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Wind Energy Facilities Law

Article V

Section 1 Title

This Local Law may be cited as the “Wind Energy Facilities Law of the Town [REDACTED], New York.”

Section 2 Purpose

The Town Board of the Town [REDACTED] repeals Local Law 1 of 2019 cited as Wind Energy Facilities Law and 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 public health, safety, and welfare will not be jeopardized.

Section 3 Authority

The Town Board of the Town [REDACTED] enacts this Local Law under the authority granted by:

- A. Article IX of the New York State Constitution, Section 2(c) (6) and (10).
- B. New York Statute of Local Governments, Section 10 (1) and (7).
- C. New York Municipal Home Rule Law, Section 10(I)(i) and (ii) and Section 10(1)(a)(6), (11), (12), and (14).
- D. New York Town Law Section 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).
- E. New York Town Law Section 64(7-a) (protection of aesthetic interests), 23 (General powers).
- F. The State Environmental Quality Review Act (“SEQRA”).
- G. New York Agricultural and Markets Law.
- H. New York Real Property Tax Law.
- I. New York Executive Law.

Section 4 Findings

- A. The Town hereby finds Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on

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nonrenewable energy sources and decrease the air and water pollution that result from the use of conventional energy sources.

- B. 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.
- C. 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.
- D. Wind Energy Facilities might present significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects, if not properly sited.
- E. If not properly regulated, installation of Wind Energy Facilities might create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction methods.
- F. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.
- G. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.
- H. Wind Energy Facilities may be significant sources of noise, which, if unregulated, might negatively impact adjoining properties.
- I. Without proper planning, construction of Wind Energy Facilities might create traffic problems and damage local roads.
- J. If improperly sited, Wind Energy Facilities might interfere with various types of communications.
- K. The Town ██████ is a rural community located in the Tug Hill region on the edge of the “Core Forest” with varying elevation and topography.
- L. The Town ██████ is an agricultural community supporting varied agricultural, forestry and recreational uses and is in the heart of the Tug Hill region of New York State and its “Core Forest” and eastern Lake Ontario near Fort Drum.
- M. The Town ██████ has very few tall structures.

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- N. The Town ██████ is bounded in all directions by Towns which share ██████ agricultural, forested, and rural residential character, with similar hilly topography.
- O. The Town ██████ contains numerous rural newly constructed homes and camps, dispersed throughout the Town. Many residents have chosen to live in ██████ because of a love for secluded undisturbed forest environs and rural pastoral lifestyle.
- P. Town ██████ residents and visitors enjoy outdoor activities, including hunting, fishing, trapping, hiking, cycling, horseback riding, snowmobiling, skiing, jogging, and other motorized and non-motorized recreational pursuits.
- Q. Wind Energy Conversion Systems must be removed when no longer utilized.

Section 5 Authorization of the Planning Board to Review Wind Energy Conversion Systems

The Planning Board is hereby authorized to review and either approve, approve with conditions, or disapprove applications for Wind Energy Conversion Systems.

Section 6 Permits Required; Transfer, Modifications

- A. No Wind Energy Conversion System (“WECS”) shall be constructed, reconstructed, modified, or operated in the Town except in compliance with this Local Law. In the case of any conflict between any Local Law, this Local Law shall supersede any conflicting provision.
- B. No WECS shall be constructed, reconstructed, modified, or operated in the Town except with a Wind Energy Permit approved pursuant to this Local Law.
- C. No Wind Measurement Tower a/k/a Met Tower or LIDAR System shall be constructed, reconstructed, modified, or operated in the Town except pursuant to a Wind Energy Permit issued pursuant to this Local Law.
- D. This Local Law shall apply to all areas of the Town with proper review by the Planning Board.
- E. Exemptions. No permit or other approval shall be required under this Local Law for mechanical, non-electrical WECS utilized solely for agricultural operations, commonly referred to as “windmills”.
- F. Transfer. No transfer of any Wind Energy Conversion System or Wind Energy Permit, nor sale of the entity owning such WECS including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), may occur unless the transferee provides to the Town Board written certification that such transferee assumes all

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obligations of the transferor under any permit issued pursuant to this Local Law and any other applicable law or ordinance. Notwithstanding the requirements of this Section, replacement in kind or modification of a WECS may occur without Town Board approval when (1) there will, be 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 the noise produced by the WECS.

