

CODE OF CONDUCT AGREEMENT

WHEREAS, the State of New York is committed to fostering and encouraging the use and development of renewable energy sources in order to protect the environment and provide long-term, sustainable benefits to the State and its residents;

WHEREAS, the New York State Office of the Attorney General (“NYAG”) has received numerous inquiries regarding Wind Farm Development from citizens, groups and public officials alleging improper relationships between Wind Companies and local officials; and

WHEREAS, the NYAG seeks to ensure that wind farm development is done in a transparent manner, in which municipal officials and companies are accountable, and wind farm development business practices are established and maintained so as to avoid conflicts of interest, or the appearance thereof; and

WHEREAS, in 2011, New York State enacted a comprehensive energy bill revising Article 10 of the New York State Public Service Law (Siting of Major Electric Generating Facilities) and, in 2012, the State Siting Board enacted new regulations governing the development of power plant projects larger than 25 megawatts (MW); and

WHEREAS, certain local action requirements remain subject to local approval processes outside of the Article 10 process and may or may not also require local agency compliance with SEQRA, including but not limited to local approvals required for the subdivision of land; extensions of special improvement or benefit assessment districts; tax assessment or payment in lieu of taxes determinations; consents for the extension of utility franchises to provide station power, private water or consumption of water from a municipal supply; the discharge of sewage or storm water into a municipal wastewater treatment system; the setting an payment of hook-in fees, water rates, sewer rents and similar capital and consumption charges; industrial development agency leases; the overt grant of property rights or other privileges that would require an affirmative action by a municipality and other similar approvals; and

WHEREAS, the regulation of towers used to monitor meteorological conditions is not governed by Article 10 and permitting, if required, may be under local codes; therefore

To foster economic development and renewable energy, and promote public integrity in Wind Farm Development, the NYAG has created the following Code of Conduct Agreement.

CODE OF CONDUCT FOR WIND FARM DEVELOPMENT

The below-signed Wind Company voluntarily agrees to implement the following Code of Conduct Agreement, and the other terms herein, pursuant to this contract between the parties, to govern future conduct in connection with the Wind Company’s Wind Farm Development in New York State.

Wind Companies with wind farm development projects that are excluded from the Article 10 siting process pursuant to Public Service Law §§ 162(4)(b), (4)(c) or (4)(d) and have not voluntarily elected to become subject to its provisions pursuant to § 162(5), shall remain subject to the terms of the 2009 Code of Conduct for those wind farm development projects.

I. CONFLICTS OF INTEREST - PROHIBITED

1. **General Standard:** The Wind Company shall not knowingly, directly or indirectly offer to, or confer on, a Municipal Officer, his or her Relative, or any third party on behalf of such Municipal Officer, during the Municipal Officer's public service or for a period of two years after termination of such Municipal Officer's service, any benefit, including gifts, employment, compensation for services, or honorariums exceeding more than \$15 in aggregate in any one year period, unless such Municipal Officer recuses him- or herself from any official duties in connection with the Wind Company's Wind Farm Development. Accordingly, any compensation provided by the Wind Company to such Municipal Officer, his or her Relative, or third party on behalf of such Municipal Officer or Relative, shall be contingent on such prior recusal and the Wind Company shall disclose in writing to the NYAG any agreement that is contingent on such recusal. For the purpose of this paragraph only, "official duties in connection with the Wind Company's Wind Farm Development" do not include the non-discretionary duties of a Town Clerk or Tax Assessor.
2. **No Contingent Compensation:** The Wind Company shall not knowingly provide or agree to provide compensation to any Municipal Officer or his or her Relative that is contingent upon such Municipal Officer's appearance before, or action as a member of, any Municipal agency.
3. **Restrictions on Easements/Leases with Municipal Officers:** The Wind Company shall not knowingly enter into any agreement with any Municipal Officer that requires the Municipal Officer to support or cooperate with the Wind Company's Wind Farm Development in any manner that relates to the Municipal Officer's official duties.
4. **Confidential Information:** The Wind Company shall not knowingly solicit, use, or receive Confidential Information acquired by a Municipal Officer in the course of his or her official duties.
5. **Restrictions on Legal Representation:** The Wind Company shall not agree to pay legal fees for any Municipal Officer or Municipality in connection with any investigation by any law enforcement agency.

