis. Stat. §§ 66.0425 and 86.07)

Section 1. Purpose and Findings

1.1. Purpose. This ordinance protects town highways, bridges, and culverts from damage caused by construction traffic associated with large-scale energy development, including wind energy systems, by requiring a permit, a road use agreement, and financial security before any such traffic uses town roads.

1.2. Findings. The Town Board finds that heavy construction vehicles associated with large-scale energy projects — including concrete trucks, cranes, and component-delivery trucks weighing well in excess of standard legal highway loads — can cause damage to town roads that substantially exceeds ordinary wear and tear, and that this damage should be borne by the developer that causes it, not by town taxpayers.

1.3. Authority. This ordinance is adopted under the Town's authority over town highways under Wis. Stat. ch. 82 and 86, and its authority to regulate driveway and highway access under Wis. Stat. § 66.0425. Nothing in this ordinance is intended to regulate the siting, height, or setback of a wind energy system. Nor is this ordinance intended to regulate the installation or use of a solar energy system. This ordinance addresses only the Town's separate and independent authority over its own roads, bridges, and culverts under Wis. Stat. chs. 82, 86, and 349 and § 66.0425 — authority that state siting law does not preempt.

Section 2. Definitions

2.1. "Large-scale energy development". means a wind energy system, solar energy system, battery energy storage system, transmission facility, or other utility-scale energy generation or transmission project requiring construction traffic on town roads. The term includes construction, major maintenance, repowering, and decommissioning activity associated with such a project.

2.2. "Developer". means the owner, developer, or operator of a large-scale energy development, and its contractors and subcontractors, and its successors and assigns.

2.3. "Town road". means any highway, bridge, or culvert under the jurisdiction and maintenance responsibility of the Town.

2.4. "Haul route". means the specific town roads designated for use by construction traffic under a road use agreement issued pursuant to this ordinance.

Section 3. Permit Required

3.1. No developer may use a town road to transport equipment, materials, or components associated with a large-scale energy development, or construct or alter any access point onto a town road, without first obtaining a Large-Scale Energy Development Road Permit from the Town Board.

3.2. A permit under this section will not be issued unless the applicant has executed a Road Use Agreement with the Town in substantially the form adopted by the Town Board, and has posted the security required by Section 5.

3.3. The Town Board shall act on a completed application under Section 4 within ninety (90) days after submission, or such longer period as the applicant agrees to in writing. Requesting additional information from the applicant suspends the running of this period until the requested information is provided. This subsection does not limit the Town's authority to deny an incomplete or noncompliant application.

Section 4. Application Requirements

An applicant for a permit under this ordinance shall submit the following at least ninety (90) days before the proposed start of construction traffic:

- A map identifying every town road, bridge, and culvert the applicant proposes to use, and the proposed designated haul route(s)
- A traffic and load plan describing anticipated vehicle types, axle weights, gross weights, and frequency of trips by road segment
- An independent engineering survey of the pre-construction condition of each town road, bridge, and culvert on the proposed haul route, including photographic and video documentation, prepared at the applicant's expense by an engineer acceptable to the Town
- A proposed schedule for construction traffic, including anticipated start and end dates
- Proof of insurance meeting the requirements of Section 7

Cost Reimbursement Account. Before the Town incurs any cost to review an application under this Section, retain independent engineering or legal consultants in connection with an application, or negotiate a Road Use Agreement, the applicant shall establish an escrow or reimbursement account with the Town, in an amount set by the Town Board, from which the Town may draw to pay its reasonable actual costs. The applicant shall replenish the account within fifteen (15) days of written request. Any unused balance shall be returned to the applicant upon issuance of the permit or final denial of the application.

Section 5. Financial Security

5.1. Amount. Before a permit is issued, the applicant shall post a bond, letter of credit, or cash escrow in favor of the Town, in an amount determined by the Town's engineer to reasonably cover the cost of restoring all affected town roads, bridges, and culverts to their pre-construction condition or better. It will also cover projected costs of calcium chloride dust control throughout the entire period of construction, and additionally for a period of 12 months following completion of construction. This amount shall not be a nominal or token sum and shall be based on the engineer's estimate under Section 4, not on a fixed cap set in advance of that estimate. If the applicant disputes the engineer's estimate, the applicant may, at its own expense, obtain a second estimate from an independent engineer mutually acceptable to the Town and the applicant; if the two engineers cannot agree, the Town and applicant shall jointly select a third engineer whose determination is final and binding. For a project whose construction traffic extends beyond one construction season, the Town's engineer shall review the amount of security at least annually

and adjust it to reflect any change in the haul route, schedule, or scope of the project.