Section 7 Definitions

The following terms shall have the meanings indicated:

APPLICANT - The person or entity filing an application and seeking license under this local law.

A-WEIGHTED (dBA) - The unit of measure for the human response to noise using an electronic filter as specified by ANSI approximating the frequency response of the human ear from 20 Hz to 20 kHz.

BACKGROUND NOISE - The noise level represented without the wind turbine(s) operating and when man-made and natural intrusive sounds are at a minimum. The intent of this definition is to exclude noise level contributions from intermittent noises such as traffic and emergency vehicles, and from seasonal natural sounds such as frogs and crickets that are not present year-round.

BLADE GLINT - The intermittent reflection of the sun off the surface of the blades of a single or multiple wind turbines.

BUILDING - Any structure used or intended for supporting any use or occupancy.

C-WEIGHTED (dBC) - An electronic filter with a band-pass frequency response 20Hz to 20kHz.

DAYTIME - Hours from 7:00 AM to 7:00 PM, unless otherwise noted.

DEBRIS HAZARD - Hazard owing to the possibility that the parts of a Wind Turbine, or material (ice or other debris) accumulated on its rotating elements, could be dislodged and fall or be thrown some distance onto surrounding property.

EXCESSIVE NOISE - Any noise that causes a nuisance or disturbance or degrades health or well-being.

FAA - The Federal Aviation Administration.

FREQUENCY - The number of occurrences of a repeating event per unit time; in cycles per second, expressed in Hz (Hertz).

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HERTZ (Hz) - A unit of frequency equal to one cycle per second.

LDN - The day/night level is the 24 hour average of continuous “A-weighted” sound energy having a 10 decibel penalty added to the nighttime hours of 10 p.m. to 7 a.m.

LEQ - The equivalent continuous sound level that has the same acoustic energy for a constant sound level as for a fluctuating or intermittent level in the same period of time.

NIGHTTIME - Hours from 7:00 PM to 7:00 AM, unless otherwise noted.

NOISE - Unwanted or any sound that is not part of the natural environment.

NOISE EMITTER - Any man-made piece of WECS equipment that is audible beyond the property line of a Participating Landowner.

NOISE LEVEL - Energy-equivalent sound pressure level (Leq) over a minimum of a ten-minute interval.

NON-PARTICIPANT - Any and all [REDACTED] landowners having no contractual relationship with a wind developer.

OCTAVE BAND - A band of sound covering a range of frequencies such that the highest is twice the lowest, as defined in ANSI Standard S1.11.

ONE-THIRD OCTAVE BAND - A band of sound covering a range of frequencies such that the highest frequency is the cube root of two times the lowest, as defined in ANSI Standard S1.11.

PARTICIPANT - Any and all [REDACTED] landowners having a signed lease, or easement with a wind developer.

PROJECT BOUNDARY - A continuous line, which encompasses all Wind Turbines and related equipment to be used in association with a Wind Energy System.

PROPERTY LINE - Means the recognized and survey or tax mapped property parcel boundary line.

PURE TONE - Sinusoidal sound energy for a single frequency or pitch.

QUALIFIED INDEPENDENT ACOUSTICAL CONSULTANT - A person who is qualified by education and experience in acoustics and regularly engaged in community noise testing with demonstrated competence in the specialty of community noise testing who is contracted by the Town for purposes of noise measurement or evaluation of noise analysis or noise complaints. The

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Qualified Independent Acoustical Consultant can have no financial relationship with the Wind developer or related entity.

RESIDENCE - means any dwelling suitable for habitation existing in the Town of [REDACTED] on the date an application is received. For purpose of this definition, “suitable for habitation” shall mean that its primary purpose is for private occupancy.

SEQRA - the New York State Environmental Quality Review Act, as codified in Article 8 of the New York State Environmental Conservation Law and its implementing regulations in Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Part 617 et seq. (6 NYCRR Section 617).

