

## **Appendix A: Handout Suitable for Developers - 239 Review Guiding Principles**

We have summarized the material from this Guide that we believe developers may find most useful. Please feel free to share as you see fit.

# Handout Suitable for Developers - 239 Review Guiding Principles

**Note to Applicants:** This handout is meant to be a summary of the key points made in Tompkins County's 239 Review Guide, September 2018. Any documents mentioned below that the applicant wishes to submit should be shared with the town, village or city and that municipality would then submit it to the County for review under GML §239. All the documents referenced below may be found at <http://tompkinscountyny.gov/planning>. If you cannot locate a document, please contact County Planning at 607-274-5560

## Comprehensive Plan Principles and GML §239 Review

The [Tompkins County Comprehensive Plan](#) seeks to encourage management and preservation of our resources for the equitable benefit of current and future generations. County Planning uses the principles and policies of the 2015 Comprehensive Plan as the underlying basis for its review of development proposals.

## Key Guidelines Used to Review GML §239 Proposals <sup>1</sup>

All the documents referenced below may be found at <http://tompkinscountyny.gov/planning>. If you cannot locate a document, please contact County Planning at 607-274-5560.

### A) Common Topics: Potential Negative Impacts

Below are the main aspects of proposals that have historically been deemed to have potential negative inter-community or county-wide impacts and have resulted in recommendations to modify or disapprove a project.

1. **Wetlands:** For projects that would disturb land within a State or Federal mapped wetland, County Planning would likely recommend that the municipality require applicants to redesign the project so as not to disturb the wetland or, if that is not possible, to **document** that the functions of the wetland were **considered** and elaborate on how their proposal will not negatively impact those wetland functions. These modifications are recommended to help preserve and protect water quality and other wetland functions.

In addition to State and Federal mapped wetlands, there are other sources of information about the existence and extent of wetlands on particular sites. The Cayuga Lake Watershed Network (CLWN) has generated a map of wetlands throughout Tompkins County based on information that is more current and more sophisticated than the original DEC and National Wetland Inventory maps. In addition, some project developers hire professionals to delineate the extent of wetlands on their site. State (DEC) and Federal (National Wetland Inventory) wetlands, as well as CLWN wetlands, can be viewed and mapped using the online mapping tool, the [Tompkins County Natural Resource Inventory](#).

2. **Stream Buffers:** For projects that would disturb land within 100' (from edge of bank) of a perennial stream, or 50' (from stream centerline) of an intermittent stream<sup>2</sup>, County Planning would review the project's potential impacts on water quality.

---

<sup>1</sup> This is not an exhaustive list of topic areas or the exact language that could be used in review of projects as each development proposal requires its own unique review. County Planning will be guided by all the Principles and Policies in the Tompkins County Comprehensive Plan (2015), as well as current research on specific topic areas, as supported by County Planning's topical plans and strategies. The resources referenced throughout this section are available on the County Planning [website](#).

<sup>2</sup> Perennial and intermittent streams, and their recommended buffers, on a specific site in Tompkins County can be mapped using the [Tompkins County Natural Resource Inventory](#).

For communities that have not established stream buffer regulations that protect water quality, County Planning would likely recommend that the municipality require applicants to redesign the project so as not to disturb the 100' or 50' buffer and vegetate that buffer if it is not currently vegetated (Reference: [Enhancing Water Resources in Tompkins Co: Benefits of Riparian Areas & Stream Buffers](#)).

In locations where communities rely on municipal storm sewer systems, County Planning would likely recommend that the municipality require applicants to **document** how the project would impact water quality and quantity through the use of that system. These modifications are recommended to help preserve and protect water quality.

3. **Floodplain Development:** For projects that would disturb land within the 100-year floodplain, County Planning would likely recommend that the municipality require applicants to eliminate the need for any building or fill within the floodplain or, if that is not possible, to prepare a hydraulic analysis of the impact of localized flooding both upstream and downstream of the project (Reference: [Tompkins County Hazard Mitigation Plan \(2013\)](#)). These modifications are recommended to help reduce flood risk to property up and downstream of the proposed site. 100-year floodplains on a specific site in Tompkins County can be mapped by using the [Tompkins County Natural Resource Inventory](#) and selecting the "Flood Zones" layer.
4. **Unique Natural Areas:** For projects that would disturb land within a designated Unique Natural Area (UNA), County Planning would likely recommend that the municipality require applicants to redesign the project so as to not disturb the UNA or, if that is not possible, to **document** that the factors contributing to the designation of the UNA were **considered** and elaborate on how their proposal will not negatively impact the resource (Reference: [Tompkins County Environment Management Council \(EMC\) Unique Natural Area \(UNA\) Inventory](#)). These modifications are recommended to help preserve and protect the distinct properties of the UNAs. A countywide map of UNAs may be found [here](#).<sup>3</sup>
5. **Public Health:** For projects with Onsite Wastewater Treatment Systems (OWTS), County Planning may consult with the Tompkins County Health Department (Reference: [OWTS \(Sewage\) Systems: Procedure for Obtaining a Permit](#)) to identify any regulatory issues. Should any issues be identified, County Planning would likely recommend that the municipality condition its approval upon the applicant receiving appropriate permits from the Tompkins County Health Department. These modifications are recommended to ensure the protection of public health and safety and of water quality.
6. **State/County Roads:** For projects with curb cuts on any County or State road, County Planning would likely consult with the Tompkins County Highway Department or the New York State Department of Transportation to identify any concerns. Should any issues be identified, County Planning would likely recommend that the municipality require applicants to redesign the project to address site-specific concerns. These modifications are recommended to ensure protection of public health and safety and to safeguard the functions of state and county highways.
7. **Traffic Impacts:** For projects expected to generate more than 1,000 trips per day based on traffic generating estimates from the Institute of Transportation Engineers' *Trip Generation Manual*, County Planning would likely recommend that the municipality require applicants to conduct a Traffic Impact Analysis. However, in places where there are existing traffic concerns County Planning may recommend a traffic study for smaller projects. These modifications are recommended to ensure a safe and efficient transportation network.

---

<sup>3</sup> Background information on the UNA Inventory is available at the noted links; full details of UNAs are available in the full inventory documents available for review at County Planning, municipal offices and local libraries.

