



EXAMPLES

of NY Local Government Laws/Zoning Provisions on Wind

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NYS Energy Research & Development Authority

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Albany, NY 12203-6399

www.nyserda.org

These ordinances have been compiled by NYSERDA and the New York Department of State as examples of laws and provisions concerning wind that are in effect in NYS municipalities. These are provided for the information of those members of the public and local officials interested in this topic. In providing these local laws, NYSERDA and NYDOS are not recommending any particular law — the examples are included in the tool kit merely for informational purposes. Please consult other sections of the tool kit, particularly the section on “Wind Energy Model Ordinance Options,” and the “Comprehensive Plan,” for advice on assembling a local ordinance that best suits the needs of the locality.

Wind turbine provisions in Town of Fenner Zoning

Zoning Map (District “C”)

Zoning Schedule: Table of Dimensions (all setback requirements for wind turbines are in footnote h.)

Zoning District “C: Uses Requiring a Special Permit (Sect. 303.3G) (‘Wind power electricity generation and transmission facilities’)

[Existing general Special Permit and Site Plan Review provisions applying to regulation of wind power electricity generation and transmission facilities Special Permits (Sect. 606.1), Application for Special Use Permit (Sect. 606.2), Standards for Granting Special Use Permits (Sect. 606.3), Submission of Site Plan and Supporting Data (Sect. 606.4), Site Plan Approval (Sect. 606.5)]

Additional Standards for Granting special Use Permits for Wind Power Electricity Generation and Transmission Facilities (Sect. 606.31)

Submission of Additional Supporting Data for Site Plan of Wind Power Electricity Generation and Transmission Facilities (Sect. 606.41)

NOTE: A ‘public (or ‘semi-public’) utility’ zoning definition that includes, as a necessary part of the definition that the service is licensed by the Public Service Commission does *not* cover a power plant or wind turbine facility generating under 80 megawatts maximum capacity. In the absence of a definition of ‘public utility’ that covered such a power generating facility, a zoning definition of ‘industry’ *might* or might not cover it, depending on how it was worded.

TABLE 1

**LAND USE SCHEDULE
Minimum Dimensions**

	Lot Area	Lot Frontage*** Ft.	Lot Depth Ft.	Yards* Front Ft.	Yards* Side Ft.	Yards* Rear Ft.	Maximum Structure Height Ft.	Notes (see Page)
“DISTRICT A” Single-family unit	1 acre**	200	200	50	40	50	35	a,b
“DISTRICT A” Two-family unit	1.5 acres	200	200	50	40	50	35	b
“DISTRICT A” Multi-family	1.5 acres + 10,000 sq. ft./unit	200	200	50	40	50	45	d,e
Farm	5 acres	200	200	50	40	50	None	c,g
“DISTRICT B” Mobile Dwelling	1 acre	200	200	50	40	50	35	b
“DISTRICT B” Mobile Dwelling park*	5 acres	200	300	50	30	50		b,d,e,f
“DISTRICT B” Individual Park Site	@ 10,000 sq. ft./unit	70	120	30	20	20	35	f
Business, professional, or industrial, on separate lots	1 acre	200	200	50	40	50	35	b,d,e
“DISTRICT C” All “B”, as above								h

*Corner lots are considered to have two front yards along the two roadways and two side yards

** Acre = 43,560 sq. ft.

*** Requirement of actual frontage along public highway, or, if applicable, private access easement

All non-farm accessory buildings shall conform to front and side yard requirements of the district in which they are located.

Notes for Table 1

- a. Measured from the road right-of-way. Applies to each side of a lot that adjoins a public road.

An alternative front yard minimum dimension measurement is permissible from the center of road-ways where neither road right-of-way bounds nor surveys are available: (1) on three rod roads (generally, but not necessarily, Town roads) set buildings back at least 75 feet from the centerline of the road; and (2) on four

- rod roads (generally, but not necessarily, County roads) set buildings back at least 83 feet from the centerline of the road.
- b. Where community water supply and sewer are used, one-half lot area and smaller bordering yards are permitted. Lot: 100 feet front x 150 feet depth. Yards: 30 feet front x 20 feet sides x 50 feet rear.
 - c. Accessory farm buildings (silos, barns, etc.) are exempt from height limits.
 - d. Requires a special use permit issued by the Planning Board.
 - e. A landscaped screening zone at least 15 feet wide shall be maintained by the owner on those sides of his lot that adjoin any residential property owned by another party.
 - f. Each mobile dwelling site shall connect to an access road within the mobile dwelling par, and the front yard of each lot shall be measured from the edge of this access road.
 - g. Upon the issuance of a special permit by the Planning Board, nor more than two units of supplementary housing for relatives or hired hands employed by the farm; each unit must be provided with an adequate sewage disposal system; does not require separate lots.
 - h. The minimum setback distance between each production line commercial wind power electricity generation unit (wind turbine tower) and: all surrounding property lines, overhead utility lines, any dwellings, and any other generation units, above-ground transmission facilities, and separate meteorological facilities, shall be equal to no less than 1.5 times the proposed structure height plus the rotor radius. [The property line setback requirement may be reduced by the Planning Board as an incident of special permit review when the Planning Board finds that the following circumstances apply: the property line in questions a) separates two properties that are both in the “C” District, and b) either, i) both properties on each side of the boundary line in question will have electricity generation or transmission facilities constructed on them as part of the project under review, or ii) the owner of the property for which the reduced setback is sought executes and presents for recording a development easement satisfactory to the Tow in which the reduced setback is consented to, and construction within, and use of the easement area is appropriately restricted.

No experimental, homebuilt, or prototype wind turbines shall be allowed without documentation by the applicant of their maximum probable blade throw distance in the event of failure and determination by the Planning Board of appropriate setback distances on the basis of that documentation.

Section VI.

Local Law 1997-1 is hereby amended to add a new Section 303 to read as follows:

Section 303 – DISTRICT C

The purpose of this district is to foster the development of the Town’s windpower resource while preserving farmlands and adjoining settlements as compatible adjoining uses.

Section 303.1 – PRINCIPAL USES PERMITTED

- a) One and two-family dwellings built on a foundation, including modular dwellings.
- b) Farms and farm buildings for related agricultural activities.
- c) Mobile dwellings on individual lots.

Section 303.2 – ACCESSORY USES PERMITTED

- a) Same as Section 301.2,
- b) Home businesses conducted by the residents.
- c) Accessory buildings necessary to the principal use and which do not include any activity commonly conducted as a separate business.

Section 303.3 – USES REQUIRING A SPECIAL PERMIT

- a) Same as Section 301.3.
- b) Mobile dwelling parks.
- c) All retail sales, eating, service and professional establishments.
- d) Day camps, guest or vacation homes for pay, private clubs and seasonal camps.
- e) Commercial outdoor recreation such as ski runs, snowmobile parks, miniature golf courses, driving ranges, race tracks and hunting and fishing preserves.
- f) More than one residence structure on a lot for a farm (See note (g) to Table 1).
- g) Wind power electricity generation and transmission facilities. (See note (h) to Table 0).

Section 303.4 – USES PROHIBITED.

All other uses prohibited in this district.

- a) Same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- b) Imposition of conditions. The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the Land Use Regulations, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

Section 606 – PLANNING BOARD

The Town Board hereby affirms the existence of the Town of Fenner Planning Board consisting of seven (7) members and having all the authority conferred pursuant to Article 16 of the Town law. Specifically, the Planning Board shall have the following powers and duties:

1. To issue or deny Special Permits required by this law.
2. To undertake planning activities allowed by Town Law or as requested by the Town Board.
3. Subdivision Review and Approval.
4. Site Plan Review and Approval.

Section 606.1 – SPECIAL PERMITS

A Special Permit gives some means of control of proposed new uses of land and buildings which are compatible with land uses permitted by right by the Land Use Regulations as long as the conditions applicable to special permit uses are satisfied. Specifically, it gives the Planning Board the opportunity to determine whether such proposed new development (in the particular location, at the particular scale, and of the particular site design contemplated) will create special problems which can be corrected or effectively minimized by specially devised conditions or which call for denial of permission.

When a Special Permit is granted, the Planning Board may prescribe conditions to be observed in order to ensure adherence to the standards specified in Sections 606.2 and 606.5.

No Special Permit shall be granted with respect to any property or any use on or for which a violation currently exists. (Non-conforming uses as outlined in Section 408 are not considered violations of this local land use law.)

Unless extended by the Planning Board, if a use or construction authorized by a Special Permit has not been started within one year, the Special Permit will expire.

Section 606.2 – APPLICATIONS FOR SPECIAL USE PERMITS

- a) An application to the Planning Board for a special use permit shall be submitted to the Town Clerk and shall be accompanied by three sets of preliminary site plans and other descriptive matter to show clearly the intentions of the applicant. These documents shall become a part of the record to determine if the proposed special use meets the requirements of this local law.
A public hearing shall be held by the Planning Board within sixty-two days from the date any application for a Special Permit is received.
- b) At least 10 days before the date of the public hearing, the Town Clerk shall transmit to the Planning Board a copy of the application, with supporting documents, and notice of hearing. The Planning Board shall render its decision within 62 days, of the date the public hearing is closed.

Section 606.3 – STANDARDS FOR GRANTING SPECIAL USE PERMITS

No special use permit shall be granted unless it is determined by the Planning Board that the proposed use meets all of the following criteria:

- a) The location, size and use of structure, nature and intensity of operations involved, size of site in relation to the proposed structure(s), and the location of

the site with respect to roads giving access to it are such that the proposed use will be in harmony with orderly development of the district.

- b) The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, or impair their value.
- c) The proposed use shall not conflict with any master plan, or part thereof.
- d) Operations of any special use shall not be more objectionable to nearby properties than would be the operations of any unconditionally permitted use.
- e) A special use permit shall not be issued for a use on a property where there is an existing violation of this local law.
- f) The use shall not have an adverse effect on the agriculture of the area.
- g) The proposed use shall be in strict compliance with the requirements of Article 5, Existing Supplemental Regulations.

Section VII.

Local Law 1997-1 is hereby amended to add a new Section 606.31 to read as follows:

Section 606.31 – ADDITIONAL STANDARDS FOR GRANTING SPECIAL USE PERMITS FOR WIND POWER ELECTRICITY GENERATION AND TRANSMISSION FACILITIES

No special use permit shall be granted for commercial wind power electricity generation and/or transmission facilities unless it is determined by the Planning Board that the proposed use meets all of the following criteria, in addition to those general criteria listed in Section 606.3:

- a) No individual tower facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
- b) No individual tower facility shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or interference with signal transmission or reception.
- c) Use of nighttime, and overcast daytime condition, stroboscopic lighting to satisfy tower facility lighting requirements for the Federal Aviation Administration shall be subject to on-site field testing before the Planning Board as a prerequisite to that Board's approval with specific respect to Section 606.3(D) as it applies to existing residential uses within 2000' of each tower for which such strobe lighting is proposed.
- d) No individual tower facility shall be installed in any location that would substantially detract from or block view of a portion of a recognized scenic viewshed, as viewed from any public road right-of-way or publicly owned land within the Town of Fenner, that extends beyond the border of the Town of Fenner.