SETBACKS - a distance measured from edge of a rural right-of-way, property lines, wetlands, or closest point of residence foundation to the base of the turbine or measurement tower.

SHADOW FLICKER - the visual effect of viewing the moving shadow of the Wind Energy Conversion System (WECS) rotor blades when they are in a position between the receptor (person viewing them) and the sun and/or the “strobe” lighting effect of this condition as perceived by the receptor whether directly or indirectly (as in a reflection off a light colored wall).

SOUND LEVEL - The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in ANSI specifications for sound level meters (ANSI S1.4-1971, or the latest revision).

SOUND POWER LEVEL - L_w . Ten times the logarithm to the base ten of the ratio of the sound power radiated by the source to a reference sound power, expressed in decibels (dB). The reference sound power is 1 *picowatt* (pW).

SOUND PRESSURE LEVEL - L_p . Twenty times the logarithm to the base ten of the ratio of a given sound pressure to a reference sound pressure of 20 microPascals (uPa), expressed in decibels (dB).

TOTAL HEIGHT - The height of the Tower from the finished ground elevation at the base of the Tower to the furthest vertical/extension of the Turbine Rotor Plane.

TOWER HEIGHT - The height of the tower from the finished ground elevation at the tower base to the center of the hub forming the attachment point for Turbine Blades.

UN-WEIGHTED (dBL) - A sound pressure level obtained without a weighting filter.

USEFUL LIFE - The period during which an individual Wind Turbine(s) will be presumed to be at the end of its economic life.

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WELFARE - A state of well-being.

WIND ENERGY CONVERSION SYSTEMS (WECS) - An electricity generating facility, with a generating capacity of over 100 kilowatts, consisting of one or more Wind Turbines, including any substations, cables/wires and other buildings accessory to such system. Sometimes referred to as a facility.

WIND ENERGY CONVERSION SYSTEMS, SMALL (SWECS) - An electricity generating facility, with a generating capacity of up to but not exceeding 100 kilowatts, consisting of one Wind Turbine, including any cables/wires, foundations and other buildings accessory to such system, and designed to produce power primarily for on-site use or consumption.

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

WIND SHEAR - The difference in atmospheric wind speed and direction occurring over relatively small increases in altitude (wind gradient).

WORTH MAPPING REQUIREMENTS (WMR)

Maps must be in color.

All mapping scales are to be: 1 inch represents 1000 ft., unless otherwise noted.

The maps must be in a format that allows Color printing of the selected study areas to fit on a Standard 36"x48" Engineering or Blueprint Size.

Each map must be available in Geographic Information System (GIS) Format as a separate overlay to the study area.

These files must be readable with Shapefiles or Google+ or other software compatible with Windows or Mac.

In addition to the individual map requirement in printed form, the maps should be available in PC digital formats.

Section 8 Applicability

- A. The requirements of this Local Law shall apply to all Wind Energy Conversion Systems proposed, operated, modified, or constructed in the Town of [REDACTED] after the effective date of this Local Law, including any Wind Energy Conversion System, applied for but not yet approved prior to the date of this Local Law.

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- B. Any Wind Measurement Tower or Wind Measurement LIDAR unit existing on the effective date of this Local Law shall be removed no later than thirty-six (36) months after said effective date, unless a Wind Energy Permit is obtained pursuant to the provision of this Local Law.

Section 9 Required Submissions to Application

- A. All Applications for Wind Energy Conversion Systems are required to provide reports and supporting information based on the studies, evaluations, and analyses set forth herein. All studies, evaluations and analysis shall be submitted to and meet the reasonable requirements of, the Planning Board before any application shall be deemed complete.
- B. To the maximum extent practicable, these are governed by NYS Article 10 of the Public Service Law and/or Article 23 of the NYS Economic Development Law and by any application requirements for federally delegated environmental permits issued by the New York State Department of Environmental Conservation (DEC), if applicable.
- C. An application for a Wind Energy Permit shall include the following, presented in the following order, unless waived by the Planning Board:
1. Name, address, and 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, and telephone number of the owners of properties on which the Wind Energy Facility will be located. 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 application and (ii) authorizing the submission of the application.
 3. Address, or other property identification, of each proposed WECS 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:
 - (a) Property lines and physical dimensions of the Site.
 - (b) Location, approximate dimensions and types of major existing structures and uses on the Site, public roads, and adjoining properties within the