8. **Sidewalk Access:** For projects that are located in, or adjacent to, areas with a sidewalk network, County Planning would likely recommend that the municipality require applicants to provide safe connections to the sidewalk network. These modifications are recommended to help promote safe, healthy and active communities.
9. **Communication Towers:** For communication tower projects, County Planning will consult with the Tompkins County Department of Emergency Response (DOER) to ensure the proposed use will not conflict with the County's public safety communications system. Should conflicts be identified, County Planning would likely recommend that the municipality require applicants to work with DOER to address any conflict. These modifications are recommended to help ensure that public safety communications systems are maintained.
10. **Building Energy Use:** For residential projects of more than 10 units or for any non-residential project, County Planning would likely recommend that the municipality require applicants to consider ways to reduce energy demand and/or reduce the use of fossil fuels. For municipalities that have not established their own process for addressing the energy impacts of proposed developments, the County would likely recommend that the municipality require applicants to use the [Tompkins County Energy Recommendations for New Construction \(2018\)](#)<sup>4</sup> to **document** that each of the energy items were **considered** and elaborate on why they chose to incorporate or not incorporate the recommendations. These modifications are recommended to help reduce greenhouse gas emissions.

The County has a new program which offers free energy evaluation and assistance to help business owners save energy in new construction and renovation projects. Please contact County Planning if such assistance is desired.

11. **Large-Scale Renewable Energy Systems:** For large-scale solar and wind energy systems, County Planning has prepared the [Tools to Promote and Regulate the Deployment of Renewable Energy Systems \(2017\)](#)<sup>5</sup> to help promote the development of renewable energy sources in the County while addressing their potential negative impacts. For municipalities that have not developed local renewable energy regulations that address the most common impacts of renewable energy developments, the County would review the proposal using the [Tools](#) document and would likely recommend that the municipality require the applicant to conform to its recommendations. These modifications are recommended to help promote development of local renewable energy systems while addressing concerns with quality-of-life issues related to renewable energy development.
12. **Distinctive Views:** For residential projects of more than 10 units, non-residential projects covering more than 10,000 square feet of land, or projects taller than 50' and that are located within the one-mile viewshed of a Distinctive View, County Planning would review the project for potential impacts on that Distinctive View. The [Tompkins County Scenic Resources Inventory](#) identified 25 Distinctive Views in the County. Fourteen of the 25 Distinctive Views are of the area's gorges, six include Cayuga Lake, and ten are located in one of the four State Parks. Distinctive Views can be found in all of the towns: Caroline (2), Danby (1), Dryden (1), Enfield (2), Ithaca (6), Lansing (2), Newfield (1), and Ulysses (3); in villages: Lansing (1) and Cayuga Heights (1); and in the City of Ithaca (5).

For projects where County Planning thinks there may be an impact on one of these Distinctive Views, County Planning would likely recommend that the municipality require applicants to prepare a visual impact

---

<sup>4</sup> See Appendix B. Note that the County has adopted these energy recommendations for use in its own SEQRA review process.

<sup>5</sup> See Appendix F.

assessment that includes these specific views. These modifications are recommended to help preserve and protect scenic resources. A map of Distinctive Views in the County may be found [here](#).

13. **Trails:** For projects that include, or are adjacent to, trails identified as priorities for the county-wide trails network (Black Diamond Trail, Ithaca-Dryden Trail, South Hill Recreation Way, Cayuga Waterfront Trail, and Finger Lakes Trail) County Planning would likely recommend that the municipality require applicants to adequately buffer and provide safe connections to these trails (Reference: [Tompkins Priority Trails Strategy](#)). These modifications are recommended to help promote safe, healthy and active communities. A map of the priority trails in the County may be found [here](#).

## **B) Common Topics: Other Important Considerations:**

Below are the main aspects of proposals that have historically been deemed to be important to consider, but not to rise to the level of having potential negative inter-community or county-wide impacts. These would be expressed in the form of a comment in a GML §239 letter from County Planning.

1. **Natural Features Focus Areas:** For projects located in Natural Features Focus Areas (NFFA), County Planning may comment that larger vegetated stream buffers be provided to help protect wildlife habitat or corridors. (References: [Tompkins County Conservation Plan – Parts I and II](#); [Enhancing Water Resources in Tompkins Co: Benefits of Riparian Areas & Stream Buffers](#)).
2. **Scenic Byway:** For projects located on the [Cayuga Lake Scenic Byway](#) (external link), County Planning may comment on how a project could be improved to enhance the scenic characteristics of the Byway.
3. **Noteworthy Views:** For residential projects of more than 10 units, non-residential projects covering more than 10,000 square feet of land, or projects taller than 50' and that are located within the one-mile viewshed of a Noteworthy View as identified in the [Tompkins County Scenic Resources Inventory](#), County Planning may suggest that the applicant prepare a visual impact assessment that includes specific views. The [Tompkins County Scenic Resources Inventory](#) identified 30 Noteworthy Views in the County. The majority of Noteworthy Views are of Cayuga Lake or another of the County's numerous scenic watercourses. These views are found throughout the County, in the Towns of Ulysses (3), Enfield (2), Newfield (2), Danby (1), Caroline (3), Dryden (4), Lansing (2), Ithaca (8), Village of Cayuga Heights (1), and the City of Ithaca (4).
4. **Invasive Species:** For projects that incorporate the use of an invasive species as noted on the [Tompkins County Environmental Management Council's \(EMC\) Regional Invasive Species list](#), County Planning may comment that the applicant's use of that species could encourage the spread of invasive species in the community and suggest that native species be used instead.
5. **Outdoor Lighting:** For projects including outdoor lighting, County Planning may comment that the applicant's lighting plans could result in adverse ecological impacts and may suggest alternative lighting options. (Reference: [EMC Indoor and Outdoor Lighting Resource \(2017\)](#)<sup>6</sup>).
6. **Outdoor Recreation:** For proposed residential projects of more than 30 units, County Planning may comment that the applicants provide on-site recreational areas or, if the project is located within a quarter-mile of a public park, playground, or other recreational resource, provide a connection to nearby recreational trails or amenities in their project design.

---

<sup>6</sup> Reference also included in Appendix F.

7. **Pedestrian Connections:** For projects that would impact the continuity of pedestrian and bicycle connections, County Planning may comment on the sufficiency of pedestrian/bicycle connections and facilities to support the safe movement of people and maintain and improve the transportation network.
8. **Transit Service:** For residential projects of more than 30 units, County Planning may comment that the applicant should coordinate with Tompkins Consolidated Area Transit (TCAT) to support the safe movement of people and maintain and improve the transportation network.