- e) Individual wind turbine towers shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed 50 dbA, measured at the boundaries of all of the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of special use permit application.

The Planning Board may impose additional standards on the special use to provide adequate safeguards to protect the health, safety, or general welfare of the public, to preserve the general character of the neighborhood in which such proposed special use is to be placed, and to minimize possible detrimental effects of use on adjacent property.

Section 606.4 – SUBMISSION OF SITE PLAN AND SUPPORTING DATA

A site plan and supporting data for a special use permit shall be submitted to the Planning Board. The owner shall submit a site plan and supporting data as required and shall include all or a portion of the following information presented in drawn form and accompanied by a written text. The amount of information will depend on the scope of the proposal.

- a) Survey of the property, showing existing features of the property, including contours, large trees, buildings, structures, streets, utility easement, right-of-way, land use, land use district and ownership of surrounding property.
- b) Site plan showing proposed lots, blocks, building locations, and land use area.
- c) Traffic circulations, parking and loading spaces, and pedestrian walks.
- d) Landscaping plans, including site grading, landscape design, and open areas.
- e) Preliminary architectural drawings for buildings to be constructed, including floor plans, exterior elevations, and sections.
- f) Preliminary engineering plans, including road improvements, storm drainage system, public utility extensions, water supply, and sanitary sewer facilities.
- g) Engineering feasibility studies of any anticipated problems which might arise due to the proposed development, as required by the Planning Board.
- h) Construction sequence and time schedule for completion of each phase for buildings, parking spaces, and landscaped areas.
- i) A description of the proposed uses, including hours of operations, number of employees, expected volume of business, and type and volume of traffic expected to be generated.
- j) A completed Environmental Assessment Form.

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- a) No wind turbines shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
 - b) The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.
 - c) All power transmission lines from the wind generation electricity generation facilities to on-site substations shall be underground.

- d) Procedures acceptable to the Planning Board for emergency shut-down of power generation units shall be established and posted prominently and permanently on at least one location on the road frontage of each individual unit site.
- e) Prior to issuance of a Building Permit, the applicant shall provide the Town proof in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance of a level to be determined by the Town Board in consultation with the Town's insurer to cover damage or injury which might result from the failure to a tower or towers or any other part(s) of the generation and transmission facility.

Section 606.5 – SITE PLAN APPROVAL

The Planning Board shall review the site plan and supporting data before approval, rejection, or approval with stated conditions as given, and take into consideration the following:

- a) Harmonious relationship between proposed uses and existing adjacent uses.
- b) Maximum safety of vehicular circulation between the site and road network.
- c) Adequacy of interior circulation, parking and loading facilities, with particular attention to vehicular and pedestrian safety.
- d) Adequacy of landscaping and setbacks in regard to achieving maximum compatibility and protection to adjacent residential districts.

Should changes or additional facilities be required by the Board, final approval of the site plan shall be conditional upon the satisfactory compliance by the owner with the changes or additions.

Any owner wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

Section 607 – CHANGES AND AMENDMENTS OF THE LAND USE LOCAL LAW

Section 607.1 – PERIODIC REVIEW

From time to time, the Town Planning Board may re-examine the provisions of this local law and the location of district boundary lines and may submit a report to the Town Board recommending such changes, or amendments, if any, which may be desirable in the interest of the safety, health, or welfare of the public.

Section 607.2 – PROCEDURE FOR AMENDMENTS

Regulations, districts and boundaries established by this local law may be amended or repealed after official notice has been given and a public hearing has been held by the Town Board as required by law.

Each petition requesting a change of land use regulations or district boundaries shall be typewritten, signed by the owner, and filed in triplicate with the Town Clerk accompanied by the required fee, which shall be determined from time to time by resolution of the Town Board.

Section VIII.

Local Law 1997-1 is hereby amended to add a new Section 606.41 to read as follows:

Section 606.41 – SUBMISSION OF ADDITIONAL SUPPORTING DATA FROM SITE PLAN OF WIND POWER ELECTRICITY GENERATION AND TRANSMISSION FACILITIES

In addition to the site plan material listed in Section 606.4, the following material shall be submitted to the Planning Board for commercial wind power electricity generation and/or transmission facilities:

- a) Digital elevation model-based project visibility map showing the impact of topography upon visibility of the project from other locations, to a distance radius of three miles from the center of the project. Scale used shall depict 3-mile radius as no smaller than 2.7 inches, and the base map used shall be a published topographic map showing cultural features.
- b) No fewer than four and no more than the number of proposed individual wind turbines plus three color photos, no smaller than 3” x 5”, taken from locations within a 3-mile radius from it and to be selected by the Planning Board, and computer-enhanced to simulate the appearance of the as-built aboveground site facilities as they would appear from these locations.

Regulation of Wind Power Generating Facilities

Town of Martinsburg, Lewis County, NY

Town of Martinsburg Development Law contains regulations for wind power generating facilities. The law allows wind power generating facilities in the rural residential, agricultural and forest districts of the town as an overlay district. This use requires a special use review by the planning board. Below are the relevant sections of the law that address these regulations.

ARTICLE 2. DEFINITIONS

Section 210. General

Except where specifically defined herein, all words used in this law carry their customary meanings. Words in the present tense include the future, words in the singular include the plural and the plural the singular, and the work “shall” is intended to be mandatory.

Section 220. Specific Definitions

Essential Facilities: The operation or maintenance by municipal agencies or public utilities or telephone dial equipment centers; electrical or gas substations; water

treatment, storage and transmission facilities; pumping stations; telecommunication towers and similar facilities. The definition of essential facilities shall not include power generating facilities of any kind.

Overlay District: A district that encompasses one or more underlying districts and that imposes additional requirements above that required by the underlying district.

Wind Power Generating Facilities: Wind generating facilities which generate original power on site to be transferred to a transmission system for distribution to customers. The definition of wind power generating facilities shall not include individual wind power generating facilities erected and used primarily for private use.

Section 310. Types of Districts

For the purpose of this law the Town of Martinsburg is hereby divided into the following districts:

H _ Hamlet:	The areas within this district are now developed to some extent and include low or medium density residential uses with some commercial and industrial uses.
A – Agricultural:	The areas within this district are generally used for agricultural activities. Most of the land is open in character with some scattered spots of forest, wetland, and residential use.
RR – Rural Residential:	The areas within this district are sparsely settled, but generally accessible by highway. Some forest and agricultural use may be present.
F – Forest Resources:	The areas within this district are predominantly covered by dense vegetation and contain many wet areas and stream courses. They are relatively inaccessible by automobile and contain few permanent residences and some seasonal residences.
WPO – Wind Power Overlay:	Area(s) in the Town of Martinsburg where wind power generating facilities are allowed.

ARTICLE 4. DISTRICT REGULATIONS

Section 410. Allowed Uses

All uses shall comply with the requirements as indicated on the following chart:

P = Development Permit Required	NONE = No Permit Required
SU = Special Use by Planning Board Approval Required	NA = Not Allowed

LAND USE	DISTRICT			
	RR Rural Residential	H Hamlet	A Agricultural	F Forest
Wind Power Generation Facilities	SU	NONE	SU	SU

Section 420. Land Use District Schedule

District	Specifications for All Uses	
<p style="text-align: center;">WPO Wind Power Overlay</p>	Lot Frontage:	same as underlying zone
	Lot Size:	same as underlying zone
	Setback of all wind power generating structures:	from centerline of any road – 100 feet plus height of structure from side and rear lot lines – 300 feet from any existing residential structures – 1500 feet
	Landscaping and Screening:	Appropriate landscaping is required to keep the site in a neat and orderly fashion. Appropriate screening is required to screen accessory structures from adjacent residences.

Section 425. Wind Power Overlay District Procedure

1. A Wind Power Overlay may be applied in the Rural Residential District or the Agricultural District upon application to the town board.
2. Any application for a Wind Power Overlay to the town board must be in writing and must be duly signed by the applicant and contain:
 - a) the identity of the parcels to be affected, including tax map numbers and acreage;
 - b) a survey map showing the boundaries of the overlay area;
 - c) the consent of all property owners within the overlay;
 - d) sufficient acreage to comply with setbacks and other requirements set forth in Section 420 of this law;
 - e) distance to nearest residential structures;
 - f) proposal for landscaping and screening;
 - g) the identity of the applicant; and
 - h) an Environmental Assessment Form.
3. The town board shall hold a public hearing on any such application prior to permitting or denying such application. The notice shall be published in the official newspaper of the town at least 10 days prior to the hearing. In addition, written notices shall be sent to:
 - a) all adjoining property owners;
 - b) all other municipal entities within 500 feet of the project site; and
 - c) the Lewis County Planning Board.

The hearing shall be held within 62 days of receiving a complete application.

4. The Town Board shall make its determination within 62 days of when the public hearing is closed.

Town of Westfield

Local Law No. 2 for the Year 2002. Wind Energy Conversion Systems

Be it enacted by the Town of Board of the Town of Westfield, County of Chautauqua and State of New York, as follows:

Section 1. Section 185-13 of the Town of Westfield Zoning Law is hereby amended to add the following definitions in alphabetical order:

WECS – Any mechanism designed for the purpose of converting wind energy into electrical energy.

WECS, Commercial – A WECS that is the prime use on a parcel of land and supplies electrical power for off-site use.

WECS, Noncommercial – A WECS that is incidental and subordinate to another use on the same parcel and supplies electrical power solely for on-site use, except that when a parcel on which a noncommercial WECS is installed also receives electrical power supplied by a utility company, excess electrical power generated by the noncommercial WECS and not presently needed for on-site use may be used by the utility company in exchange for a reduction in the cost of electrical power supplied by that company to the parcel for on-site use, as long as no net revenue is produced by such excess electrical power.

Section 2. Section 185-43(J) is added as follows:

- J. Wind Energy Conversion Systems (Commercial and Noncommercial)
1. Purpose. For the purpose of protecting the general public of the Town of Westfield and properties adjacent to Wind Energy Conversion Systems (WECS) from indiscriminate placement, related health and safety problems, etc., the following rules and regulations shall apply.
 2. Definitions – See Section 185-13.
 3. Regulations – Noncommercial WECS shall be allowed by special use permit pursuant to Article XI in any district; commercial WECS shall be allowed by special use permit pursuant to Article XI in the Residential – Agricultural (R-A) District only. All WECS shall conform to the following regulations:
 - a. Application. An applicant for a special use permit for a WECS shall submit a site plan, as required by 185-48(B), which meets the requirements of 185-48(B). In addition, the following information shall be submitted and prepared by a Professional Engineer registered to practice in New York State:
 - 1) A site plan drawn in sufficient detail to show the following:
 - a) Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.