5.2. Form. Security shall be in a form approved by the Town Attorney and shall remain in effect until the Town has certified, under Section 8, that all restoration obligations have been satisfied.

5.3. Supplementation. If actual or anticipated repair costs exceed the amount of security posted, the Town may require the developer to supplement the security before construction traffic continues.

Section 6. Haul Routes and Weight Limits

6.1. Construction traffic associated with a large-scale energy development shall be confined to the haul route(s) designated in the Road Use Agreement. Use of any other town road for such traffic is a violation of this ordinance.

6.2. The Town Board may post seasonal weight limits on town roads under Wis. Stat. ch. 349 and may require the developer to obtain an overweight/oversize vehicle permit for any load exceeding legal limits before it may use a town road.

6.3. The Town Board may prohibit construction traffic on town roads during periods of seasonal weight restriction (e.g., spring thaw) except by written waiver.

Section 7. Insurance and Indemnification

7.1. The developer shall maintain commercial general liability and automobile liability insurance, in amounts and forms approved by the Town, naming the Town as an additional insured, for the duration of construction traffic and until restoration is certified complete.

7.2. The developer shall indemnify, defend, and hold harmless the Town, its officers, employees, and agents from any claim, damage, or liability arising from construction traffic or work performed under a permit issued pursuant to this ordinance.

Section 8. Inspection and Restoration

8.1. Inspections. The Town, or its designated engineer, may inspect any town road on a designated haul route at any time during construction, without prior notice, to assess condition and compliance with this ordinance.

8.2. Restoration standard. Upon substantial completion of construction traffic on a given haul route segment, the developer shall restore all affected town roads, bridges, and culverts to their pre-construction condition or better, using materials and methods meeting current Town road standards, at the developer's sole expense.

8.3. Deadline. Restoration shall be completed no later than one hundred eighty (180) days after substantial completion of construction traffic on the applicable haul route segment, unless the Town Board grants a written extension for good cause. If the 180-day period would otherwise expire between November 1 and April 1, the developer shall complete permanent, in-kind restoration no later than June 1 following the close of that period, and shall in the interim complete any temporary repairs the Town's engineer determines are necessary to keep the affected town road safe and passable.

8.4. Certification and release of security. Security posted under Section 5 shall not be released, in whole or in part, until the Town's engineer has certified in writing that restoration is complete and satisfactory.

Section 9. Enforcement

9.1. A violation of this ordinance is subject to the general forfeiture and enforcement provisions including the Town's authority to close a town road to further construction traffic until the violation is corrected. A violation of this ordinance is, consistent with the Town's general forfeiture authority under Wis. Stat. § 66.0113, subject to a forfeiture of not less than $500 nor more than $5,000 for each violation, and each day a violation continues is a separate offense.

9.2. The Town may draw on security posted under Section 5 to complete restoration work if the developer fails to do so within the deadline set in Section 8.3, without waiving any other remedy available to the Town.

Section 10. Severability

If any section, clause, or provision of this ordinance is held invalid, the remainder shall continue in full force and effect.

The bond formula in Section 5 is left to the engineer's estimate rather than a fixed dollar figure, because a cap set today may be far too low once your engineer has surveyed your specific roads and bridges. Consider asking your town's engineer for a per-mile or per-turbine planning estimate now, so your board has a benchmark before any application arrives.

Adopted by the Town Board of the Town of Eau Pleine, Marathon County, Wisconsin, this 17th day of November, 2026.

Town Chair: Mark Radke

Town Clerk: Heather Kops

PART II

Model Road Use Agreement

Between the Town of Eau Pleine, Marathon County, Wisconsin, and a Large-Scale Energy Development Company

This Road Use Agreement ("Agreement") is entered into as of _____, 20____, by and between the Town of Eau Pleine, Marathon County, Wisconsin, a Wisconsin town ("Town"), and _____, a _____ ("Developer"), together the "Parties."