**Appendix B: Tompkins County Energy Recommendations for New Construction (2018)**



## Tompkins County Energy Recommendations for New Construction (2018)

---

The Tompkins County Energy Roadmap is intended to help inspire immediate action to reduce energy use and transition to renewable energy as a way to help meet our County's goal of reducing greenhouse gas emissions by at least 80% compared to 2008 by 2050. Constructing buildings at higher energy efficiency standards and incorporating renewable energy systems are essential to attaining that goal. For more information on these recommendations, please see the Green Energy Incentives Assessment Project Final Report (2016), <http://www.tompkinscountyny.gov/planning/energy-greenhouse-gas#incentives>

### New Construction Projects

Applicants should address how they will support this goal, including documenting that they have considered each of the following four energy elements.

- 1) ENERGY STAR® products include a wide range of **equipment and appliances** that are independently certified to save energy without sacrificing features or functionality. Water saving fixtures can reduce energy needed for hot water. Recommendations:
  - Require that water fixtures meet EPA's Water Sense requirements.
  - Require that permanent appliances (apartment refrigerators, restaurant cooking equipment, etc.) be ENERGY STAR rated.
  
- 2) Recent advances in **heat pump** design have reduced installation costs and made them more cost-effective than electric resistance heat, propane, and oil, and close in life cycle costs to natural gas. Use of electric heat pumps allows elimination of fossil fuels as they can be powered by renewable energy sources such as solar photovoltaic. Recommendations:
  - Utilize electrically-powered heat pump systems (ground- or air-source heat pumps); avoid boiler-assisted heat pump systems, avoid systems that burn fossil fuels.
  - Utilize air-source heat pump hot water heaters.
  
- 3) The state has a goal that 50% of NYS electricity will be generated by **renewables** (solar, wind, hydropower, and biomass) by the year 2030. Recommendations:
  - Design roofs to be "solar receptive": Maximize area available for solar collection systems. For pitched roofs, place roof-mounted components (plumbing vents, exhaust fans, etc.) on north-facing roof surfaces, to keep south-facing surfaces available for solar collection systems. Orient one roof surface to the south, plus/minus 30 degrees, to maximize potential for solar energy.
  - Maximize solar collection systems on available roof areas, and consider using high-production solar panels to maximize solar production for a given roof area, especially for medium-rise and high-rise buildings.
  
- 4) Energy-efficient building design begins with the **building envelope** – the walls, windows, foundations, and roof. Recommendations:

## ***Tompkins County Energy Recommendations for New Construction (2018), cont.***

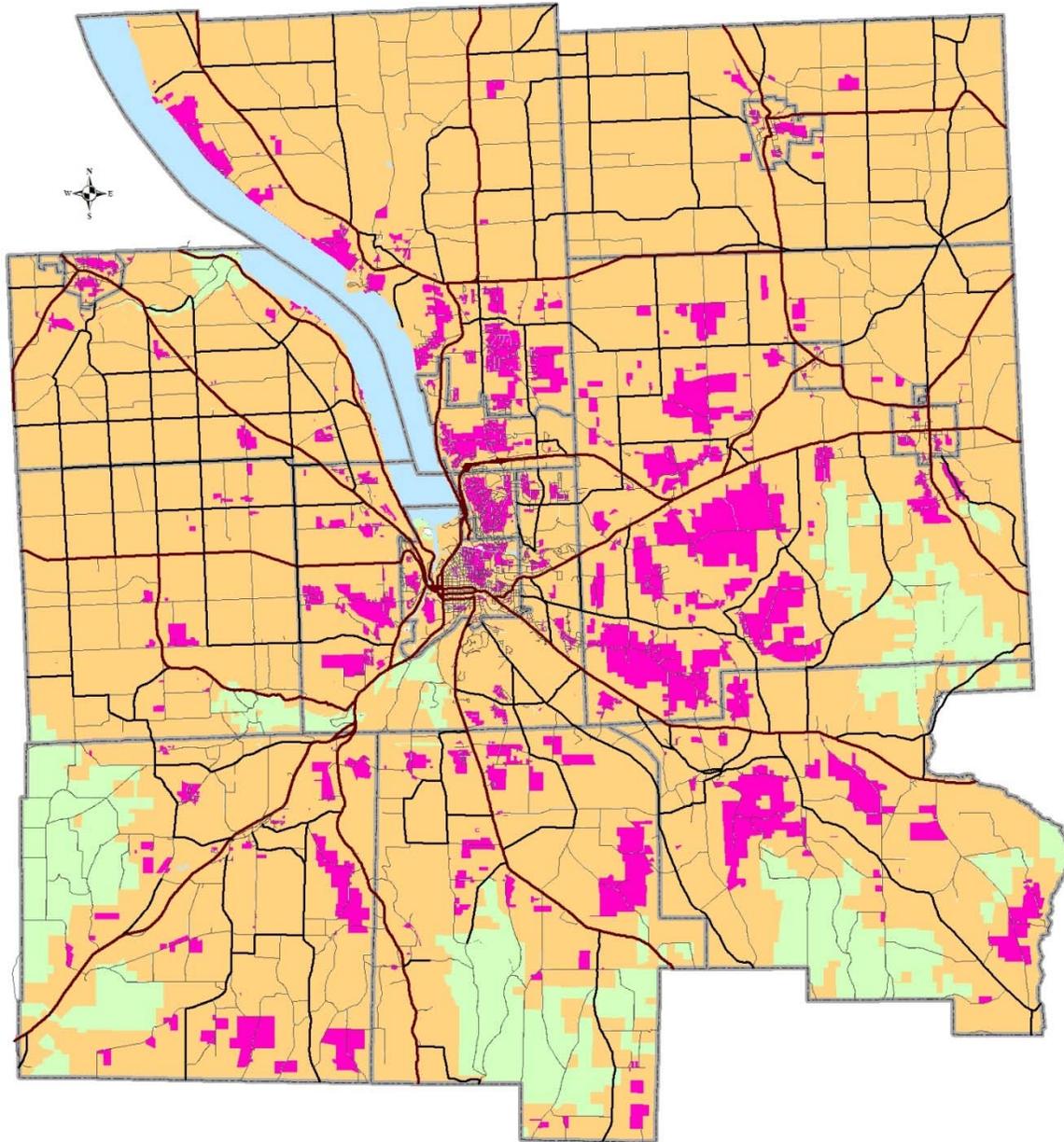
- Design to window-to-wall ratio less than 25% (the new energy code requires 30% or less). Keep large windows on south-facing surfaces and important facades; minimize windows on north-facing surfaces and in spaces that see low occupancy (stairwells, corridors, utility rooms, etc.).
- Avoid unusually complex building shapes.
- Use 20% more insulation R-value than required by the energy code.
- Use best practices for minimizing infiltration and stack effect, and require inspection/commissioning of these elements: vestibules at entrance doors, air sealing around window and door frames, sealing at exterior wall/floor junctions, and guarded blower door testing of individual spaces or entire building floors.