- b) Utility lines, both above and below ground, within a radius equal to the proposed tower height, including blades.
 - c) Property lot lines and the location and dimensions of all existing structures and uses on sit within 300 feet of the system.
 - d) Surrounding land use and all structures within 500 feet of the WECS location.
 - e) Dimensional representation of the various structural components of the tower construction, including the base and footing.
 - f) Design data indicating the basis of design, including manufacturer's dimensional drawings and installation and operation instructions.
 - g) Certification by a registered professional engineer or manufacturer's certification that the tower design is sufficient to withstand wind-load requirements for structures as established by the New York State Uniform Fire Prevention and Building Code.
 - h) Evidence from a qualified individual that the site is feasible for a WECS.
- 2) A Full Environmental Assessment Form ("EAF") and Visual EAF Addendum Form prepared in accordance with the State Environmental Quality Review Act.
 - 3) Digital elevation model-based project visibility map showing the impact of topography upon visibility of the WECs from other locations, to a distance radius of three (3) miles from the center of the WECS site. Scale used shall depict 3-mile radius as no smaller than 2.7 inches, and the base map shall be a published topographic map showing cultural features.
 - 4) No fewer than four (4) and no more than the number of proposed individual wind turbines plus three color photos, no smaller than 3" x 5", taken from locations within a three (3) mile radius from it and to be selected by the Planning Board, and computer-enhanced to simulate the appearance of the as-built above ground facilities as they would appear from these locations.
 - 5) An application for a noncommercial WECS is exempt from the requirements of a (1)(a)(h) and a (1)(a)(2), a (1)(a)(3) and a (1)(a)(4) hereof, but shall include a short EAF.
- b. Access. Access to the tower shall be limited by means of a fence no lower than six (6) feet high around the tower base with a locking portal and

- with a locking gate on fence or by limiting tower climbing apparatus to no lower than twelve (12) feet from the ground.
- c. Setback. The minimum required setback for any WECS tower from property lines, overhead utility lines, dwellings, agricultural buildings, or other WECS shall be equal to 1.5 times the proposed structure height, including blades.
 - d. Noise. WECS towers shall be properly maintained and operated at all times and shall be located with relation to property lines so that the noise produced during operation shall not exceed fifty (50) dbA, measured at the boundaries of all of the closets parcels that are owned by non-site owners.
 - e. Electromagnetic Interference. WECS generators and alternators shall be properly filtered and/or shielded in order to avoid electromagnetic interference and shall comply with the rules and regulations of the Federal Communications Commission contained in 47 CFR Parts 15 and 18.
 - f. Safety.
 - 1) No WECS shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
 - 2) The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.
 - 3) Procedures acceptable to the Town Board for emergency shutdown of power generation units shall be established and posted prominently and permanently on at least one location on the road frontage of each individual unit.
 - 4) Appropriate warning signs shall be posted. The type and placement of signs shall be determined on an individual basis as safety needs dictate.
 - 5) The Permittee shall meet all FAA requirements to lighting.
 - g. Transmission Lines. All power transmission lines from the WECS to on-site substations shall be underground.
 - h. Height.
 - 1) Noncommercial WECS shall not exceed a total height of fifty (5) feet unless the parcel on which the WECS is to be location is ten (10) acres or larger, in which case the maximum total height may be 100 feet.
 - 2) Commercial WECS shall not exceed a total height of 350 feet.
 - i. Liability Insurance. Prior to the issuance of a Building Permit, the applicant shall provide the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company that liability insurance has been obtained to cover damage or injury which might result from the failure of the tower and/or the WECS or any part

thereof and transmission facility. The Town Board, in consultation with the Town's insurer, may set the level of insurance required at whatever level it deems adequate.

- j. Abatement.
 - 1) If any WECS remains non-functional or inoperative for a continuous period of one (1) year, the permittee shall remove the WECS at the expense. Removal of the system shall include removal of the entire structure, including foundations, transmission equipment, and fencing, from the property.
 - 2) Bond/Security – The special use permit shall require a permittee to execute and file with the Town Clerk a bond or other form of security acceptable to the Town Board and Town Attorney as to the form, content and manner of execution, in an amount sufficient to ensure the faithful performance of the removal of the tower and the restoration of the site subsequent to its removal. The amount of the bond or security shall be no less than 125% of the cost of the removal of the tower and restoration of the site.
 - 3) If removal of towers and appurtenant facilities is required and the applicant, permit holder, or successors fails to remove the towers and appurtenant facilities from the property within 30 days from the date of notification by the Town Board, the board may contract for such removal and pay for removal from the bond.
- 4. The owner of each WECS shall have it inspected at least every two years for structural and operational integrity by a New York State licensed professional engineer, and shall submit a copy of the inspection report to the Town. If such report recommends that repairs or maintenance are to be conducted, the owner shall provide to the Town Board a written schedule for the repairs or maintenance.
- 5. A WECS shall not begin its initial operation until inspections required by the Town of Westfield have been made and all necessary approvals have been given. After initial operations have begun, the Code Enforcement Officer or his designated representative shall have the right at any reasonable time to enter the premises on which a WECS has been placed to inspect any or all parts of said installation.
- 6. After conducting an inspection, the Code Enforcement Officer may order the owner of a WECS to render said WECS inoperative for reasons related to assuring safety of operations, abating noise or eliminating electromagnetic interference. The owner of the WECS shall not return the WECS to service until any and all of the reasons which caused the Code Enforcement Officer to issue the order to the owner to make said WECS inoperative have been corrected to the satisfaction of the Code Enforcement Officer.
- 7. Prior to allowing a WECS to resume operations, the Code Enforcement Officer may require the owner of the WECS to have an inspection made and a report

issued by a professional engineer licensed in the State of New York, certifying that the WECS and/or tower is safe.

Section 3.

Section 185-24(J)(16) is hereby deleted from the Town of Westfield Zoning Law.

Section 4.

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

Section 5.

This Local Law shall take effect immediately upon filing with the Secretary of State of the State of New York.

Town of Westfield

Local Law No. 7 for the Year 2002

**AMENDMENT TO LOCAL LAW NO. 2 OF 2002- WIND ENERGY
CONVERSION SYSTEMS**

Be it enacted by the Town of Board of the Town of Westfield, County of Chautauqua and State of New York, as follows:

Section 1. Section 185-43(J)(3)(c) of the Town of Westfield Zoning Code is hereby amended to read as follows:

- i. Setback. The minimum required setback for any WECS tower from property lines shall be equal to 1.5 times the proposed structure height, including blades. The minimum setback from overhead utility lines, dwellings, agricultural buildings, or other WECS shall be equal to 1.2 times the proposed structure height, including blades. These setback requirements may be waived where the applicant submits a signed waiver from the owner(s) of the neighboring property, overhead utility lines, or other structures in relation to which the applicant does not meet the setback requirements set forth above. Where an applicant proposes to locate one or more WECS on a site consisting of multiple contiguous parcels owned or leased by the applicant, the term "property lines" shall mean the exterior boundaries of the contiguous parcels, which adjoin parcels not owned or leased by the applicant."

Section 2. Section 185-43(J)(3)(h)(2) of the Town of Westfield Zoning Code is hereby amended to read as follows:

- 1) Commercial WECS shall not exceed a total height of 400 feet.

Section 3.

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional unenforceable to a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

Section 4.

This Local Law shall take effect immediately upon filing with the Secretary of State of the State of New York.

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and italics or underlining to indicate new matter.

Town of Eden

Local Law No. 3 of the year 2004.

A local law regulating Wind Energy Conversion Systems

Be it enacted by the Eden Town Board of the Town of Eden as follows:

See "Attachment 1"

(If additional space is needed, attach pages the same size as this sheet, and number each.)

DOS-239 (Rev. 11/99)

Wind Energy Conversion Systems Local Law No. 3 – 2004 Town of Eden

§217-1. Purpose

§217-2. Findings

§217-3. Definitions

§217-4. Requirements

§217-5. Special Permit Required

§217-6. Penalties for Offenses

§217-1. Purpose

The Town Board of the Town of Eden adopts this chapter to promote the effective and efficient use of wind energy/conversion systems (WECS) and to regulate the placement of wind energy conversion systems so that the public health, safety, natural resources, and aesthetics will not be jeopardized.

§217-2. Findings

- A. The Town Board of the Town of Eden finds and declares that wind energy is an abundant, renewable and nonpolluting energy resource of the Town and that its conversion to electricity will reduce our dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
- B. The Town Board of the Town of Eden further finds and declares that:
 - 1) Wind turbines that convert wind energy to electricity are currently available on a commercial basis from many manufacturers.
 - 2) The generation of electricity from properly sited wind turbines can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users.
 - 3) Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health and safety of neighboring property owner and the general public, and the aesthetics of the community.

§217-3. Definitions

As used in this chapter, the following terms shall have the meanings indicated:

WIND ENERGY CONVERSION SYSTEM – (WECS) a machine that converts the kinetic energy in the wind into a usable form (commonly known as a “wind turbine” or “windmill”). The WECS includes all parts of the system except the tower and the transmission equipment; the turbine or windmill may be on a horizontal or vertical axis, rotor or propeller.

WINDMILL FARMS – more than one WECS (two or more wind turbines or windmills) located within one site or adjacent sites.

SITE – the physical location of a WECS, including the related tower and transmission equipment.

SWEPT AREA – the largest area of the WECS which extracts energy from the wind stream. In a conventional propeller-type WECS, there is a direct relationship between swept area and the rotor diameter.

TOTAL HEIGHT – the height of the tower and the furthest vertical extension of the WECS.

OVERSPEED CONTROL – a mechanism used to limit the speed of blade rotation to below the design limits of the WECS.

§217-4. Requirements

A. Zoning District Requirements

- 1) A WECS and a Windmill Farm may be allowed in the Conservation ©, Agricultural (A), General Industrial (GI), Planned Industrial (PI), Suburban Residential (SR) and Rural Residential (RR) zoning districts of the Town of Eden only by Special Use Permit.
- 2) Neither a WECS nor a Windmill Farm shall be allowed in the Hamlet Residential (HR), General Business (GB), Office Business (OB) or Local Business (LB) zoning districts.

B. Application Requirements: all site plan applications and Special Use Permit applications for WECS and Windmill Farms shall meet the requirements of Sections 225-30 and 225-36 of the Eden Town Code and includes a drawing that depicts the following additional requirements:

- 1) Property lines and physical dimensions of the site.
- 2) Location, approximate dimensions and types of major existing structures and uses on site.
- 3) Location and elevation of the proposed WECS.
- 4) Location of all aboveground utility lines on site or within one radius of the total height of the WECS
- 5) Location and size of structures and trees above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposed of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
- 6) Show the zoning designations of the immediate and adjacent sites and the locations of any buildings or improvements that are within the fall zone of a proposed tower as set forth in Chapter 225, Zoning.
- 7) Include make, model, picture and manufacturer's specifications, including noise decibels.