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- setback distances specified in Section 14 of the boundaries of the proposed WECS Site.
- (c) Location and elevation of each proposed WECS.
 - (d) 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.
 - (e) Location and size of structures above 35 feet within the setback distances specified in Section 14 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.
 - (f) To demonstrate compliance with the setback requirements of this Local Law, circles drawn around each proposed tower location equal to the setback distances specified in Section 14.
 - (g) Location of the nearest residential structure located off the Site, and the distance from the proposed WECS.
 - (h) 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 addresses, 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.

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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 as 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 three (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 potential 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:
 - a. A construction schedule describing expected commencement and completion dates; and
 - b. A description of the anticipated routes to be used by construction and delivery vehicles and the gross weights and heights of those loaded vehicles.
13. Completed Part 1 of the Full Environmental Assessment Form.
14. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the Wind Energy Facility application.
15. For each proposed WECS, include make, model, picture, and manufacturers' 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 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, if relevant. Otherwise, the following studies shall be submitted with the application:

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- 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. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, and other wireless communication.
17. The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable Transmission Owner.
18. A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

Section 10 Application Review Process

- A. Applicants may request a pre-application meeting with the Planning Board or with any consultants retained by the Planning Board for application review. Meetings with the
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Town Board, Zoning Board of Appeals, Planning Board or any Town representative shall be conducted in accordance with The Open Meetings Law.

- B. Six (6) copies of the application and a complete digital version shall be submitted to the Town Zoning Enforcement Officer; Payment of all application fees shall be made at the time of application submission. If any waivers are requested, waiver application fees, if any, shall be paid at the time of the receipt of the application. In addition, the applicant shall provide the Planning Board free of charge, with a reasonable number of additional copies necessary to coordinate review with involved agencies and interested parties, pursuant to SEQRA.
- C. Town staff or Town designated consultants, shall, within sixty (60) days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Local Law/Article is included in the application, unless the Planning Board waives any application requirement, no application shall be considered complete and ready for final action until deemed complete and until either a negative declaration is issued under SEQRA, or, a Final Environmental Impact Statement and SEQRA Findings are issued by the lead agency.
- D. If the application is deemed incomplete, the Planning Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fee(s) shall be made, but no additional fees shall be required upon submittal of the additional information.
- E. Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Town Zoning Enforcement Officer shall transmit the application to the Planning Board.

The Planning Board shall hold at least one (1) public hearing on the application. Notice shall be provided by the first class mail to property owners within one (1) mile of a turbine, and published in the Town's official newspaper, no less than fifteen (15) nor more than thirty (30) days before any hearing, but where any hearing is adjourned by the Planning Board to hear additional comments, no further publications or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Planning Board, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- F. The public hearing may be combined with any other public hearing required, including public hearings held pursuant to SEQRA.
- G. Referral shall also be made, when applicable, to the Jefferson County Planning Department, pursuant to General Municipal Law Sections 239-l and 239-m.

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- H. SEQRA review. Applications for WECS shall be deemed Type 1 projects under SEQRA. The Planning Board shall be responsible for the review of the proposed project under SEQRA, and shall where appropriate, act as lead agency under SEQRA, and shall coordinate its review with all other involved agencies having discretionary approval over any aspect of the proposed project.
- I. The Planning Board shall 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 process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Planning Board shall issue a Statement of Findings, which Statement may also serve as the Planning Board's decision on the application.
- J. Upon receipt of the recommendations of the County Planning Department (where applicable), the holding of a public hearing, and the completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the application, in accordance with the standards in this Local Law.
- K. If approved, the Town Planning Board will issue, to the applicant only, a Wind Energy Permit for each WECS for the purpose of construction and continued operation based on satisfaction of all conditions for said Permit. This authorizes the Zoning Enforcement Officer to issue a permit for each WECS, upon compliance with any conditions of this Local Law.
- L. If construction of any approved WECS is not substantially commenced within one (1) year of issuance of the permit, the permit shall expire.