### **Greater than 20 Units - New Construction Projects**

In addition to the above, applicants should also **document** that they have **considered** each of the following three additional energy elements.

- 5) Lighting controls and high-efficiency **lighting technology** (such as LED or induction) offer significant benefits including greatly reduced energy use and cost, sophisticated controls, simplified maintenance, and longer life. Recommendations:
  - Perform lighting design on a space-by-space basis, using the space-by-space lighting power density method (not the whole-building method). Use LED lighting where possible. Design to lighting power density of 15% less than required by the energy code.
  - Require occupancy sensors where possible, for both indoor and outdoor lighting. Require short off-delay (1 minute or less), and commissioning of lighting controls.
- 6) High-efficiency **heating and cooling systems** may cost incrementally more than standard-efficiency but have a positive payback over their useful life. Recommendations:
  - Select high-efficiency heating and cooling plants with rated efficiencies at least 15% higher than required by the NYS Energy Conservation Construction Code.
  - Select high-efficiency domestic hot water (DHW) plants with rated efficiencies at least 15% higher than required by the NYS Energy Conservation Construction Code.
  - Avoid placing heating and cooling distribution systems in unheated spaces, such as attics, basements, etc. Give preference to systems that have efficient distribution systems and low distribution losses (for example, room-by-room fan coils).
  - Use energy-recovery ventilation systems in air-conditioned buildings, and heat-recovery ventilation systems in buildings that do not have air-conditioning. Design ventilation systems to be separate from heating and cooling systems.
  - Assess ductwork for heating, cooling and ventilation. If leakage is greater than 10%, seal chases and shafts with aerosol duct-sealing process.
  - Select heating/cooling systems that allow thermal zoning on a space-by-space basis.
- 7) **Whole-building energy modeling** can allow you to dramatically reduce energy costs, reduce carbon emissions, and even reduce some construction costs. Recommendation:
  - Employ whole-building energy modeling to optimize building energy performance.

# Appendix C: Properties Subject to County Planning Agency Review Under GML §239



- Properties not subject to GML 239 Review
- Properties subject to review under GML 239\*
- State Forests & Parks
- State Highways
- County Roads
- Local Roads
- Municipal Boundaries



Tompkins County Planning Department  
July 2017

\* These properties have at least some portion within 500 feet of the criteria stated

## Appendix D: New York State General Municipal Law §239-l, m & n

### GENERAL MUNICIPAL LAW

#### **§ 239-l. Coordination of certain municipal zoning and planning actions; legislative intent and policy.**

1. Definitions. For the purposes of this section and sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article, the following terms shall apply:

- a. "County planning agency" means a county planning board, commission or other agency authorized by the county legislative body to review proposed actions referenced for inter-community or county-wide considerations subject to the provisions of this section, and sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article.
- b. "Regional planning council" means a regional planning board or agency established pursuant to the provisions of this chapter.

2. Intent. The purposes of this section, sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article shall be to bring pertinent inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction. Such review may include inter-community and county-wide considerations in respect to the following:

- a. compatibility of various land uses with one another;
- b. traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities;
- c. impact of proposed land uses on existing and proposed county or state institutional or other uses;
- d. protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas;
- e. drainage;
- f. community facilities;
- g. official municipal and county development policies, as may be expressed through comprehensive plans, capital programs or regulatory measures; and
- h. such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of a satisfactory community environment.

3. Review considerations. In no way shall the review of inter-community and county-wide considerations pursuant to the provisions of this section, or pursuant to sections two hundred thirty-nine-m and two hundred thirty-nine-n of this article, preclude a county planning agency or a regional planning council from making informal comments, or supplying such technical assistance as may be requested by a municipality.

#### **§ 239-m. Referral of certain proposed city, town and village planning and zoning actions to the county planning agency or regional planning council; report thereon; final action.**

1. Definitions. As used herein:

- a. The term "proposed" as used in subparagraphs (ii) and (iii) of paragraph (b) of subdivision three of this section shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads

or highways which are shown on a county comprehensive plan adopted pursuant to section two hundred thirty-nine-d of this article or adopted on an official map pursuant to section two hundred thirty-nine-e of this article.

b. The term "referring body" shall mean the city, town or village body responsible for final action on proposed actions subject to this section.

c. The term "full statement of such proposed action" shall mean all materials required by and submitted to the referring body as an application on a proposed action, including a completed environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. When the proposed action referred is the adoption or amendment of a zoning ordinance or local law, "full statement of such proposed action" shall also include the complete text of the proposed ordinance or local law as well as all existing provisions to be affected thereby, if any, if not already in the possession of the county planning agency or regional planning council. Notwithstanding the foregoing provisions of this paragraph, any referring body may agree with the county planning agency or regional planning council as to what shall constitute a "full statement" for any or all of those proposed actions which said referring body is authorized to act upon.

d. The term "receipt" shall mean delivery of a full statement of such proposed action, as defined in this section, in accordance with the rules and regulations of the county planning agency or regional planning council with respect to person, place and period of time for submission. In no event shall such rule or regulation define delivery so as to require in hand delivery or delivery more than twelve calendar days prior to the county planning agency's or regional planning council's meeting date. In the absence of any such rules or regulations, "receipt" shall mean delivery in hand or by mail to the clerk of the county planning agency or regional planning council. Where delivery is made in hand, the date of receipt shall be the date of delivery. Where delivery is made by mail, the date as postmarked shall be the date of delivery. The provisions of this section shall not preclude the rules and regulations of the county planning agency or regional planning council from providing that the delivery may be a period greater than twelve days provided the referring body and the county planning agency or regional planning council agree in writing to such longer period.

2. Referral of proposed planning and zoning actions. In any city, town or village which is located in a county which has a county planning agency, or, in the absence of a county planning agency, which is located within the jurisdiction of a regional planning council duly created pursuant to the provisions of law, each referring body shall, before taking final action on proposed actions included in subdivision three of this section, refer the same to such county planning agency or regional planning council.