C. General Provisions: Approval of all site plans or Special Use Permits for the installation of a WECS or Windmill Farm shall comply with the following requirements:

- 1) WECS size. This chapter covers those WECS of any size.
- 2) Water pumpers. Non-electrical windmills used for pumping water may be exempted from the provisions of Subsection C (3) through (15), but they must be sited so as any tipover will be harmless to others.
- 3) Compliance with Building Code.
 - a) Building permit applications shall be accompanied by standard drawings of structural components of the wind energy conversion system, including support structures, tower, base and footings. Drawings and any necessary calculations shall be certified, in writing, by a New York State registered professional engineer that the system complies with the current building code. This certification would normally be supplied by the manufacturer.
 - b) Where the structural components or installation vary from the standard design or specification, the proposed modifications shall be certified by a New York State registered professional engineer for compliance with the seismic and structural design provisions of the building code.
- 4) Compliance with Electrical Code.
 - a) Building permit applications shall be accompanied by a line drawing identifying the electrical components of the wind system to be installed in sufficient detail to allow for a determination that the manner of installation conforms to the electrical code. The application shall include a statement from a New York State registered professional engineer indicating that the electrical system conforms with good engineering practices and complies with the electrical code. This certification would normally be supplied by the manufacturer. All equipment and materials shall be used or installed in accordance with such drawings and diagrams.
 - b) Where the electrical components of an installation vary from the standard design or specifications, the proposed modifications shall be reviewed and certified by a New York State registered professional engineer for compliance with the requirements of the electrical code and good engineering practices.
- 5) Rotor safety. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the blade below the design limits of the rotor. The application must include a statement by a New York State registered professional engineer certifying that the rotor and overspeed controls have been designed and fabricated for the proposed use in accordance with good engineering practices. The engineer should also certify the structural compatibility of possible towers with available rotors. This certification would normally be supplied by the manufacturer and include the distance and trajectory of the thrown blade from an exploding turbine or propeller according to the Loss of Blade Theory.

- 6) Guy wires. Anchor points for guy wires for the WECS tower shall be located within property lines and not on or across any aboveground electrical transmission or distribution line. The point of ground attachment for the guy wires shall be enclosed by a fence six feet high.
- 7) Tower access. Towers should have either:
 - a) Tower-climbing apparatus located no closer than 12 feet from the ground.
 - b) A locked anticlimb device installed on the tower; or
 - c) The tower shall be completely enclosed by a locked, protective fence at least six feet high. For windmill farms a protective fence at least six feet high enclosing the entire site may be considered.
- 8) Noise. The WECS shall meet the requirements of any existing noise ordinance of the Town of Eden¹. In general the noise of the turbine shall not exceed 50 dbA., as measured at the boundaries of all the closet parcels that are owned by non-site owners and abut the site parcels.
- 9) Electromagnetic interference. The WECS shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated to a Town Building and Zoning Inspector that a wind energy conversion system is causing harmful interference, the operator shall promptly mitigate the harmful interference.
- 10) Signs. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage.
- 11) Height. The minimum height of the lowest part of the swept area of any WECS shall be 30 feet above the highest existing major structure or tree within a two-hundred-fifty-foot radius. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open-lattice towers are not considered structures. The overall height of a WECS unit shall be equal to or less than 200 feet.
- 12) Setbacks.
 - a) WECS shall be set back from any property line, above ground utility line or other WECS a distance greater than its overall height, including blades. The WECS shall also not be placed in front yard of any existing structure.
 - b) In the case of cluster development, a WECS shall be erected within the common open space area and shall be set back from all residences a distance greater than Subsection C (12)(a) above.
 - c) Contiguous property owners may construct a WECS for use in common, provided that the required setback, as defined in Subsection C(12)(A) above, is maintained relative to the property lines of non-participant owners.
- 13) Utility interconnection (for those WECS which will be interconnected to a utility grid). No wind turbine shall be installed until evidence has been

¹ Editor's Note: See Ch. 146, Art. 2, Noise Control.

given of a signed interconnection agreement, or letter of intent, with the interconnecting utility company.

- 14) Abatement. If a wind energy conversion system or systems are not maintained in operation condition for a period of one year and pose a potential safety hazard, the owner or operator shall take expeditious action to remedy the situation. The Town of Eden reserves the authority to abate any hazardous situation and to pass the cost of such abatement onto the owner or operator of the system. If the Town of Eden determines that the WECS has been abandoned or poses a safety hazard, the system shall be removed within 45 days of written notice to the owner or operator of the system.
- 15) Liability insurance. The applicant, owner, lessee or assignee shall maintain a current insurance policy which will cover installation and operation of the wind energy conversion system at all times. As a part of the application review process, the Town may require proof that the applicant is carrying sufficient liability, workers compensation etc. during installation and operation of proposed facility. Limits for said policy shall be set on size and scope of each project.
- 16) Lighting of tower. Lighting of the tower for aircraft and helicopter will conform with FAA standards for wattage and color, when required.
- 17) Environmental impact. Any WECS or Windmill Farm project will be subject to the State Environmental Quality Review Act (SEQRA) and will require a visual assessment.
- 18) Decommissioning and Restoration. The applicant shall include the following information regarding decommissioning of the project and restoring the site:
 - a) The applicant shall include the following information regarding decommissioning and restoring the site:
 - The anticipated life of the project;
 - The estimated decommissioning costs in current dollars;
 - The method and schedule for updating the costs of decommissioning and restoration;
 - The method of ensuring that funds will be available for decommissioning and restoration; and
 - The anticipated manner in which the project will be decommissioned and the site restored.
 - b) The Planning Board and/or the Town Board shall require the applicant to provide an appropriate and adequate demolition bond for purposes of removing the WECS facility in case the applicant fails to do so as required above. Proof of this bond shall be provided each year or at renewal time of any Special Permit.
 - c) The sufficiency of the demolition bond shall be confirmed at least every five years by an analysis and report of the cost of removal and property restoration to be performed by a New York Stat

licensed professional engineer, the cost of same to be borne by the applicant. If said analysis and report determines that the amount of the bond in force is insufficient to cover the removal, disposal and restoration costs, the bond shall be increased to the amount necessary to cover such costs within 10 days of the applicant's receipt of such report.

§217-5. Additional Special Use Permit Requirements

A. Application. Every application for a special use permit shall be made, in writing, to the Town Board in accordance with the requirements of the Town, shall be accompanied by a filing fee as set forth in the Town's Standard Schedule of Fees.² The special use permit application will include the following:

- 1) Name and address of the applicant.
- 2) Evidence that the applicant is the owner of the premises involved or that the applicant has written permission of the owner to make such an application.
- 3) A plot plan and development plan drawn in accordance with §217-4 and §225-30D of the Town Code.
 - a) Property line and physical dimensions of the proposed site;
 - b) Location, approximate dimensions and types of major existing structures and uses of the site;
 - c) Location and elevation of the proposed WECS;
 - d) Where applicable, the location of all transmission facilities proposed for installation; and
 - e) Where applicable, the location of all road and other service structures proposed as part of the installation.
- 4) An Environmental Assessment Form (Full EAF) and Visual EAF.
- 5) Other information as requested by the Town Planning Board, and the Town Board.

§217-6. Penalties for Offenses³

Any person who violates any provision of this chapter shall be guilty of a violation and subject to a fine or not more than \$250, imprisonment not to exceed 15 days, or both such fine and imprisonment.

§217-7. Enforcement.

A. The Town Code Enforcement of his designee shall be provided access, at any time, to any WECS site for the purposes of ensuring compliance with this and any other applicable code. Such access shall be upon providing 24-hour advance notification to the owner/operator of any such site.

² Editor's Note: The Standard Schedule of Fees is on file in the Town offices.

³ Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. 1).

New York State Department of State
State Records and Law Bureau
41 State Street, Albany, NY 12231

Local Law Filing

Town of Henderson

Local Law No. 2 of the year 2005

A Local Law amending the Town of Henderson Zoning Law enacted by Local Law No. 3 of the Year 1991 of the Town of Henderson as heretofore amended to establish predictable and balanced regulations for the siting of wind turbine facilities.

Be it enacted by the Town Board of the Town of Henderson as follows:

Section 1. Article 11, §150-6B – Terminology of the Town of Henderson Zoning Law being Chapter 150 of the Code of the Town of Henderson is hereby amended to add thereto, the following terminology in the correct alphabetical order therein:

Corridor Overlay Zone:

A district that encompasses one or more underlying districts and that imposes additional requirements above such required by the underlying district with the boundaries of said Overlay Zone as set forth on the Corridor Overlay Map.

Roof-mounted Wind Turbine:

A relatively small wind generating facility which generates original power on-site for on-site use by the property owner or home-owner, mounted on the principle building's roof and with a maximum height no greater than ten (1) feet.

Wind Turbine Tower:

Wind generating facility which generated original power on-site.

Private Wind Turbine Tower:

An individual wind turbine tower used to generate power for on-site use by the property owner or home-owner, except for the required electrical current feed-back to the power company.

Commercial Wind Power Generating Facility (Wind Turbine Farm):

Wind generating facilities which generate original power on site to be transferred to a transmission system for distribution to customers. The definition of commercial wind power generating facilities shall not include individual wind power generating facilities erected and used primarily for private use.

Section 2. The Town of Henderson Zoning Law, is further amended to add Article IX as follows:

Article IX
Wind Generation Facilities

§150-51. Purpose

The Town Board of the Town of Henderson recognizes the increased demand for alternative energy generating facilities and the need for more inexpensive power that wind turbine facilities may provide. Often these facilities require the construction of single or multiple wind turbines. The purpose of these supplemental regulations is to protect the community’s interest in properly siting wind turbine towers in a manner consistent with sound land use planning, while also allowing private and commercial providers to meet their power generating objectives.

§150-52. Permitted and Prohibited Uses

- A. Roof mounted wind turbines are permitted uses within all zoning districts.
- B. Private Wind Turbine Towers are permitted upon granting of a special permit within the Residential (R-15), Business (B) and Agriculture and Rural Residence (AR-40) zoning districts, but are not permitted within the Lakefront (LF), Island (I) and Harbor (H) zoning districts.
- C. Commercial Wind Power Generating Facilities are permitted upon granting of a special permit within the AR-40 zoning district, but are not permitted within the Corridor Overlay Zone or the R-15, B, LF, I, and H zoning districts.

§150-53. Additional Standards: Special Permit Criteria

- A. No special use permit shall be granted for a Private Wind Turbine Tower or a Commercial Wind Power Generating Facilities and/or transmission system unless it is determined by the Planning Board that the proposed use meets all of the following criteria, in addition to the special permit and site plan review criteria in Sections 150-20 and 150-39 respectively in the Town of Henderson Zoning Law:
 - B. No experimental, homebuilt, or prototype wind turbines shall be allowed without documentation by the applicant of their maximum probable blade throw distance in the event of failure and determination by the planning board of appropriate setback distances on the basis of that documentation.
 - C. The minimum required setback distance between each Wind Turbine Tower and all surrounding property lines, overhead utility lines, overhead utility lines, any dwellings or other buildings for occupancy, and any other wind turbine towers, above-ground generation facilities, shall be no less than 1.5 times the proposed structure height plus the rotor radius.