Recitals

- Developer is constructing, or intends to construct, a large-scale energy development known as _____ ("Project") within or near the Town.
- Construction of the Project will require the use of town roads for the transport of equipment, materials, and personnel.
- The Parties wish to establish the terms under which Developer may use town roads, and to protect the Town's roads, bridges, and culverts from damage caused by Project-related traffic.
- This Agreement is entered into as a condition of the Large-Scale Energy Development Road Permit issued to Developer under Section 3.2 of the Town's Large-Scale Energy Development Road Protection ordinance, and satisfies that ordinance's Road Use Agreement requirement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. Designated Haul Routes

1.1. Developer shall confine all Project-related construction traffic to the town roads identified in Exhibit A (the "Haul Route"). Developer shall not use any other town road for Project-related traffic without the Town's prior written consent.

1.2. Developer shall install and maintain any traffic control, signage, or temporary road improvements, including application of calcium chloride dust control, the Town reasonably requires along the Haul Route for the duration of construction.

2. Weight Limits and Permits

2.1. Developer shall comply with all posted weight limits on the Haul Route, including seasonal weight restrictions imposed under Wis. Stat. ch. 349, and shall obtain any required overweight or oversize vehicle permits before moving a non-conforming load.

2.2. Developer shall not conduct heavy-load construction traffic on the Haul Route during a posted seasonal weight restriction period without the Town's prior written waiver.

3. Pre-Construction Survey

3.1. Before any construction traffic begins, Developer shall commission, at its own expense, an

independent engineering survey of the pre-construction condition of every town road, bridge, and culvert on the Haul Route, including photographic and video documentation. The survey shall be prepared by an engineer acceptable to the Town and delivered to the Town at least thirty (30) days before construction traffic begins.

3.2. The Town, or its designated representative, may participate in the survey and note any disagreement with its findings in writing. The agreed or Town-noted baseline condition shall govern any dispute over restoration under Section 6.

4. Financial Security

4.1. Amount. Before construction traffic begins, Developer shall post security in favor of the Town in an amount determined by the Town's engineer, based on the survey under Section 3, to be reasonably necessary to restore the Haul Route to its pre-construction condition or better [if the Parties negotiate a stated floor, add: ", but not less than $_____"].

4.2. Form. Security shall be in the form of [a surety bond / an irrevocable letter of credit / a cash escrow] issued by an institution acceptable to the Town, and shall remain in effect until released under Section 6.4.

4.3. Supplementation. If, at any time during construction, the Town's engineer reasonably determines that anticipated repair costs exceed the security posted, Developer shall supplement the security within fifteen (15) days of written notice.

4.4. Town's Costs. Developer shall reimburse the Town for its reasonable actual costs, including engineering and legal fees, incurred in negotiating, administering, and enforcing this Agreement, whether by direct reimbursement or through an escrow or reimbursement account established at the Town's request.

5. Inspections During Construction

5.1. The Town may inspect the Haul Route at any time during construction, with or without notice to Developer, to monitor road condition and compliance with this Agreement.

5.2. The Parties shall conduct a joint inspection of the Haul Route not less than once every 5 working days during active construction traffic, and shall keep a written record of any damage observed.

5.3. If the Town's engineer determines that ongoing traffic is causing damage requiring immediate attention, the Town may direct Developer to suspend traffic on the affected segment until interim repairs are made or an alternate route is arranged.

6. Restoration

6.1. Standard. Developer shall restore all town roads, bridges, and culverts on the Haul Route to their pre-construction condition or better, as documented under Section 3, using materials and construction methods meeting current Town road standards.

6.2. Timing. Restoration of a given Haul Route segment shall be substantially complete no later than one hundred eighty (180) days after Developer's last use of that segment for heavy construction traffic, unless

the Parties agree in writing to a different deadline. If that 180-day period would otherwise expire between November 1 and April 1, Developer shall complete permanent, in-kind restoration no later than June 1 following the close of that period, and shall in the interim complete any temporary repairs the Town's engineer determines are necessary to keep the affected segment safe and passable.