3. Proposed actions subject to referral.

a. The following proposed actions shall be subject to the referral requirements of this section, if they apply to real property set forth in paragraph (b) of this subdivision:

- i. adoption or amendment of a comprehensive plan pursuant to section two hundred seventy-two-a of the town law, section 7-722 of the village law or section twenty-eight-a of the general city law;
- ii. adoption or amendment of a zoning ordinance or local law;
- iii. issuance of special use permits;
- iv. approval of site plans;

v. granting of use or area variances;

vi. other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

b. The proposed actions set forth in paragraph (a) of this subdivision shall be subject to the referral requirements of this section if they apply to real property within five hundred feet of the following:

i. the boundary of any city, village or town; or

ii. the boundary of any existing or proposed county or state park or any other recreation area; or

iii. the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or

iv. the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or

v. the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or

vi. the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law, except this subparagraph shall not apply to the granting of area variances.

c. The county planning agency or regional planning council may enter into an agreement with the referring body or other duly authorized body of a city, town or village to provide that certain proposed actions set forth in this subdivision are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section.

4. County planning agency or regional planning council review of proposed actions; recommendation, report.

a. The county planning agency or regional planning council shall review any proposed action referred for inter-community or county-wide considerations, including but not limited to those considerations identified in section two hundred thirty-nine-l of this article. Such county planning agency or regional planning council shall recommend approval, modification, or disapproval, of the proposed action, or report that the proposed action has no significant county-wide or inter-community impact.

b. Such county planning agency or regional planning council, or an authorized agent of said agency or council, shall have thirty days after receipt of a full statement of such proposed action, or such longer period as may have been agreed upon by the county planning agency or regional planning council and the referring body, to report its recommendations to the referring body, accompanied by a statement of the reasons for such recommendations. If such county planning agency or regional planning council fails to report within such period, the referring body may take final action on the proposed action without such report. However, any county planning agency or regional planning council report received after thirty days or such longer period as may have been agreed upon, but two or more days prior to final action by the referring body, shall be subject to the provisions of subdivision five of this section.

5. Extraordinary vote upon recommendation of modification or disapproval. If such county planning agency or regional planning council recommends modification or disapproval of a proposed action, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.

6. Report of final action. Within thirty days after final action, the referring body shall file a report of the final action it has taken with the county planning agency or regional planning council. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

**§ 239-n. Referral of certain proposed subdivision plats to the county planning agency or regional planning council; report thereon; final action.**

1. Definitions. As used herein:

- a. The term "proposed" as used in subparagraphs (ii) and (iii) of paragraph (a) of subdivision three of this section shall be deemed to include only those recreation areas, parkways, thruways, expressways, roads or highways which are shown on a county comprehensive plan, adopted pursuant to subdivision seven of section two hundred thirty-nine-d of this article, or shown on an official map adopted pursuant to section two hundred thirty-nine-e of this article.
- b. The term "undeveloped plat" shall mean those plats already filed in the office of the clerk of the county in which such plat is located where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development.
- c. The term "referring body" shall mean the city, town or village body authorized by a municipal legislative body to approve preliminary or final plats or to approve the development of undeveloped plats and/or plats already filed in the office of the county clerk.

2. Referral of proposed plats. In any city, town or village which is located in a county which has a county planning agency authorized by the county legislative body to review preliminary or final plats or to approve the development of undeveloped plats, the clerk of the municipal planning agency, upon receipt of application for preliminary and/or final approval of a subdivision plat or proposal to develop an undeveloped plat and/or plats already filed in the office of the county clerk, shall refer certain of such plats to the county planning agency. In the absence of a county planning agency, the county legislative body may authorize a regional planning council whose geographic area includes the county, to perform the review functions prescribed herein.

3. Plats subject to referral.

- a. The following applications for approval of preliminary or final plats and undeveloped plats shall be subject to the referral requirements of this section, if the application applies to real property within five hundred feet of the following:
  - i. the boundary of any city, village, or town; or
  - ii. the boundary of any existing or proposed county or state park or other recreation area; or
  - iii. the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
  - iv. the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
  - v. the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
  - vi. the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law.

b. The county planning agency or regional planning council may enter into an agreement with the referring body or other duly authorized body of a city, town or village to provide that certain proposed plats are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section.

4. County planning agency or regional planning council review of proposed plats; recommendation, report.

a. The county planning agency or regional planning council, when authorized by the county legislative body, shall review any referred plat for inter-community or county-wide considerations, including but not limited to those considerations identified in section two hundred thirty-nine-I of this article. The county planning agency or regional planning council may adopt such rules and regulations as are necessary to perform such function. Such county planning agency or regional planning council shall recommend approval, modification, or disapproval, of such plat, or report that such plat has no significant county-wide or inter-community impact.

b. Such county planning agency or regional planning council, or an authorized agent of said agency or council, shall have thirty days after receipt of a preliminary or final plat or proposal to develop an undeveloped plat, or such longer period as may have been agreed upon by the county planning agency or regional planning council and the referring body, to report its recommendations to the referring body, accompanied by a statement of the reasons for such recommendations. If such county planning agency or regional planning council fails to report within such period, the referring body may take final action on the referred plat without such report. However, any county planning agency or regional planning council report received after thirty days or such longer period as may have been agreed upon, but two or more days prior to final action by the referring body, shall be subject to the provisions of subdivision five of this section.

5. Extraordinary vote upon recommendation of modification or disapproval. If such county planning agency or regional planning council recommends modification or disapproval of a referred plat, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.

6. Report of final action. Within thirty days after final action, the referring body shall file a report of the final action it has taken with the county planning agency or regional planning council. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.

## Appendix E: Standard Inter-governmental 239 Agreement Template

### Inter-governmental Agreement

#### Tompkins County Review of Local Zoning and Planning Actions Under New York State General Municipal Law

- I. This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018 between the Tompkins County Planning Department and the Municipality.
  - A. Authority and Purpose of State Law  
The authority for county planning agency review of certain local planning and zoning actions is provided in Article 12-B, Section 239 (l, m & n) of New York State General Municipal Law (GML). The purpose as stated in law is “to bring pertinent inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction.”
  - B. Current Practice in Tompkins County  
The Tompkins County Charter gives responsibility for the implementation of this county review to the Commissioner of Planning. All matters identified in GML Section 239 (m & n) are currently subject to review.
  - C. Authority for Inter-governmental Agreement  
GML Section 239 (m) specifically authorizes the county planning agency to “enter into an agreement with the referring body or other duly authorized body of a city, town or village to provide that certain proposed actions set forth in this subdivision are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section.” GML Section 239 (n) authorizes the same agreement with respect to subdivision plats.