- D. No Wind Turbine Tower facilities shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
- E. No Wind Turbine Tower facilities shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception.
- F. Use of nighttime, and overcast daytime condition, stroboscopic lighting to satisfy tower facility lighting requirements for the FAA shall be subject to on-site field testing before the Planning Board as a prerequisite to that Board's approval with specific respect to glare to existing residential uses within 200' of each tower for which such strobe lighting is proposed.
- G. No Wind Turbine Tower facilities shall be installed in any location that would substantially detract from or block view of a portion of a recognized scenic viewshed, as viewed from any public road right-of way, public body of water, or publicly owned land within the Town of Henderson or that extends beyond the border of the Town of Henderson.
- H. Wind Turbine Tower facilities shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed 50 dbA, measured at the boundaries of all of the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of the issuance of any special permit for such facilities.
- I. No Wind Turbine Tower facilities shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
- J. The minimum distance between the ground and any part of the rotor blade system shall be 30 feet, unless a fence enclosure is provided to limit unauthorized or accidental access to the spinning rotors.
- K. All power transmission lines from the Wind Turbine Tower facilities to on-site substations shall be underground.
- L. Procedures acceptable to the Planning Board for emergency shutdown of power generation units shall be established and posted prominently and permanently on at least on location on the road frontage of each individual unit site.

§150-54. Liability Insurance

Prior to issuance of a Building Permit for a Wind Turbine Tower and continuing thereafter construction until such facility is removed from the site, the applicant shall provide documentation satisfactory to the Town and as such reasonable intervals as determined by the Town of the existence of liability insurance coverage with reasonable

limits as determined by the Town Board in consultation with the Town's insurer, for property damage, injury or death resulting from the construction, placement, use, maintenance, operation of a Wind Generation Facility, by the Owner of the Site.

§150-55. Removal of Obsolete Commercial Wind Turbine Facilities

- A. Obsolete or unused wind turbines and accessory structures shall be removed from any site within four months of the discontinuance of the use thereof. Owner of the site shall notify the Tow in writing within ten (1) days of the discontinuance of the use of such Turbine Tower or facility. Failure to notify and/or remove the obsolete or unused tower or facility in accordance with these regulations shall be a violation of this law. The Town Board may remove such facilities after 60 days and treat the cost as a tax lien on the property.
- B. When the zoning permit is obtained for a commercial wind turbine facility, the applicant must provide and maintain a performance bond issued by a surety licensed in New York State in form acceptable to Town or such other security acceptable to the Town for removal of the wind turbines and property restoration, in an amount approved by the Planning Board, but not less than \$50,00.
- C. When a zoning permit is renewed or modified, the Board may adjust the required amount of the financial security bond to adequately cover increases in the cost of removal of the wind turbine facility and property restoration.

§150-56. Special Permit and Site Plan Procedures/Submittal Requirements

- A. The procedure for obtaining special permit or site plan approval hereunder and the information to be provided by an applicant hereunder shall be as provided respectively Articles V and VI of the Code and as set forth hereafter.
- B. A digital elevation model-based project visibility map showing the impact of topography upon visibility of the project from other locations throughout the region, to a distance of 5 miles from the center of the project shall be provided. The scale used shall depict a 3-mile radius no smaller than 2.7 inches, and the base map shall be a published topographic map showing cultural features and other landmarks.
- C. Color photographs, at least 3 inches x 5 inches, taken from locations selected by the Planning Board within a three-mile radius of the boundaries of the facility site, shall be provided. Said photographs shall be computer enhanced to simulate the appearance of the as-built aboveground site facilities as such would appear from said locations. The number of photographs to be submitted shall be equal to the number of proposed individual wind turbines plus three, but in no event less than four.

§3. This Local Law shall take effect immediately upon the filing thereof in the Office of the New York State Secretary of State.

New York State Department of State
State Records and Law Bureau
41 State Street, Albany, NY 12231

Local Law Filing

(Use this form to file local law with Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Portland

Local Law No. 03 of the year 2002

A Local law Amending the Zoning Law relative to Interpretations and Definitions, adding a new section dealing with wind conversion systems and changing the Junk Vehicles on Private Property sections

Be it enacted by the Town Board of the

Town of Portland as follows:

02-02-01: Article 200- INTERPRETATIONS, DEFINITIONS, is hereby amended by adding the following new definitions:

- A. AGRICULTURE – shall mean production of crops, plants, vines, trees or farm animals.
- B. AGRICULTURE, LIMITED _ Agriculture except for farm animals. Delete old definition.
- C. AGRICULTURE, UNLIMITED – Agriculture where no nuisance is created. Delete old definition.
- D. AGRICULTURAL STRUCTURES – Any structure used primarily and directly for agricultural (limited or unlimited) activities and including but not limited to barns, silos, storage sheds, corncribs, milk house, greenhouse, saw mills and similar structures.
(If additional space is needed, attach pages the same size as this sheet, and number each.)
- E. ENFORCEMENT OFFICER – Shall mean the Enforcement officer and any deputies or assistants appointed from time to time by resolution of the Town Board of Town of Portland.
- F. FARM ANIMALS – Shall mean bees, poultry, sheep, llamas, goats, swine, cattle, or horses and other equines.
- G. GARAGES – PUBLIC AND PRIVATE, A PUBLIC garage shall mean any structure within which personal property may be stored for a fee and or any work or labor is performed for which a charge is made to a person not performing the work or labor. A PRIVATE garage shall mean any structure within which items of personal property are stored without a fee being charged and in which the

owner or lessee may perform work or labor upon such personal property without charging a fee.

- H. PORCH – A roofed open structure projecting from an outside wall of a structure which may or may not have screening installed thereon.
- I. WIND ENERGY CONVERSION SYSTEMS OR (WECS) – Shall mean any mechanism designed for the purpose of converting wind energy into electrical energy. WECS maybe:
 - 1. Commercial – A WECS that is the prime use on a parcel of land and supplies electrical power for off-site use.
 - 2. Non-Commercial – A WECS that is incidental and subordinate to another use on the same parcel and supplies electrical power for on-site use, except that when a parcel on which a non-commercial WECS is installed also receives electrical power supplied by a utility company, excess electrical power generated by non-commercial and not presently needed for on-site use may be used by the utility company in exchange for a reduction in the cost of electrical power supplied by the company to the parcel for on-site use, al long as not net revenue is produced by such excess electrical power.

02-02-02: Article 200 – INTERPRETATIONS, DEFINITIONS, is hereby amended by amending the following definitions:

- A. BUILDING SETBACK LINE—Delete the present language and insert the following new language: An established line, set up in this Zoning Ordinance as amended from time to time, defining the distance between the face of any structure to be erected and the edge of the right of way of any road or adjacent highway.
- B. DEVELOPEMTN – add the letter “d” to the word “improve” so it reads “improved” and change the word “dredged” to “dredging”.
- C. FARM – delete the word “and” before the word grain and insert the word “or”; delete the words “the usual farm products such as” and insert “plants, vines, trees,” in their place; delete the words “the usual farm poultry” and the words “such as horses, cattle, sheep, and swine”.
- D. JUNK VEHICLES ON PRIVATE PROPERTY – delete the words “old second hand” and insert “or an uninspected” and delete the words “intended or”.
- E. NUISANCE – delete old definition and add the following new definition “A use on any property in the Town of Portland outside the Village of Brocton which use results in an offensive, annoying, unpleasant, or obnoxious condition or conditions being created of such nature or degree, that they are detrimental to the health, safety, general welfare of persons or property. Common examples include excessive odors, noise, smoke, vibration, light, runoff, traffic, or electric interference.

02-02-03: Article 400 – District Regulations is amended by adding to subsection “2. Use upon Special Condition” of Sections 410, 411, 412, 412(A), 413, 413(A), 420, 421, 422 and 430 Noncommercial Wind Energy Conversion Systems (WECS) and by addition to

section 413 subsection “2. Use upon Special Condition” Commercial Wind Energy Conversion Systems (WECS).

02-02-04: Section 412(A) – R3 District: Residential subparagraph 2. Add, “Agricultural (Limited and Unlimited) related Business”

02-02-05: ARTICLE 800 – SUPPLEMENTAL REGULATIONS is hereby amended by adding a new section entitled “Section 818 – Wind Energy Conversion Systems” as follows:

- A. Purpose – For the purpose of protecting the general public of the Town of Portland and properties adjacent to Wind Energy Conversion Systems (WECS) from indiscriminate placement, related health and safety problems, the following rules and regulations shall apply:
- B. Definitions – See Section 202
- C. Regulations – Non-commercial WECS shall be allowed by use upon special condition pursuant to Article 400 in any district; commercial WECS shall be allowed by use upon special condition pursuant to Article 400 in Agricultural (A) District only. All WECS shall conform to the following regulations:
- D. Application. An applicant for a use under special conditions for a WECS shall submit a site plan, as required by Article 600 Section 602, which meets the requirements of Article 603. In addition, the following information shall be submitted and prepared by a professional Engineer registered to practice in New York State.
- E. A site plan drawn in sufficient detail to show the following:
 - 1. Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
 - 2. Utility lines, both above and below ground, within a radius equal to the proposed tower height, including blades.
 - 3. Property lot lines and location and dimensions of all existing structures and uses on site within 300 feet of system.
 - 4. Surrounding land use and all structures within 500 feet of the WECS location.
 - 5. Dimensional representation of the various structural components of the tower construction, including base and footing.
 - 6. Design data indicating the basis of design, including manufacturer’s dimensional drawings and installation and operation instructions.
 - 7. Certification by a registered professional engineer or manufacturer’s certification that the tower design is sufficient to withstand wind-load requirements for structures as established by the New York State Uniform Fire Prevention and Building Code.
 - 8. Evidence from a “qualified individual” that the site is feasible for a WECS.
- F. A full Environmental Assessment Form (EAF”), and for a commercial WECS a Visual EAF Addendum Form, prepared in accordance with the State Environmental Quality Review Act.
- G. Digital elevation model-based project visibility map showing the impact of topography upon visibility of the WECS from other locations, to a distance

radius of three (3) miles from the center of the WECS site. Scale used shall depict 3-mile radius as no small than 2.7 inches, and the base map shall be a published topographic map showing cultural features.