Section 11 Standards for WECS

The following standards shall apply to all WECS.

- A. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
- B. 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.
- C. In order to minimize any visual impacts associated with Wind Energy Conversion System, no advertising signs are allowed on any part of the Wind Energy Conversion System, including fencing and support structures.

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- D. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum downward directed security lighting for ground level facilities shall be allowed as approved on the site plan.
- E. All applicants shall use measures to reduce the visual impact of WECS to the extent possible. WECS shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished white or gray in color. WECS within 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.
- F. The use of guy wires is permitted in connection with small WECS and wind measurement towers only.
- G. 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.
- H. WECS 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.
- I. WECS shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity, particularly bird and bat species, including those that may be listed by the U.S. Fish & Wildlife Service as threatened or endangered and those listed as threatened, endangered, and species of concern by the NYS officials.
- J. Wind energy conversion systems shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
- K. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
- L. The maximum Total Height of any WECS shall be seven hundred (700) feet.
- M. Any substation used in conjunction with a WECS shall be sited in a manner that will have the least intrusive impact upon adjacent residences and shall be sheltered and/or screened with a physical barrier and/or vegetation in a manner to eliminate its views from such residences. The Planning Board shall assess such siting in accordance with the requirements of this Local Law and the Town's Rural Development Code and Comprehensive Plan.

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- N. Construction of the WECS shall be limited to the hours of 7 AM to 7 PM, Monday through Friday, unless prior written approval of the Highway Superintendent or independent monitor is issued to allow deviation from such hours.
- O. In processing any application for a WECS or in reviewing such project under SEQRA, the Planning Board shall consider any applicable policy or guidelines issued by the New York State DEC (i.e., visual impacts, noise impact).
- P. Worth shall require any WECS project to meet the latest version of the National Electric Code for the life of the project. If it is determined that a WECS is causing stray voltage issues, the operator shall take the necessary corrective action to eliminate these problems including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for revocation of the Special-use Permit for the specific WECS causing the problems. Fines for non-compliance will be set by the Town Board and assessed accordingly.
- Q. To the greatest extent possible WECS, together with all above ground facilities, underground cables and wires, and all permanent access roads shall be positioned along existing fence lines, hedge rows or tree rows and/or as near the edge of any fields as possible to minimize the disruption to pasture land or tillable land unless, otherwise allowed by the property owner(s). Following construction, the site shall be graded and seeded and restored to its preconstruction condition or better unless, otherwise allowed by the property owner(s). During construction, the developer shall be required to act consistent with Agricultural Consistency Review under Agriculture and Markets Law, and best agricultural and forestry practices to ensure construction integrity of the site.

Section 12 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. Appropriate warning signs shall be posted. At least one (1) sign shall be posted at least 100 feet from the base of the tower on the tower access road/route warning of electrical shock or high voltage. A sign shall be posted on the entry area 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 Planning Board may require additional signs based on safety needs.
- C. 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.
- D. The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet.

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- E. WECS 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.
- F. Existing snowmobile and/or ATV trails shall be posted, where reasonably necessary, to warn of potential ice throw dangers from the WECS.

Section 13 Traffic Routes

- A. Construction of WECS pose 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 for 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, including impacts on local residential areas;
 - 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 specific routes, and include a plan for disseminating traffic route information to the public.

- B. The applicant is responsible for repair of all damages to Town Roads occurring during the construction or maintenance of a WECS to be addressed in a Road Agreement, which shall be a condition precedent to issuance of any WECS permit. A public improvement bond shall be posted prior to the issuance of any WECS permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to local roads.

Section 14 Setbacks and Noise Standards for Wind Energy Conversion Systems

- A. The following standards shall apply to all WECS:

Setback Requirements:

No Wind Energy Conversion Systems shall be allowed within the following setbacks. If more than one setback applies, the most restrictive setback shall prevail.

From property lines:

A minimum distance of 1.1 times the Total Height of turbine from any non-participant's property line, excluding adjoining lot lines of the project participants.