- II. Items to be Excluded from Review

Pursuant to the authority cited herein the parties to this agreement do hereby agree that the following items are of local, rather than inter-community or county-wide, concern and are not subject to referral to the Tompkins County Planning Department under New York State General Municipal Law Article 12-B Section 239 (l, m & n):

- A. Lot frontage, width or depth variances for residential uses;
- B. Lot area variances for additions to residential uses on existing non-conforming lots;
- C. Special Permits or Site Plan Reviews for permitted accessory uses and home occupations on residential lots;
- D. Residential subdivisions of fewer than 5 lots all of which comply with local zoning standards and Tompkins County Sanitary Code requirements, and do not involve new local roads or streets directly accessing a State or county road;
- E. Yard setback variances not abutting County or State property, a State or County road right of way, or a municipal boundary;
- F. Site Plan Reviews or Special Permits for change of commercial use in an existing building not involving any change in building footprint and with no change in vehicular access on a State or County highway;
- G. Sign variances exceeding local standards by 20% or less.

III. Execution, Termination and Modification

- A. The undersigned parties attest that they have the authority to enter into this agreement. This agreement shall become effective upon execution by both parties.
- B. The agreement shall remain in effect unless terminated by 60 days advance written notice by either party. Such notice shall be by certified mail to the Tompkins County Commissioner of Planning or the authorized local municipal official, as appropriate.
- C. The agreement may be modified by mutual agreement of the parties hereto.

By: \_\_\_\_\_ Date \_\_\_\_\_  
Tompkins County Commissioner of Planning

\_\_\_\_\_ Date \_\_\_\_\_  
Planning Board Chair

## **Appendix F: Recently Developed Planning Documents**

Resources are included as reference documents for local governments to use as they development laws. Documents also include details from which Tompkins County will reference in advocating for impacts to Tompkins County.

- Summary of Recommendations for the Deployment of Solar Energy Systems and Wind Energy Systems (2017)
- Tompkins County Environmental Management Council (EMC)'s Recommendations for Indoor and Outdoor Lighting (2017)

# Recommendations for Municipal Tools to Promote and Regulate the Deployment of Solar Energy Systems

## **Roof-Mounted and Building-Integrated Solar Energy Systems**

*Appropriate Locations.* Roof-Mounted and Building-Integrated Solar Energy Systems should be permitted as-of-right on all other permitted buildings and structures throughout the community.

*Height.* Roof-Mounted and Building-Integrated Solar Energy Systems should be required to meet the same height restrictions as any other building or structure. In other words, if located on a principal building they should meet the height requirements of a principal building; if located on an accessory building, they should meet the height requirements of an accessory building.

*\*\*Historic Districts.* Municipalities with historic districts should establish specific guidelines and standards for building owners that wish to install solar energy systems. To the extent possible, the requirements should not involve any additional review beyond that required of any other alteration to an existing historic building.

## **Accessory Ground-Mounted Solar Energy Systems**

*Appropriate Locations.* Accessory Ground-Mounted Solar Energy Systems should be permitted as-of-right accessory uses throughout the community.

*Height.* Accessory Ground-Mounted Solar Energy Systems should be required to meet the same height restrictions as any other accessory building or structure.

*\*\*Location on a Property.* (a) Accessory Ground-Mounted Solar Energy Systems should be required to meet the same setback requirements as any other accessory building or structure.

(b) In residential zoning districts, Accessory Ground-Mounted Solar Energy Systems should be located in side or rear yards, to the extent practical.

## **Large-Scale Solar Energy Systems**

*Appropriate Locations.* (a) Communities should conduct a thorough review of all their zoning districts to determine in which Large-Scale Solar Energy Systems would be appropriate. As a general rule of thumb, Industrial Zoning Districts and Agricultural Zoning Districts would be appropriate, as would some Rural and Low-Density Residential Zoning Districts and some Commercial Zoning Districts. Other Zoning Districts may also be suited for such energy systems.

(b) Where the municipality's comprehensive plan does not address renewable energy systems, add language indicating the critical nature of these systems to our energy future and identify the types of areas where they are appropriate.

*Height.* Large-Scale Solar Energy Systems should be required to meet the same height restrictions as an accessory building or structure.

**\*\*See the notes section of this report for additional information about this recommendation.**

## Recommendations: Solar Energy Systems, cont.

*Location on a Property.* Large-Scale Solar Energy Systems should be required to meet the same setbacks as any other principal building, but not be required to have more than 30 foot rear or side setbacks.

*Approval Process.* Large-Scale Solar Energy Systems should be permitted either with a special use permit or with a site plan review and a public hearing on proposals should be required.

*\*\*Decommissioning.* There is no specific recommendation concerning decommissioning. Refer to the NYSERDA Decommissioning Fact Sheet for guidance.

*\*\*Glare from Systems.* When located where glare may be an issue for specific uses, communities should require the preparation of a glare analysis for proposed Large-Scale Solar Energy Systems.

*\*\*Stormwater Management.* Unless located over an existing parking lot or other already-paved area, a vegetative cover should be established and maintained underneath solar panels in Large-Scale Solar Energy Systems. Management of that vegetative cover should be reviewed as part of the local municipal review of the project. Natural hydrology should be maintained to the maximum extent practical and stormwater management plans required only when already required by a municipality's stormwater management law or where hydrology is being significantly modified.

*Screening.* Screening of Large-Scale Solar Energy Systems should only be required to address site-specific conditions identified during local municipal review.

*\*\*Agricultural Resources.* Large-Scale Solar Energy Systems should avoid large extents (10 acres or more) of actively-farmed prime agricultural soils. Land underneath solar panels within agricultural areas should be maintained as vegetative cover. For any proposed disturbance of ten acres or more of prime agricultural soils, communities should consider the value of requiring a soil reclamation plan and related financial guarantee of plan implementation.

*\*\*Natural Resources.* (a) Large-Scale Solar Energy Systems should avoid Critical Environmental Areas, Unique Natural Areas, slopes in excess of 15%, clearing extensive areas of forest, and previously-identified distinctive viewsheds. Any systems located in these areas should be required to take appropriate mitigation measures.