- H. No fewer than four (4) and no more than the number of proposed individual wind turbines plus three (3) color photos, no small than 3” x 5”, taken from locations within three (3) mile radius from it, to be selected by the Planning Board, and computer-enhanced to simulate the appearance of the as built above ground facilities as they would appear from these locations.
- I. Access. Access to the tower shall be limited by means of a fence six (6) feet high around the base with a locking portal and with a locking gate on fence or by limiting tower climbing apparatus to no lower than twelve (2) feet from the ground.
- J. Setback. The minimum setback for any WECS tower from property lines, overhead lines, dwellings, agricultural buildings, or other WECS shall be equal to 1.5 times the proposed structure height, including blades.
- K. Noise. WECS towers shall be properly maintained and operated at all times and shall be located with the relation to property lines so that the noise produced during operation shall not exceed fifty (50) dbA, measured a the boundaries of all of the closest parcels that are owned by non-site owners.
- L. Electromagnetic Interference. WECS generators and alternators shall be properly filtered and/or shield in order to avoid electromagnetic interference and shall comply with the rules and regulations of the Federal Communications Commission contained in 47 CFR Parts 15 and 18.
- M. Safety.
 - 1. No WECS shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades and turbine components.
 - 2. The minimum distance between the ground and any part of the rotor blade system shall be thirty (3) feet.
 - 3. Procedures acceptable to the Town Board for emergency shutdown of power generation units shall be established and posted prominently and permanently on at least one (1) location on the road frontage of each individual unit.
 - 4. Appropriate warning signs shall be posted. The type and placement of signs shall be determined on an individual basis as safety needs dictate.
 - 5. The Permittee shall meet all FAA requirements for lighting.
- N. Transmission Lines. All power transmission lines from WECS to on-site substations shall be underground.
- O. Height.
 - 1. Non-commercial WECS shall not exceed a total height of fifty (5) feet unless the parcel on which the WECS is to be located in ten (1) acres or larger, in which case the maximum height of the tower, excluding the turbine and blades, shall be 100 feet.
 - 2. Commercial WECS shall not exceed a total height of 350 feet.

- P. Compliance with National Electrical Code.
1. Building permit applications shall be accompanied by a one line drawing identifying the electrical components of the wind system to be installed in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. The application shall include a statement from a New York State registered professional engineer indicating that the electrical system conforms to good engineering practices and complies with the National Electrical Cod. The manufacturer normally supplies this certification. All equipment and materials shall be used or installed in accordance with such drawings and diagrams.
 2. Where the electrical components of an installation vary from the manufacturer's standard design or specifications, the proposed modifications shall be reviewed and certified by a New York State registered professional engineer for compliance with requirements of the National Electrical Code and good engineering practices.
- Q. Liability Insurance. Prior to issuance of a Building Permit, the applicant shall provide the Town proof, in the form of a duplicate insurance policy.
- R. Abatement.
1. If any WECS remains non-functional or inoperative for a continuous period of one (1) year, the Permittee shall remove the WECS at their expense. Removal of the system shall include the removal of the entire structure, including foundations, transmission equipment, and fencing, from the property.
 2. Bond/Security – The use upon special condition shall require a Permittee to execute and file with the Town Clerk a bond or other form of security acceptable to the Town Board and Town Attorney as to the form, content and manner of execution, in an amount sufficient to ensure the faithful performance of the removal of the tower and the restoration of the site subsequent to its removal. The amount of the bond or security shall be no

Local Law No. 1 of 2005

Be it hereby enacted by the Town Board of the Town of Clinton as follows:

Section 1: Local Law No. 1 of 2005, entitled “WIND ENERGY FACILITIES,” is hereby adopted to read in its entirety as follows:

WIND ENERGY FACILITIES

Article I

§1 Title.

This Local Law may be cited as the “Wind Energy Facility Law of the Town of Clinton, New York.”

§2 Purpose.

The Town Board of the Town of Clinton adopts this Local Law to promote the effective and efficient use of the Town’s wind energy resource through Wind Energy Conversion Systems (WECS), and to regulate the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

§3 Authority.

The Town Board of the Town of Clinton enacts this Local Law under the authority granted by

1. Article IX of the New York State Constitution, §2(c)(6) and (10).
2. New York Statute of Local Governments, § 10 (1) and (7).
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(6), (11), (12), and (14).
4. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).
7. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(General powers).

§4. Findings.

A. The Town Board of the Town of Clinton finds and declares that

1. Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
2. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or energy consumption at that location can be reduced.

3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects, if not properly sited.
5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction methods.
6. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.
7. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.
8. Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively impact adjoining properties.
9. Without proper planning, construction of Wind Energy Facilities can create traffic problems and damage local roads.
10. If improperly sited, Wind Energy Facilities can interfere issues with various types of communications.

§5. Permits Required; Transfer; Modifications.

- A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Clinton except in compliance with this Local Law.
- B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Clinton except with a Wind Energy Facility Permit approved pursuant to this Local Law.
- C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Clinton except pursuant to a Wind Energy Facility Permit issued pursuant to this Local Law.
- D. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Clinton except pursuant to a Wind Energy Permit issued pursuant to this Local Law.
- E. This Local Law shall apply to all areas of the Town of Clinton.
- F. F. Exemptions. No permit or other approval shall be required under this Local Law for mechanical, non electrical WECS utilized solely for agricultural operations.
- G. Transfer. No transfer of any Wind Energy Facility or Wind Energy Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability of an applicant nor of any other party under this Local Law.
- H. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there will no increase in Total Height; (2) no change in the

location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.

§6 Definitions.

As used in this Local Law, the following terms shall have the meanings indicated:

EAF – Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

RESIDENCE – means any dwelling suitable for habitation existing in the Town of Clinton on the date an application is received. A residence may be part of a multi-dwelling or multipurpose building, but shall not include buildings such as hunting camps, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

SEQRA - the New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

SOUND PRESSURE LEVEL -- means the level which is equaled or exceeded a stated percentage of time. An L_{10} - 50 dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.

SITE -- The parcel(s) of land where a Wind Energy Facility is to be placed. The Site can be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered an agreement for said Facility or a setback agreement shall not be considered off-site.

SMALL WIND ENERGY CONVERSION SYSTEM (“Small WECS”)-- A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce consumption of utility power at that location.

TOTAL HEIGHT -- The height of the tower and the furthest vertical extension of the WECS.

WIND ENERGY CONVERSION SYSTEM (“WECS”)-- A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").

WIND ENERGY FACILITY - Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

WIND MEASUREMENT TOWER – a tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

WIND ENERGY PERMIT – A permit granted pursuant to this Local Law granting the holder the right to construct, maintain and operate a Wind Energy Facility.

§7. Applicability.

- A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law.
- B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that
 - 1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Local Law prior to recommencing production of energy.
 - 2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.
 - 3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-four (24) months after said effective date, unless a Wind Energy Permit for said Wind Energy Facility is obtained.

§§8-9 Reserved for Future Use.

WIND ENERGY CONVERSION SYSTEMS

Article II

§10 Applications for Wind Energy Permits for Wind Energy Conversion Systems.

- A. An application for a Wind Energy Permit for individual WECS shall include the following:
 - 1. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
 - 2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

3. Address, or other property identification, of each proposed tower location, including Tax Map section, block and lot number.
4. A description of the project, including the number and maximum rated capacity of each WECS.
5. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following.
 - 1) Property lines and physical dimensions of the Site;
 - 2) Location, approximate dimensions and types of major existing structures and uses on the Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the proposed WECS Site.
 - 3) Location and elevation of each proposed WECS.
 - 4) Location of all above ground utility lines on the Site or within one radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
 - 5) Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
 - 6) To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower location equal to:
 - i. One and a half times the tower height.
 - ii. Five hundred foot perimeter.
 - iii. One thousand foot perimeter.
 - 7) Location of the nearest residential structure on the Site and located off the Site, and the distance from the proposed WECS.
 - 8) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
6. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.
7. Landscaping Plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.
8. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.
9. List of property owners, with their mailing address, within 500 feet of the boundaries of the proposed Site. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.

10. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; (5) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of 3 feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.
11. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.
12. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:
 - 1) A construction schedule describing commencement and completion dates; and
 - 2) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
13. Completed Part 1 of the Full EAF.
14. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the WECS application.
15. For each proposed WECS, include make, model, picture and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.
16. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board may issue a positive declaration of environmental significance.
17. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:
 - a. Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.

- b. Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
 - c. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Site.
 - d. Noise Analysis: a noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall include low frequency noise.
 - e. Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring WECS Sites.
 - f. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.
18. The applicant shall, prior to the receipt of a building permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner.
19. A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

§11 Application Review Process.

- A. Applicants may request a pre-application meeting with the Town Board or with any consultants retained by the Town Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meetings Law.
- B. Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any waivers are requested, waiver application fees shall be paid at the time of the receipt of the application.
- C. Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Town Board waives any application requirement, no application shall be considered until deemed complete.
- D. If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees

shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.

- E. Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town Board.
- F. The Town Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed WECSs, and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- G. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers.
- H. Notice of the project shall also be given, when applicable, to (1) the Clinton County Planning Board, if required by General Municipal Law §§239-l and 239-m.
- I. SEQRA review. Applications for WECS are deemed Type I projects under SEQRA. The Town may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Town's proceedings.
- J. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings, which Statement may also serve as the Town's decision on the applications.
- K. Upon receipt of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

§12 Standards for WECS.

- A. The following standards shall apply to all WECS, unless specifically waived by the Town Board as part of a Wind Energy Permit.
 - 1. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
 - 2. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECS and telecommunications facilities.
 - 3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.

4. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan.
5. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. WECSs within a multiple WECS project shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Project, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
6. The use of guy wires is disfavored. A WECS using guy wires for tower support shall incorporate appropriate measures to protect the guy wires from damage which could cause tower failure.
7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the interference.
8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.
9. WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.
10. WECSs shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.
11. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
12. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
13. The maximum Total Height of any WECS shall be 400 feet.

14. Construction of the WECS shall be limited to the hours of 7 a.m. to 7 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town.

§13 Required Safety Measures.

- A. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- B. Unless the property owner submits a written request that no fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.
- C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information. The Town Board may require additional signs based on safety needs.
- D. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
- E. The minimum distance between the ground and any part of the rotor or blade system shall be twenty (20) feet.
- F. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

§14 Traffic Routes.

- A. Construction of WECSs poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECSs and /or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Wind Energy Permit conditions may limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.
- B. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECSs. A public improvement bond shall be posted prior to the issuance of any building permit in an amount,

determined by the Town Board, sufficient to compensate the Town for any damage to local roads.

§15 Setbacks for Wind Energy Conversion Systems.

- A. The statistical sound pressure level generated by a WECS shall not exceed $L_{10} - 50$ dBA measured at the nearest residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- B. In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.
- C. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.
- D. Any noise level falling between two whole decibels shall be the lower of the two.
- E. Each WECS shall be setback from Site boundaries, measured from the center of the WECS:
 - 1. 500 feet from the nearest Site boundary property line.
 - 2. 1,000 feet from the right of way of State Route 11
 - 3. 500 feet from the right of way of all other public roads.
 - 4. 1,200 feet from the nearest off-site residence, measured from the exterior of such residence. Notwithstanding any other provision of this Local Law regarding waivers or setback easements, no WECS shall be within 1,000 feet of a off-site residence, whether or not said residence is located in the Town of Clinton.
 - 5. 2,500 feet from the property line of any school, church, hospital or nursing facility.

6. One and a half times the Total Height of the WECS from any non-WECS structure or any above-ground utilities, unless waived by the utility companies.
7. 100 feet from state-identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds.

§16 Noise and Setback Easements.