II. PUBLIC DISCLOSURE

For Wind Companies subject to the Article 10 siting process, the following disclosure requirements shall apply.

For any financial interest held by a Municipal Officer or his or her Relative in any property identified for the Wind Company's Wind Farm Development prior to execution of this Code of Conduct Agreement, the Wind Company shall disclose the full name of the Municipal Officer or his or her Relative and the nature and scope of the financial interest in a chart submitted to the NYAG and displayed on a website, or on a link from a website, hosted by the Wind Company. The submission shall include all such instances of which the Wind Company has knowledge, or through the exercise of reasonable diligence should know that any municipal officer or his or her Relative has a financial interest in the property. The format of the submission shall be subject to the approval of the NYAG. Such disclosures shall be made within 60 days of execution of the Code of Conduct Agreement.

For events transpiring after the date this Code of Conduct Agreement is signed, the Wind Company shall make the disclosures as set forth in this section.

1. Prior to pursuing, either formally or informally, any approvals before any Municipal Board, including a Town Board, and/or submitting a Public Involvement Plan ("PIP") to the Article 10 Siting Board, whichever is sooner (hereinafter the "Disclosure Date"), the Wind Company shall make public disclosures as defined in paragraph 3 below (hereinafter the "Disclosure List"), in the following manner:
 - a. Submit the Disclosure List in writing for public inspection to the Clerk of such Municipality.
 - b. Publish Notice of the Disclosure List in a newspaper having a general circulation in such Municipality.
 - c. Display the Disclosure List on a website, or on a link from a website, hosted by the Wind Company.
 - d. Submit the Disclosure List in writing to the Office of the Attorney General.
2. All easements and leases relating to Wind Farm Development shall be in writing (Wind Agreements"). Prior to the Disclosure date, the Wind Company shall duly file, record, and index, in the Office of the County Clerk for the county in which the subject property is located, an abstract or memorandum of each such agreement, as known at the time, or the agreement itself, which at a minimum shall include the categories identified below in the "Disclosure List."

3. **Disclosure List.** The Wind Company shall maintain a list of any Wind Agreements it has with any Municipal Officers and his or her Relatives (“the Disclosure List”). The Disclosure List must be updated or modified if a Wind Agreement is signed with any Municipal Officer or Relative after the initial Disclosure Date. The updated Disclosure List is to be displayed on a website, or a link from a website, hosted by the Wind Company. The Disclosure List shall include:
- b. The full names and addresses of the parties to the Wind Agreement, and identification of the party that is a Municipal Officer or related to a Municipal Officer and, if the latter, the relationship between the Municipal Officer and the Party to the Wind Agreements;
 - c. A full description of the property subject to such Wind Agreements;
 - d. The essential terms of each such Wind Agreement, including the rights conveyed by the property owner and, if the property owner is a Municipal Officer or his or her Relative, which of the following ranges encompasses the actual monetary consideration offered by the Wind Company or, if the actual monetary consideration is not fixed, the Wind Company’s good faith estimate of the projected annual monetary consideration, which estimate may be accompanied by a description of any factors or contingencies that could affect the actual monetary compensation:
 - i. Under \$5, 000
 - ii. \$5,000 to under \$20,000
 - iii. \$20,000 to under \$60,000
 - iv. \$60,000 to under \$100,000
 - v. \$100,000 to under \$250,000
 - vi. \$250,000 to under \$500,000
 - vii. \$500,000 to under \$1,000,000
 - viii. \$1,000,000 or higher.