(b) NYS DEC regulated wetlands should be avoided. Development in federally-identified wetlands should be avoided, but could be considered where wetland hydrological function can be maintained and no endangered or threatened species would be impacted.

(c) Habitat loss, habitat fragmentation, and wildlife corridors should be reviewed for potential impacts on a case-by-case basis.

*\*\*Water Quality.* Large-Scale Solar Energy Systems should be prohibited within 100-foot buffers of perennial streams and 50-foot buffers of intermittent streams.

*Flood Hazard Areas.* Large-Scale Solar Energy Systems, including any related fill, should be prohibited within 100-year floodplains. Any incidental and unavoidable development within the floodplain should be required to assess changes to flood levels, runoff quantity, and velocity resulting from any structure, facility, or fill within a floodplain. No structure, facility, or fill of any kind should be permitted within a floodway.

*\*\*See the notes section of this report for additional information about this recommendation.*

# Recommendations for Municipal Tools to Promote and Regulate the Deployment of Wind Energy Systems

## Small-Scale Wind Energy Systems

*Appropriate Locations.* Small-Scale Wind Energy Systems consisting of a single turbine should be a permitted as-of-right accessory use throughout the community.

*\*\*Setbacks.* Setbacks for Small-Scale Wind Energy Systems from lot lines should be the total height of the installation plus 10 feet, unless the affected adjoining property owner agrees otherwise in writing. This setback should be measured from the center of the tower.

*Location on a Property.* In residential zoning districts, Small-Scale Wind Energy Systems should be located in the side or rear yards, to the extent practical.

*Height.* Small-Scale Wind Energy Systems should be allowed to exceed otherwise-established maximum height requirements.

## Medium-Scale Wind Energy Systems

*Appropriate Locations.* Communities should conduct a thorough review of all their zoning districts to determine in which Medium-Scale Wind Energy Systems would be appropriate. As a general rule of thumb, Industrial Zoning Districts and Agricultural Zoning Districts would be appropriate, as would some Rural Zoning Districts and some Commercial Zoning Districts. Other Zoning Districts may also be suited for such energy systems.

(b) Where the municipality's comprehensive plan does not address renewable energy systems, add language indicating the critical nature of these systems to our energy future and identify the types of areas where they are appropriate.

*Approval Process.* Medium-Scale Wind Energy Systems should be permitted through a site plan review process in order to ensure that proposed installations comply with the standards established by the community.

*\*\*Setbacks.* (a) Setbacks for Medium-Scale Wind Energy Systems from lot lines should be 1.5 times the total height of the installation.

(b) Setbacks from neighboring residences, schools, churches, and libraries should be 2 times the total height of the installation, unless the affected adjoining property owner agrees otherwise in writing.

*Height.* Medium-Scale Wind Energy Systems should be allowed to exceed otherwise-established maximum height requirements.

*\*\*Natural Resources.* Medium-Scale Wind Energy Systems should avoid Critical Environmental Areas, Unique Natural Areas, slopes in excess of 15%, and clearing extensive areas of forest. Any systems located in these areas should be required to take appropriate mitigation measures.

*\*\*Scenic Resources.* Medium-Scale Wind Energy Systems located in previously-identified distinctive or noteworthy viewsheds should be required to prepare a visual impact analysis.

*\*\*See the notes section of this report for additional information about this recommendation.*

## Recommendations: Wind Energy Systems, cont.

### Large-Scale Wind Energy Systems

*Approval Process.* Large-Scale Wind Energy Systems should be permitted either with a special use permit or with a site plan review and a public hearing on proposals should be required.

*\*\*Setbacks.* (a) Setbacks for Large-Scale Wind Energy Systems from lot lines should be 1.5 times the total height of the installation.

(b) Setbacks from neighboring residences, schools, churches, and libraries should be 2 times the total height of the installation, unless the affected adjoining property owner agrees otherwise in writing.

*Height.* Large-Scale Wind Energy Systems should be allowed to exceed otherwise-established maximum height requirements.

*\*\*Decommissioning.* There is no specific recommendation concerning decommissioning. Refer to the NYSERDA Decommissioning Fact Sheet for guidance.

*\*\*Stormwater Management.* When stormwater management plans are required by the community under existing stormwater management ordinances, the impacts of towers, roads, utility lines, and all appurtenant facilities should be considered.

*\*\*Agricultural Resources.* Proposals for Large-Scale Wind Energy Systems should be reviewed for potential impacts on agricultural operations.

*\*\*Natural Resources.* Large-Scale Wind Energy Systems should avoid Critical Environmental Areas, Unique Natural Areas, slopes in excess of 15%, and clearing extensive areas of forest. Any systems located in these areas should be required to take appropriate mitigation measures.

*\*\*Water Quality.* (a) Large-Scale Wind Energy Systems should be prohibited within 100-foot buffers of perennial streams and 50-foot buffers of intermittent streams.

(b) Large-Scale Wind Energy Systems should be prohibited in wetlands.

*\*\*Scenic Resources.* Large-Scale Wind Energy Systems located in previously-identified distinctive or noteworthy viewsheds should be required to prepare a visual impact analysis.

*\*\*Wildlife.* Habitat loss, habitat fragmentation, and impacts on migratory routes and Important Bird Areas should be assessed on a case-by-case basis when proposals are reviewed by municipal officials.

*\*\*Birds and Bats.* Large-Scale Wind Energy Systems should be the subject of bird and bat studies performed in accordance with NYSDEC guidelines.

*\*\*Shadow Flicker.* Communities should require a preliminary (and, if indicated, a more comprehensive) shadow flicker analysis for all proposed Large-Scale Wind Energy Systems. If shadow flicker will occur for more than 30 hours per year on any one nearby residence or facility, mitigation steps should be required.

*\*\*Ice Throw.* No additional recommendations are provided for ice throw as the recommended setbacks are designed, in part, to minimize the impact of ice throw.

*\*\*Noise and Vibration.* Communities should either (a) establish the following noise standards to be measured at neighboring residences, schools, churches, and libraries:

- a design goal of 40 dBA;
- a long-term average sound limit of 45 dBA; and
- a short-term (10-20 minute) maximum sound limit of 50 dBA; or

(b) if the community wishes to use setbacks instead of sound measurements to address noise impacts, require that wind turbines be set back from residences, schools, churches and libraries by at least 1,150 feet.