- A. In the event a Wind Energy Facility does not meet a setback requirement or exceeds noise or other criteria established in this Local Law as it existed at the time the Wind Energy Permit is granted, a waiver will be granted from such requirement by the Town Board in the following circumstances:
 1. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) setbacks less than required; and
 2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Article, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.
 3. Waivers granted under this Section differ from waiver requests under Article IV of this Local Law in that no Article IV waiver is required if a waiver is given under this Section, and a Article IV waiver must be sought rather than a waiver under this Section if the adjoining property owner will not grant an easement pursuant to this Section.

§17 Issuance of Wind Energy Permits.

- A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- B. If approved, the Town Board will direct the Town Clerk to issue a Wind Energy Permit upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this Local Law.
- C. The decision of the Town Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

- D. If any approved Wind Energy Facility is not substantially commenced within one year of issuance of the Wind Energy Permit, the Wind Energy Permit shall expire.

§18 Abatement.

1. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Town Board, the applicant shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's limit the ability to order a remedial action plan after public hearing.
2. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.
3. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of non-functional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully funded before a building permit is issued.

§19 Limitations on Approvals; Easements on Town Property

- A. Nothing in this Local Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Local Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.
- B. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

§20 Permit Revocation

- A. Testing fund. A Wind Energy Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as bi-annually, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Wind Energy Permit and this Local Law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.
- B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.
- C. Notwithstanding any other abatement provision under this Local Law, , and consistent with §19(A) and §21(B), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Wind Energy Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

WIND MEASUREMENT TOWERS

Article III

§21 Wind Site Assessment.

The Town Board acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of Wind Measurement Towers, also known as anemometer (“Met”) towers, shall be permitted on the issuance of a Wind Energy Permit in accordance with this Article.

§22 Applications for Wind Measurement Towers

- A. An application for a Wind Measurement Tower shall include
 - 1. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and

- telephone number of the agent as well as an original signature of the applicant authorizing the representation.
2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
 3. Address of each proposed tower location, including Tax Map section, block and lot number.
 4. Proposed Development Plan and Map.
 5. Decommissioning Plan, including a security bond for removal.

§23 Standards for Wind Measurement Towers.

- A. The distance between a Wind Measurement Tower and the property line shall be at least one and a half times the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- B. Wind Energy Permits for Wind Measurement Towers may be issued for a period of up to two years. Permits shall be renewable upon application to the Town Board in accordance with the procedure of §1-20.

SMALL WIND ENERGY CONVERSION SYSTEMS

Article III

§24 Purpose and Intent.

The purpose of this Article is to provide standards for small wind energy conversion systems designed for home, farm, and small commercial use on the same parcel, and that are primarily used to reduce consumption of utility power at that location. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

§25 Applications.

- A. Applications for Small WECS Wind Energy permits shall include:
 1. Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
 2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
 3. Address of each proposed tower location, including Tax Map section, block and lot number.

4. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.
6. Sufficient information demonstrating that the system will be used primarily to reduce
7. consumption of electricity at that location.
8. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.
9. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

§26 Development Standards.

All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Article that are not in conflict with the requirements contained in this section.

1. A system shall be located on a lot a minimum of one acre in size, however, this requirement can be met by multiple owners submitting a joint application.
2. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Article.
3. Small Wind energy systems shall be used primarily to reduce the on-site consumption of electricity.
4. Tower heights may be allowed as follows:
 - a. 65 feet or less on parcels between one and five acres.
 - b. 80 feet or less on parcels of five or more acres.
 - c. The allowed height shall be reduced if necessary to comply with all applicable Federal
 - d. Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
5. The maximum turbine power output is limited to 10 KW.
6. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding

- landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
7. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
 8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
 9. All on-site electrical wires associated with the system shall be installed underground except for "tie- ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
 10. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
 11. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
 12. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
 - a. Tower-climbing apparatus located no closer than 12 feet from the ground.
 - b. A locked anti-climb device installed on the tower.
 - c. A locked, protective fence at least six feet in height that encloses the tower.
 13. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.
 14. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.
 15. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates

that a lower height will not jeopardize the safety of the wind turbine structure.

16. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.
17. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacture.

§27 Standards.

A Small Wind Energy System shall comply with the following standards:

1. Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility
2. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed the 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

§28 Abandonment of Use.

- A. A Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the City.
- B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

WAIVERS

Article IV

§29 Waivers.

- A. The Town Board may, after a public hearing (which may be combined with other public hearings on Wind Energy Facilities, so long as the waiver request is detailed in the public notice), grant a waiver from the strict application of the provisions of this Local Law if, in the opinion of the Town Board, the grant of said waiver is in the best interests of the Town. The Town Board may consider as reasonable factors in evaluating the request, which may include, when applicable, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives, and the scope of the request.
- B. The Town Board may attach such conditions as it deems appropriate to waive approvals as it deems necessary to minimize the impact of the waiver.

MISCELLANEOUS

Article V

§30 Fees.

- A. Non-refundable Application Fees shall be as follows:
 - 1. WECS Wind Energy Permit: \$50 per megawatt of rated maximum capacity
 - 2. Wind Measurement Towers Wind Energy Permit: \$200 per tower.
 - 3. Small WECS Wind Energy Permit: \$150 per WECS
 - 4. Wind Measurement Tower Wind Energy Permit renewals: \$50 per Wind Measurement Tower.
- B. Building Permits. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall \$25 per permit request for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties.
- C. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

§31 Tax Exemption.

The Town hereby exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by paragraph 8 of that law.

§32 Enforcement; Penalties and remedies for violations.

- A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than six months, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$350 for each violation and each week said violation continues shall be deemed a separate violation.

- C. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

SECTION 2: Severability

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

SECTION 3: Effective Date

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

Local Law No. 4 of 2005

Be it hereby enacted by the Town Board of the Town of Ellenburg as follows:

Section 1: Local Law No. 4 of 2005, entitled “WIND ENERGY FACILITIES,” is hereby adopted to read in its entirety as follows:

WIND ENERGY FACILITIES

Article I

§1 Title.

This Local Law shall be cited as the “Wind Energy Facility Law of the Town of Ellenburg, New York.”

§2 Purpose.

The Town Board of the Town of Ellenburg adopts this Local Law to promote the effective and efficient use of the Town’s wind energy resource through wind energy conversion systems (WECS), and to regulate the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

§3 Authority.

The Town Board of the Town of Ellenburg enacts this Local Law under the authority granted by

1. Article IX of the New York State Constitution, §2(c)(6) and (10).
2. New York Statute of Local Governments, § 10 (1), (6), and (7).
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(6), (11), (12), and (14).
4. The supersession authority of New York Municipal Home Rule Law, § 10 (2)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this Local Law, to the extent such grant of power is different than under Town Law §267.
5. New York Town Law, Article 16 (Zoning).
6. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).
7. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(General powers).

§4. Findings.

- A. The Town Board of the Town of Ellenburg finds and declares that
 1. Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.

2. The generation of electricity from properly Sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-Site consumption can be reduced.
3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.
5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road Sites, and harm farmlands through improper construction methods,.
6. Wind Energy Facilities may present a risk to bird and bat populations if not properly Sited.
7. If not properly Sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.
8. Wind Energy Facilities are significant sources of noise, which, if unregulated, can negatively impact adjoining properties.
9. Construction of Wind Energy Facilities can create traffic problems and damage local roads.
10. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

§5. Permits Required

- A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Ellenburg except in compliance with this Local Law.
- B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Ellenburg except in a Wind Overlay Zone, pursuant to an application for rezoning and special use permit approved pursuant to this Local Law.
- C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Ellenburg except pursuant to a Special Use Permit issued pursuant to this Local Law.
- D. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Ellenburg except pursuant to a Special Use Permit issued pursuant to this Local Law.
- E. This Local Law shall apply to all areas of the Town of Ellenburg.
- F. Exemptions. No permit or other approval shall be required under this Local Law for mechanical, non electrical WECS utilized solely for agricultural operations.
- G. Transfer. No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this

Local Law. No transfer shall eliminate the liability of an applicant nor of any other party under this Local Law.

- H. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there will no increase in Total Height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.

§6 Definitions.

As used in this Local Law, the following terms shall have the meanings indicated: EAF – Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

RESIDENCE – means any dwelling suitable for habitation existing in the Town of Ellenburg on the date an application is received. A residence may be part of a multi-dwelling or multipurpose building, but shall not include buildings such as hunting camps, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

SEQRA – the New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

SOUND PRESSURE LEVEL – means the level which is equaled or exceeded a stated percentage of time. An $L_{10} - 50$ dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.

SITE – The parcel(s) of land where the Wind Energy Facility is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered an agreement for said Facility or a setback agreement shall not be considered off-site.

SMALL WIND ENERGY CONVERSION SYSTEM (“Small WECS”) – A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-Site consumption of utility power.

TOTAL HEIGHT – The height of the tower and the furthest vertical extension of the WECS.

WIND ENERGY CONVERSION SYSTEM (“WECS”) – A machine that converts the kinetic energy in the wind into a usable form (commonly known as a “wind turbine” or “windmill”).

WIND ENERGY FACILITY – Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

WIND MEASUREMENT TOWER – a tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

§7. Applicability

- A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law.
- B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that
 - 1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Local Law prior to recommencing production of energy.
 - 2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.
 - 3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-four (24) months after said effective date, unless a Special Use Permit for said Wind Energy Facility is obtained.
- C. Wind Energy Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same Site shall not preclude the installation of a Wind Energy Facility or a part of such facility on such Site. Wind Energy Facilities constructed and installed in accordance with this Local Law shall not be deemed expansions of a nonconforming use or structure.

§§8-9 Reserved for Future Use

WIND ENERGY CONVERSION SYSTEMS

Article II

§10 Creation of Wind Overlay Zones.

- A. Wind Overlay Zones may be created in the RU Rural Use and RA Rural Arterial Zones.
- B. Initial requests for Wind Overlay Zones shall be submitted with applications for WECS Special Use Permits. No Wind Overlay Zone may be initially created without specific requests for WECSs.

- C. Once a Wind Overlay Zone has been created, new WECSs or accessory structures or facilities may be added in that zone by grant of a Special Use Permit pursuant to the requirements of this Article.

§11 Applications for Wind Energy Conversion Systems.

- A. A joint application for creation of a Wind Overlay Zone and Special Use Permit for individual WECS shall include the following:
1. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
 2. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
 3. Address, or other property identification, of each proposed tower location, including Tax Map section, block and lot number.
 4. A description of the project, including the number and maximum rated capacity of each WECS.
 5. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following.
 - 1) Property lines and physical dimensions of the Site;
 - 2) Location, approximate dimensions and types of major existing structures and uses on Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the proposed Wind Overlay Zone.
 - 3) Location and elevation of each proposed WECS.
 - 4) Location of all above ground utility lines on the Site or within one radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
 - 5) Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
 - 6) The zoning designation of the subject and adjacent properties as set forth in Town Zoning Law.
 - 7) Proposed boundaries of the Wind Overlay Zone.
 - 8) To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower location equal to:
 - i. One and a half times the tower height.
 - ii. Five Hundred foot perimeter.
 - iii. One Thousand foot perimeter.