From public road and highways:

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A minimum distance of 1.1 times the Total Height of turbine, from any public road and highway.

From public above-ground transmission lines;

A minimum distance of 1.1 times the Total Height of turbine from any above-ground transmission line greater than 12 kilovolts.

From the boundary of any light district in the Town of Worth;

A minimum distance of 1.1 times the Total Height of turbine from the boundary of any light district in the Town.

From another WECS turbine;

A minimum distance of 1.1 times the Total Height of turbine from any other turbine.

All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.

B. NOISE LEVEL LIMITS AND MEASUREMENT

1. 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 five dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
2. 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 § 14(B)(1) shall be reduced by five dBA. A Pure Tone is defined to exist if the 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 contiguous 1/3 octave bands by five dBA for center frequencies of 500 Hz and above, by eight dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.
3. 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 minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level

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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 30 mph at the ambient noise measurement location.

4. Any noise level falling between two whole decibels shall be the lower of the two.

Section 15 Issuance of Wind Energy Permits

- A. Upon completion of the review process, the Planning Board shall, upon consideration of the standards in this Local Law, the Town's Rural Development Code and Comprehensive Plan, and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- B. The decision of the Planning Board shall be filed within five (5) days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- C. If any approved Wind Energy Conversion System is not substantially commenced within one (1) year of issuance of the Wind Energy Permit, the Wind Energy Permit shall expire.

Section 16 Decommissioning

- 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 as per paragraph C below. This provision shall not apply if the applicant demonstrates to the reasonable satisfaction of the Town Board that it has been making good faith efforts to restore the WECS to an operable condition. Nothing in this provision shall limit the Town Board's ability to order a remedial action plan.
- 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 to a designee (i.e. town engineer, project manager, etc.) appointed by the Town Board, all reports from the purchaser of energy from individual WECS, if requested to prove the WECS is functioning. This designee may also request periodic documentation reporting the power output generated by the WECS.
- C. Decommissioning and Site Restoration Plan and Requirements. An application for a WECS permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.
 1. The plan shall provide for the removal from the Project Parcels, and lawful disposal or disposition of all Wind Turbines and other structures, hazardous materials, electrical facilities, and all foundations to a depth of not less than 36 inches below grade. The plan shall provide for the removal of all access roads that the owner of the Project Parcels wants removed. The plan shall provide for the restoration of the

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Project Parcels to farmland or forest land of similar condition to that which existed before construction of the WECS.

2. The plan shall provide for the decommissioning of the site upon the expiration or revocation of the WECS permit, or upon the abandonment of the WECS. The WECS shall be deemed abandoned if its operation is ceased for 12 consecutive months.
3. The Plan shall include: (a) the estimated decommissioning cost in current dollars; (b) how said estimate was determined; (c) the method of ensuring that funds will be available for decommissioning and restoration; (d) the method that will be used to keep the decommissioning costs current. The Town Board will make arrangements to ensure the fund amount is adjusted annually based on a suitable index such as the “Engineering News Report Construction Costs Index” unless the wind developer supplies evidence to the reasonable satisfaction of the Town Board that market conditions have changed.
4. The plan shall include provisions for financial security to secure completion of decommissioning (removal of non-functional towers and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund payable to the Town ██████, in a form approved by the Town Attorney, and in an amount to be determined by the Town Board for the period of the life of the facility. This fund shall be no less than 125% of the cost of full decommissioning (including salvage value) and restoration in the form of cash on deposit with the Town or cash held in escrow in a New York licensed-financial institution, pursuant to an agreement acceptable to the Town. In lieu thereof, a decommissioning bond in a form, and in an amount, acceptable to the Town Board may be accepted. All decommissioning funding requirements shall be met prior to commencement of construction.
5. The plan shall include written authorization from the WECS Permittee and all owners of all Project Parcels for the Town to access the Project Parcels and implement the decommissioning and site restoration plan, in the event the WECS Permittee fails to implement the plan. The written authorization shall be in a form approved by the Town.
6. Use of Decommissioning Fund
 - (a) Any non-functional or inoperative WECS, or any WECS for which the Permit has been revoked, shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration plan within 120 days of the date on which the facility becomes non-functional or inoperative, as defined above, and weather permitting, or of the revocation of the permit.