6.3. Post-construction survey. Upon completion of restoration, the Parties shall jointly conduct a post-construction survey of the Haul Route, comparing conditions to the baseline survey under Section 3.

6.4. Release of security. The Town shall release security posted under Section 4 only after its engineer certifies in writing that restoration is complete and satisfactory. The Town may release security in segments as individual Haul Route sections are certified complete.

7. Insurance and Indemnification

7.1. Developer shall maintain commercial general liability insurance of not less than $5,000,000 per occurrence and automobile liability insurance of not less than $5,000,000combined single limit, naming the Town as an additional insured, throughout the term of this Agreement. [Consider a floor of not less than $5,000,000 per occurrence for general liability and $5,000,000 combined single limit for automobile liability, given the exposure to town bridges and culverts; confirm with the Town's insurance advisor.] Developer's insurer shall provide the Town with at least thirty (30) days' advance written notice of cancellation or material reduction in coverage.

7.2. Developer shall indemnify, defend, and hold harmless the Town and its officers, employees, and agents from and against any claims, damages, losses, and expenses, including reasonable attorney fees, arising out of or related to Developer's use of town roads under this Agreement, except to the extent caused by the Town's own negligence. Nothing in this Section waives or modifies any notice-of-claim or other procedural requirement applicable to the Town under Wis. Stat. § 893.80 or other applicable law.

8. Default and Remedies

8.1. If Developer fails to complete restoration by the deadline in Section 6.2, or otherwise materially breaches this Agreement, the Town may, after written notice and a thirty (30) day opportunity to cure (or such shorter period as is reasonable if the breach poses an immediate risk to public safety), draw on the security posted under Section 4 to complete the necessary work, and may restrict or suspend Developer's further use of town roads until the breach is cured.

8.2. The Town's rights under this Agreement are in addition to, and not in place of, any rights or remedies available under the Town's ordinances or applicable law.

8.3. Developer shall reimburse the Town for its reasonable costs, including reasonable attorneys' fees and engineering fees, incurred in enforcing this Agreement against Developer, whether or not litigation is commenced.

9. Term

This Agreement takes effect on the date first written above and continues until all restoration obligations under Section 6 have been satisfied and all security has been released under Section 6.4, unless earlier terminated by mutual written agreement of the Parties. The Parties acknowledge that this

Agreement addresses construction-related road use only. Developer shall not use town roads for decommissioning of the Project without first obtaining a new permit and executing a new road use agreement under the Town's ordinance, on terms reflecting the Town's roads and this Agreement's experience at that time.

10. General Provisions

10.1. Assignment. Developer may not assign this Agreement without the Town's prior written consent, which shall not be unreasonably withheld if the assignee agrees in writing to assume all of Developer's obligations under this Agreement.

10.2. Governing law. This Agreement is governed by the laws of the State of Wisconsin.

10.3. Entire agreement. This Agreement, including its exhibits, is the entire agreement between the Parties regarding the subject matter of this Agreement and supersedes any prior discussions or understandings.

10.4. Amendment. This Agreement may be amended only in writing signed by both Parties.

10.5. Notices. Notices under this Agreement shall be in writing and delivered to the addresses set forth below, or such other address as a Party designates in writing.

10.6. Memorandum of Agreement. At the Town's request, the Parties shall execute, and Developer shall record at its own expense, a memorandum of this Agreement in the office of the Register of Deeds against Developer's leasehold or other real property interests in the Project, so that this Agreement's obligations are of record and binding on Developer's successors and assigns.

> **Drafting note**
>
> *Leave the security amount in Section 4.1 blank until your engineer has surveyed the specific haul route — a number pulled from a template or from another town's agreement may not reflect what it actually costs to rebuild your roads. The Neosho County, Kansas case in the accompanying briefing is a cautionary example of a bonded agreement that still fell short.*

Signatures

Town Chair, Town of Eau Pleine, Marathon County, Wisconsin:

_____

Date:_____

Authorized Representative, Developer:

_____

Date:_____

Exhibit A

Haul Route Map and Road/Bridge/Culvert Inventory (attach map and engineering survey referenced in Section 3)