- 9) Location of the nearest residential structure on the Site and located off-Site, and the distance from the proposed WECS.
- 10) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
6. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.
7. Landscaping Plan depicting vegetation describing the area to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.
8. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.
9. List of property owners, with their mailing address, within 500 feet of the boundaries of the proposed Wind Overlay Zone. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.
10. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; (5) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of 3 feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.
11. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process shall use an independent mediator or arbitrator and include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.
12. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:
 - 1) A construction schedule describing commencement and completion dates; and
 - 2) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
13. Completed Part 1 of the Full EAF.

14. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the WECS.
15. For each proposed WECS, include make, model, picture and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.
16. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board may issue a positive declaration of environmental significance.
17. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:
 - a. Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.
 - b. Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
 - c. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Zone.
 - d. Noise Analysis: a noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall include low frequency noise.
 - e. Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring WECS Sites.
 - f. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.

18. The applicant shall, prior to the receipt of a building permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner.
19. A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

§12 Application Review Process.

- A. Applicants may request a pre-application meeting with the Town Board, or with any consultants retained by the Town Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meetings Law.
- B. Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application.
- C. Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Town Board waives any application requirement, no application shall be considered until deemed complete.
- D. If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town Board.
- F. The Town Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed Wind Overlay Zone, and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- G. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances.
- H. Notice of the project shall also be given, when applicable, to (1) the Clinton County Planning Board, if required by General Municipal Law §§239-l and 239-m, and (2) to adjoining Towns under Town Law §264.
- I. SEQRA review. Applications for WECS are deemed Type I projects under SEQRA. The Town may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of

the record of the Town's proceedings. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings, which Statement may also serve as the Town's decision on the applications.

- J. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

§13 Standards for WECS.

- A. The following standards shall apply to all WECS, unless specifically waived by the Town Board as part of a permit.
 - 1. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
 - 2. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Zoning Law. Applications may be jointly submitted for WECS and telecommunications facilities.
 - 3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
 - 4. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site plan.
 - 5. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs within a Wind Overlay Zone shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Zone, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
 - 6. The use of guy wires is disfavored. A WECS using guy wires for tower support shall incorporate appropriate measures to protect the guy wires from damage which could cause tower failure.
 - 7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a

WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the interference.

8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.
9. WECSs shall be designed to minimize the impacts land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.
10. WECSs shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.
11. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
12. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
13. The maximum Total Height of any WECS shall be 440 feet.
14. Construction of the WECS shall be limited to the hours of 6 a.m. to 8 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town.

§14 Required Safety Measures.

- A. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- B. Unless the property owner submits a written request that no fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.
- C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hour, 7 day a week coverage. The Town Board may require additional signs based on safety needs.
- D. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
- E. The minimum distance between the ground and any part of the rotor or blade system shall be twenty (20) feet.

- F. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.

§15 Traffic Routes.

- A. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and /or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Permit conditions may limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.
- B. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads.
- C. If the applicant uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway including but not limited to snow plowing. no act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.

§16 Setbacks for Wind Energy Conversion Systems.

- A. The statistical sound pressure level generated by a WECS shall not exceed $L_{10} - 50$ dBA measured at the nearest inhabited off-Site dwelling existing at the time of application. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- B. In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.
- C. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be

expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

- D. Any noise level falling between two whole decibels shall be the lower of the two.
- E. Each WECS shall be setback from Site boundaries, measured from the center of the WECS:
 1. 500 feet from the nearest Site boundary property line.
 2. 500 feet from the nearest public road.
 3. 1,000 feet from the nearest off-Site residence existing at the time of application, measured from the exterior of such residence.
 4. One and a half times the Total Height of the WECS from any non-WECS structure or any above-ground utilities.
 5. 100 feet from state-identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds.

§17 Noise and Setback Easements.

- A. In the event the noise levels resulting from a Wind Energy Facility exceed the criteria established in this Local Law, or setback requirement is not met, a waiver will be granted from such requirement by the Town Board in the following circumstances:
 1. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) all setbacks less than required; and
 2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Article, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.
- B. Waivers granted under this Section differ from variances under Article IV of this Local Law in that no variance is required if a waiver is given under this Section, and a variance must be sought rather than a waiver if the adjoining property owner will not grant an easement pursuant to this section.

§18 Creation of Wind Overlay Zones and Issuance of Special Use Permits.

- A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- B. If approved, the Town Board will direct the Town Clerk to modify the Official Map to reflect the creation of the Wind Overlay Zones, and direct Town staff to issue a Special Use Permit for each WECSs upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Local Law.
- C. The decision of the Town Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- D. If any approved WECS is not substantially commenced within two years of issuance of the permit, the special use permit shall expire.

§19 Abatement.

- A. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's limit the ability to order a remedial action plan after public hearing.
- B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.
- C. Decommissioning Bond or Fund The applicant, or successors, shall continuously maintain a fund or bond payable to the Town for the removal of non-functional towers and appurtenant facilities in an amount to be determined by the Town for the period of the of the life of the facility. This fund may consist of a letter of credit from a State of New York-licensed financial institution. All costs of the financial security shall be borne by the applicant.

§20 Limitations on Approvals; Easements on Town Property.

- A. Nothing in this Local Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Local Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind

Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

- B. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

§21 Permit Revocation.

- A. Testing fund. A Special Use Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Local Law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.
- B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.
- C. Notwithstanding any other abatement provision under this Local Law, and consistent with §19(A) and §21(B), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Wind Energy Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

WIND MEASUREMENT TOWERS

Article III

§22 Wind Site Assessment.

The Town Board acknowledges that prior to construction of a WECS, a wind Site assessment is conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of Wind Measurement Towers, also known as anemometer (“Met”) towers, shall be permitted as Special Use in the RU Rural Use and RA Rural Arterial Zones.

§23 Applications for Wind Measurement Towers.

- A. An application for a Wind Measurement Tower shall include
 - 1. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
 - 2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
 - 3. Address of each proposed tower Site, including Tax Map section, block and lot number.
 - 4. Site plan
 - 5. Decommissioning Plan, including a security bond or cash for removal.

§24 Standards for Wind Measurement Towers.

- A. The distance between a Wind Measurement Tower and the property line shall be at least the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- B. Special Use permits for Wind Measurement Towers may be issued for a period of up to two years. Permits may be renewed if the Facility is in compliance with the conditions of the Special Use Permit.

SMALL WIND ENERGY CONVERSION SYSTEMS

Article IV

§25 Purpose and Intent.

The purpose of this Article is to provide standards for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

§26 Permitted Areas.

1. Small Wind energy systems may be permitted in the RA or RU districts any zoning district on a Site of at least 5 acres, upon issuance of a Special Use Permit.

§27 Applications.

- A. Applications for Small WECS special use permits shall include:
 1. Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
 2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
 3. Address of each proposed tower Site, including Tax Map section, block and lot number.
 4. Evidence that the proposed tower height does not exceed the height recommended by the manufacture or distributor of the system.
 5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.
 6. Sufficient information demonstrating that the system will be used primarily to reduce
 7. on-site consumption of electricity.
 8. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.
 9. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

§28 Development Standards.

All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Article that are not in conflict with the requirements contained in this section.

1. A system shall be located on a lot a minimum of one acre in size, however, this requirement can be met by multiple owners submitting a joint application.
2. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Article.
3. Small Wind energy systems may be used primarily to reduce the on-Site consumption of electricity.
4. Tower heights may be allowed as follows:
 - a. 65 feet or less on parcels between one and five acres.
 - b. 80 feet or less on parcels of five or more acres.
 - c. The allowed height shall be reduced if necessary to comply with all applicable Federal
 - d. Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
5. The maximum turbine power output is limited to 10 KW.
6. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
7. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible a small wind energy system:
 - a. Shall not project above the top of ridgelines.
 - b. If visible from public viewing areas. shall use natural landforms and existing vegetation for screening.
 - c. Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.
8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
9. All on-site electrical wires associated with the system shall be installed underground except for "tie- ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
10. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
11. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No

- brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner
12. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
 - a. Tower-climbing apparatus located no closer than 12 feet from the ground.
 - b. A locked anti-climb device installed on the tower.
 - c. A locked, protective fence at least six feet in height that encloses the tower.
 13. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.
 14. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.
 15. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
 16. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.
 17. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacture.

§29 Standards.

- A. A Small Wind Energy System shall comply with the following standards:
 1. Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.
 2. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed the 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

§30 Abandonment of Use.

- A. A Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at

the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the City.

- B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

VARIANCES

Article IV

§31 Variances.

- A. The Town Board may, after a public hearing (which may be combined with other public hearings on Wind Energy Facilities, so long as the variance request is detailed in the public notice), grant a variance from the strict application of the provisions of this Local Law in accordance with the following:
- B. USE VARIANCE: The Town Board may grant a use variance, to allow a Wind Energy Facility outside a Wind Overlay District, based upon unnecessary hardship, only where the applicant has established all of the following factors:
 - 1. the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - 2. the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - 3. the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - 4. the alleged hardship has not been self-created.
- C. AREA VARIANCE: Area variance may be considered where setback, lot size, height or other requirements of this local law cannot be reasonably met. The Town Board may grant an area variance, upon a balancing of the following factors:
 - 1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - 2. whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
 - 3. whether the requested area variance is substantial;
 - 4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
 - 5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Town Board, but shall not necessarily preclude the granting of the area variance;
 - 6. whether the proposed variance is the minimum variance necessary to afford relief; and
 - 7. whether feasible alternatives not requiring a variance are available.
- D. The Town Board may attach such conditions as it deems appropriate to variance approvals as it deems necessary to minimize the impact of the variance.

MISCELLANEOUS

Article V

§32 Fees.

- A. Non-refundable Application Fees shall be as follows:
 1. Wind Overlay Zone rezoning: \$500 per zone.
 2. WECS Special Use Permit: \$50 per megawatt of rated maximum capacity
 3. Wind Measurement Towers: \$200 per tower.
 4. Small WECS: \$150 per WECS
 5. Wind Measurement Tower Special Use Permit renewals: \$50 per Wind Measurement Tower.
- B. Building Permits. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall \$25 per permit request for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties.
- C. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.
- D. The Town Board may amend these fees, by resolution after a properly noticed public hearing.

§33 Tax Exemption.

The Town hereby exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by paragraph 8 of that law.

§34 Enforcement; Penalties and remedies for violations.

- A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy conversion facility or wind monitoring tower in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than six months, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect

civil penalties in the amount of \$350 for each violation and each week said violation continues shall be deemed a separate violation.

- C. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

SECTION 2: The “Zoning Regulations for the Town of Ellenburg, New York,” are amended by adding the following to “Definitions”:

WIND ENERGY FACILITY – Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, as each is defined in Local Law No. - of 2005, including all related infrastructure, electrical lines and substations, access roads and accessory structures. Public Utility uses otherwise allowed under this Law do not include Wind Energy Facilities.

SECTION 3: Severability

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

SECTION 4: Effective Date

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.