*\*\*See the notes section of this report for additional information about this recommendation.*



TOMPKINS COUNTY

ENVIRONMENTAL MANAGEMENT COUNCIL



*121 East Court Street Ithaca, New York 14850*

Telephone (607) 274-5560

<http://www.tompkinscountyny.gov/emc>

## ENVIRONMENTAL ALERT

### IMPORTANT RECOMMENDATIONS FOR INDOOR AND OUTDOOR LIGHTING

#### **Background**

Over the last decade there have been both rapid advances in lighting technology and converging lines of scientific inquiry documenting health and environmental issues with “blue light”.<sup>1</sup> Municipalities, businesses, schools, and individuals all need to be aware of the implications of the lighting decisions they make.

Recent studies indicate that a substantial composition of blue light in the spectrum is conducive to productive work for persons who work inside during the day, but deleterious to human health at night, altering circadian rhythms necessary for a “good night's sleep”.

Besides human-health impacts, blue light has been implicated in a wide range of ecological impacts as well as increased “sky glow” at night. Minimizing blue light output at night for human health reasons also decreases these additional deleterious impacts.

---

<sup>1</sup> Picture the color spectrum of a rainbow. “Blue light” refers to short wavelength visible light in general, and spans from a violet-blue to a green-blue visible color (~380 to ~500 nanometer wavelengths). In this document, we refer to this color range simply as blue light.

*Indoor lighting technology.* We are moving away from the familiar warm yellow-orange incandescent lights to light-emitting diodes (LEDs), which offer better efficiency and economics over time and a wider range of spectrum and light intensity. Although commercially available LEDs include some that are similar to incandescent bulbs, we find ones termed “warm white,” “cool white,” and “daylight,” all of which have a higher proportion of blue light emissions.

*Outdoor lighting technology.* For street lights, the old standard high-pressure sodium bulbs with their orange-hued spectral output are in many cases being replaced with more efficient bright-white LEDs, greatly increasing the municipality's blue light output at night. (In 2016 Binghamton, NY, finished transition of its ~2000 orange-hued high-pressure sodium street lights to bright-white LEDs.)

*Personal electronic devices.* Luminous computer screens, tablets, and smart phones also emit blue wavelength light with potential health impacts. Many operating systems on these devices now include software (or apps can be added) that can be set to limit the devices’ blue light emissions at night. (As of 2017, the computers Ithaca public schools provide to students for home use do not include such capabilities.)

## **Recommendations**

### *Municipalities*

1. Transition to LED street lights with low blue light emissions. Even street lights with 3000K CCT<sup>2</sup> have increased blue light output compared with existing high-pressure sodium street lights, which are ~2100K CCT. Ideally, from a human health and ecological impact standpoint, street light conversion to LED would involve the equivalent (or lower) blue light output as that from high-pressure sodium (~2100K CCT) street lights. While street light

---

<sup>2</sup> “CCT” stands for “Correlated Color Temperature” and uses the Kelvin temperature scale to roughly indicate spectral content of whitish light. Lower CCT points toward warmer hues (yellowish, orangish) with a lower percentage of blue light, while higher CCT points toward cooler hues (greenish, blueish) and higher blue-light output.

manufacturers have been promoting 3000K+ CCT varieties, “amber” LED street lights are available that have very low blue light output (<2000K CCT). While these may not be the most energy efficient LEDs on the market (i.e. ~3% less efficient), there is still a great energy & maintenance savings compared with existing gas discharge or metal halide street lighting.

2. Avoid using metal halide fixtures for street lights or other outdoor lighting. These are typically strong blue wavelength emitters and less efficient than LEDs. (e.g., Ithaca Wal-Mart parking lot)
3. Consider incorporating Dark Sky<sup>3</sup> outdoor lighting standards into municipal codes. This includes stipulating that no light be directly emitted horizontal or above the horizontal plane of the light — in other words, all direct light emission should be downward. Dark Sky standards currently call for all outdoor lighting to be no higher than 3000K CCT. Yet 3000K CCT is typically composed of substantial blue light. Municipalities should encourage no greater than 2700K CCT for outdoor lighting, and lower if possible. 2700K CCT is readily commercially available for about the same cost as higher CCT lighting. Luminous intensity (brightness) is another metric that should be stipulated in municipal codes and minimized to the extent possible.
4. Consider special outdoor light codes or actions that further reduce blue light emissions for lighting in proximity to natural areas.
5. Schools should consider incorporating automatic night time blue light filters into laptops provided to students for home use.

#### *Residential and business lighting*

1. Transition to LEDs with 2700K CCT or lower indoor and outdoor lighting at night. Higher CCT lighting should be considered for indoor lighting during the day to simulate the spectral characteristics of sunlight and help maximize human productivity for businesses. Use Energy Star<sup>4</sup> rated LEDs that include the “Lighting Facts” label.<sup>5</sup>

---

<sup>3</sup> <http://www.darksky.org>

<sup>4</sup> <https://www.energystar.gov/>

<sup>5</sup> <http://www.lightingfacts.com/>

2. Municipalities may want to consider incentives for homeowners (and businesses) to encourage transition to <2700 CCT outdoor lighting. These could be as simple as a letter of thanks that includes a waterproof sticker to apply at the doorway to a building.
3. Use software and apps for automatically minimizing blue light output from computer monitors, tablets, and smart phones, etc. at night.
4. Do not use “bug zappers.” These lights have high ultraviolet (UV) and blue light output, kill many useful insects, and attract insects from afar to the vicinity of your residence.
5. Porch, deck, and front door lights with low UV and blue light emissions minimize insect attraction and thereby lead to a more comfortable outdoor experience for people.

### **Further reading**

American Medical Association. 2016. CSAPH Report 2-A-16. Human and Environmental Effects of Light Emitting Diode (LED) Community Lighting. American Medical Association.

[http://darksky.org/wp-content/uploads/bsk-pdf-manager/AMA\\_Report\\_2016\\_60.pdf](http://darksky.org/wp-content/uploads/bsk-pdf-manager/AMA_Report_2016_60.pdf)

Christensen et al. 2016. Direct Measurements of Smartphone Screen-Time: Relationships with Demographics and Sleep. PLoS One. 2016; 11(11): e0165331.

<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0165331>

Holzman D.C. 2010. What's in a color? The unique human health effect of blue light. Environ Health Perspect [Internet]. 118(1):A22-7.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2831986/>