III. EDUCATION AND TRAINING

1. Prior to the Disclosure Date, the Wind Company shall provide a copy of this Code of Conduct Agreement and a written statement of its intention to comply with this Code of Conduct Agreement to each government or Municipality in which the Wind Farm Development Project is located. If the Disclosure Date for a Wind Farm Development Project precedes the execution date of this Code of Conduct, then the Wind Company shall, within one week of execution, provide a copy of the Code of Conduct and a written statement of its intention to comply with the Agreement to each government or Municipality in which the Wind Farm Development Project is located.
2. Within one week of the execution of this Code of Conduct Agreement, the Wind Company shall publish this Code of Conduct Agreement on a website, or on a link from a website, hosted by the Company and on any internal computer network (intranet) site that can be accessed only by its officers or employees (if the Wind Company maintains such an intranet site), distribute copies of this Code of Conduct Agreement to its officers and employees and post copies in its main office, any office in New York State, and any other office where the Wind Company has personnel involved in Wind Farm Development in New York State.
3. Within ninety days after the execution of this Code of Conduct Agreement, the Wind Company shall conduct a seminar for all officers, employees and project developers actively working in or on projects related to Wind Development in the State of New York about identifying and preventing conflicts of interest when working with Municipal Officers.
4. Within thirty days of the seminar, the Wind Company shall obtain acknowledgement forms from each of its officers and employees actively working in or on projects related to Wind Farm Development in New York State, certifying that they have: (i) attended the seminar required by paragraph 3 of this section and (ii) have read and agree to comply with this Code of Conduct Agreement. If, due to exceptional circumstances, an officer or employee is unable to attend the seminar required in paragraph 3 of this section, alternative arrangements should be made as soon as is practical for such officer or employee to receive the training described in paragraph 3 and sign the acknowledgement form. The Wind Company shall discontinue employment on Wind Farm Development in the State of New York of any such officer or employee who fails to attend the seminar or its equivalent, or sign the acknowledgement form.
5. The Wind Company shall distribute to all its officers and employees and post prominently in all its work locations in New York State, as well as on its website and intranet system (if the Wind Company maintains such an intranet system), instructions that any misconduct, violation of the law, or corruption of any sort in connection with Wind Farm Development or any violation of this Code of Conduct Agreement shall be promptly reported to the NYAG.

6. Upon discovery by the Wind Company that a Municipal Officer or his or her Relative has entered into a lease or easement with the Wind Company, the Wind Company shall (i) notify the attorney for the Municipality and (ii) recommend to such Municipal Officer that he or she consult with the Municipality's attorney concerning his or her legal obligations, including any obligation to recuse him- or herself.

IV. ENFORCEMENT AND COMPLIANCE

1. Should the Wind Company discover any conduct in violation of the provisions of this Code of Conduct Agreement, the Wind Company shall promptly disclose such information to the NYAG. The Wind Company shall fully cooperate with the NYAG in any investigation arising out of such violation.
2. With respect to any complaint received by the NYAG, the NYAG shall advise the Wind Company of the complaint and give the Wind Company a reasonable opportunity to submit to the NYAG information relevant to the complaint. After providing such opportunity, the NYAG shall make a written determination, based on a reasonable investigation, including any information provided by the Wind Company, whether a preponderance of the evidence establishes that the Wind Company has violated this Code of Conduct Agreement in any material respect. In the event that a violation of any provision set forth in this Code of Conduct Agreement is found, the Wind Company may be subject to penalties of up to \$50,000 for the first violation and up to \$100,000 for any subsequent violation. In establishing a penalty amount under this Code of Conduct Agreement, the NYAG shall consider the relative severity of, and the relative harm to public integrity occasioned by, such violation and shall provide written findings in support of such conclusions. Any payment shall be made by certified check made payable to the "State of New York." The Wind Company shall have the right to challenge in court the NYAG's finding of a violation of this Code of Conduct Agreement and determination of the penalty amount, on the grounds that such determinations are not supported by a preponderance of the evidence. The Wind Company shall pay any assessed penalties to a reserve fund of the State of New York pending the resolution of any such court challenge. In the event that the NYAG's determination is overturned upon judicial review, the penalty payment (including any interest accrued) shall be returned to the Wind Company.
3. The Code of Conduct Agreement shall be applicable during all phases of wind farm development including preliminary scoping, siting, approval and construction, and shall automatically terminate one year after project completion. A project will be deemed completed when the wind farm development project is fully operational. If the Wind Company proposes any future capacity increases for the wind farm development project, then the Wind Company shall reanimate and update the previously signed Code of Conduct.

V. DEFINITIONS

Unless otherwise stated or unless the context otherwise requires, when used in this Code:

1. "Confidential Information" means:
 - a. information that reveals an imminent or present determination, decision, report, audit or recommendation by the State, an agency of the State, a Municipality or Municipal Officer that is related to Wind Farm Development and that is scheduled, planned or required to be announced or made available to the public in the future;
 - b. information derived from communications as to which the Municipality could assert a claim of privilege under section 4503 of the Civil Practice Law and Rules;
 - c. trade secrets submitted to the Municipality by a commercial enterprise or derived from information obtained from a commercial enterprise, which if disclosed could cause substantial injury to the competitive position of the subject enterprise;
 - d. information compiled for law enforcement purposes; and
 - e. any other information deemed confidential by a law, rule or code to which the Municipal Officer was subjected.
2. For the purpose of Paragraphs III.3 and III.4 above, "employee" or "employees," when used in reference to a Wind Company, shall mean the Wind Company's employees who are involved in Wind Farm Development in New York State, except those who perform solely administrative/clerical, accounting, construction or maintenance functions.
3. "Disclosure Date" means the date, prior to the Wind Company pursuing, either formally or informally, any approvals before any Municipal Board, including a Town Board, and/or submitting a Public Involvement Plan ("PIP") to the Article 10 Siting Board, whichever is sooner, when the Wind Company publishes its Disclosure List.
4. "Disclosure List" means a list of any Wind Agreements that a Wind Company has with Municipal Officers and/or his or her Relatives. The Disclosure List shall be updated whenever a Wind Agreement is signed with a Municipal Officer or Municipal Officer's Relative, even when this occurs after the Disclosure Date.

5. “Gift” means anything having more than a nominal value, whether in the form of money, service, loan, investment, travel, entertainment, hospitality, or in any other form, and includes an offer to a charitable organization at the designation of the Municipal Officer or at the designation of his or her Relative. “Gift” does not include educational materials provided to Municipal Officers by the Wind Company in connection with Wind Farm Development in New York State.
6. “Honorarium” means any payment made in consideration for any speech given at a public or private conference, convention, meeting, social event, meal or like gathering.
7. “Identified” means that the Wind Company has begun to pursue the purchase or lease of, or an easement on, real property, in which the Wind Company knows, or through the exercise of reasonable diligence should have known, that a Municipal Official or his or her Relative has a financial interest in the property.
8. “Knowingly,” “knowing” or “has knowledge” means that a person:
 - a. has actual knowledge of a claim or information;
 - b. acts in deliberate ignorance of the truth or falsity of a claim or information; or
 - c. acts in reckless disregard of the truth or falsity of a claim or information.
9. “Article 10 of the New York State Public Service Law (Siting of Major Electric Utility Transmission Facilities)” references Public Service Law §§ 160-173, also cited as “Power NY Act of 2011,” enacted August 4, 2011.
10. “Municipality” means a county, city, town, village, public authority, school district, or any other special or improvement district, but shall have no application to a city having a population of one million or more, or to a county, school district, or other public agency or facility therein.
11. “Municipal Officer” means any officer or employee of a Municipality in the State of New York, whether paid or unpaid and includes, without limitation, members of any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau, or committee of the municipality. “Municipal Officer” also includes any entity that is directly or indirectly controlled by, or is under common control with, such officer or employee. “Municipal Officer” shall not include:

- a. a judge, justice, officer, or employee of the unified court system;
 - b. a volunteer firefighter or civil defense volunteer, except a fire chief or assistant fire chief; or
 - c. a member of an advisory board of the municipality if, but only if, the advisory board has no authority to implement its recommendations or to act on behalf of the municipality or to restrict authority of the municipality to act.
12. "Officer" or "Officers," when used in reference to a Wind Company, shall mean the Wind Company's officers who are involved in Wind Farm Development in the State of New York, except those who perform solely administrative/clerical, accounting, construction or maintenance functions.
 13. For the purpose of paragraphs I.1 and I.3 above, "relative" means a spouse or domestic partner, child, step-child, or parent of the Municipal Officer, or a person claimed as a dependent on the Municipal Officer's latest individual state income tax return. For the purpose of the remainder of this Code of Conduct Agreement, "relative" also includes sibling.
 14. "Wind Company" means the signatory of this Code of Conduct Agreement as well as its officers, directors, employees, subsidiaries and any affiliates over which it exercises control.
 15. "Wind Farm Development" means any stage of past, present or future development or siting of wind farms, wind turbines, wind power and related facilities or wind power projects in the State of New York, whether considered, planned, attempted or completed, including but not limited to permitting, licensing, construction and energy production. "Wind Farm Development" shall not include past, present, or future development or siting of so-called "community energy" projects involving wind turbines and related facilities that are interconnected to utility distribution systems (less than 50 kV), either directly or through a retail customer meter.
 14. "Financial interest in any property" shall mean the ability to claim full or partial legal ownership of the property and/or a future or contingent interest in the property including, without limitation, fee ownership, easement and option rights and loans or other interests secured by the property.

VI. FORMS

The following forms shall be used to comply with the disclosure requirements in Sections II and III above.

1. Disclosure under paragraph II.1.a., above, shall be made with the following form:

**PROPERTY INTEREST OF MUNICIPAL OFFICER
FOR FILING WITH CLERK OF MUNICIPAL ENTITY**

Please take notice that a Municipal Officer has a financial interest in a property identified for Wind Farm Development by the Wind Company as set forth below:

Name of Municipal Official:

Name of Municipality and Position that Municipal Official Holds:

Name of Wind Company:

Address of Wind Company:

Description of Property:

Street Address:

Town/City:

Section/Block/Lot #:

2. Disclosure under paragraph II.1.b. and c. above shall be made with the following form:

PUBLISHING ABSTRACT

**NOTICE OF CONVEYANCE OF PROPERTY INTEREST
BY MUNICIPAL OFFICER TO WIND COMPANY**

Please be advised that [Name of Municipal Official] who holds that position of _____ with the _____ of _____, New York, has conveyed a _____ to [Name of Wind Company] for property with the following street address and section/block/lot number in the _____ of _____, New York. An abstract with more information concerning the transfer is available with the _____ Clerk of the _____ of _____.

3. Disclosure under paragraph III.6, above, shall be made with the following form:

NOTICE TO MUNICIPAL OFFICER

Dear Municipal Official:

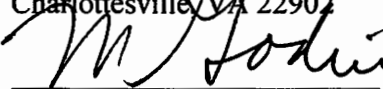
It has come to our attention that either you and/or one or more of your relatives may be a Municipal Officer or Employee that has transferred or otherwise conveyed an interest in real property to a wind company.

We strongly recommend that you contact your municipality's attorney to discuss possible obligations, including, but not limited to the obligation under certain laws to recuse yourself from certain matters involving that wind company.

DATED: New York, New York
4/29/16, 2016

Heritage Wind, LLC
By: Apex GCL, its Sole Member
By: Apex Clean Energy Holdings, LLC,
its Sole Member
Court Square Building
310 4th Street NE, #200
Charlottesville, VA 22902

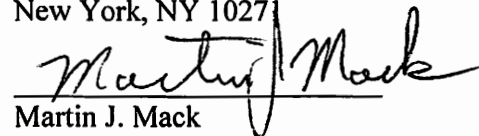
By:



Mark Goodwin
President

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271

By:



Martin J. Mack
Executive Deputy Attorney General
for Regional Affairs