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- (b) If removal of the WECS is required and the applicant, permittee, or successor fails to remove the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the permittee, by accepting the permit, authorizes the Town Board to Contract for such removal and restoration and to pay for the removal and restoration from the posted decommissioning and site restoration fund and/or bond.
- (c) If the fund and/or bond is not sufficient, the Town shall charge the permit holder for the costs over and above the amount of the fund and/or bond.

Section 17 Limitations on Approvals; Easements on Town Property

- A. 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 Conversion System. It shall be the sole responsibility of the Facility operator, or owner, to acquire any necessary wind flow or turbulence easements, or right 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.

Section 18 Permit Revocation

- A. Testing fund. A permit shall contain a requirement that the applicant fund periodic noise testing by qualified independent third-party acoustical measurement consultant, which permittee shall include in the annual Operation Maintenance and Compliance report required by this local law. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Permit and this Local Law and shall include an evaluation of any complaints received by the Town. A non-compliant WECS shall be shut down immediately. The applicant shall have 90 days after written notice from the Zoning Officer to cure any deficiency. An extension of the 90-day period may be considered by the Zoning Enforcement Officer, 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, it shall be shut down immediately. The owner or operator shall remedy the situation within ninety (90) days after written notice from the Town Zoning Enforcement Officer. The applicant shall have ninety (90) days after written notice from the Town Zoning Enforcement Officer, to cure any deficiency. The Planning Board may extend the ninety (90) days cure period for good cause shown.

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- C. Notwithstanding any other abatement provision under this Local Law, 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.

Article VI
Wind Measurement Towers

Section 19 Wind Site Assessments

As a wind site assessment is typically 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 in accordance with this Article.

Section 20 Applications for Wind Measurement Towers

An application for a Wind Measurement Tower shall include, unless waived by the Planning Board:

- A. 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.
- B. Name, address, telephone number of the property owner.
- C. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner:
 - 1. confirming that the property owner is familiar with the proposed application(s) and
 - 2. authorizing the submission of the application.
- D. Address of each proposed tower location, including Tax Map section, block and lot number.
- E. Proposed Development Plan and Map.
- F. Decommissioning Plan, including financial security in a form acceptable to Town’s Attorney for removal.

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Section 21 Standards for Wind Measurement Towers

- A. The distance between a Wind Measurement Tower and the property line shall be at least one point one (1.1) 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 three (3) years. Permits shall be renewable upon application to the Planning Board in accordance with the procedure of this Section.

Article VII
Small Wind Energy Conversion Systems

Section 22 Purpose and Intent

The purpose of this Article is to provide standards for small wind energy conversion systems (SWECS) designed to produce electrical power for home, farm, and small commercial use on the same parcel the SWECS is installed on, and that are primarily used to reduce consumption of utility power at that location. Such SWECS shall have a generated capacity of up to but not exceeding 100 kilowatts. 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.

Section 23 Applications

Applications for Small WECS Permits shall include, unless waived by the Planning Board:

- A. 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.
- B. 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:
 - 1. confirming that the property owner is familiar with the proposed applications and
 - 2. authorizing the submission of the application.
- C. Address of each proposed tower location, including Tax Map section, block and lot number.
- D. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.

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- E. 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 Building Code of the State of New York.
- F. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
- G. 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 in the application, to connect the system to the electricity grid.
- H. A visual analysis of the SWECS 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.

Section 24 Development Standards

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

- A. Only one (1) small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which case their joint lots shall be treated as one lot for purposes of this Article.
- B. SWECS shall be used primarily to reduce the on-site consumption of electricity.
- C. Tower heights may be allowed as follows:
 - 1. Sixty-five (65) feet or less on parcels between one (1) and five (5) acres,
 - 2. Eighty (80) feet or less on parcels of five (5) or more acres.
- D. The maximum turbine power output is limited to 100 KW.
- E. 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.

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- F. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
- G. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- H. 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 Planning Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.”
- I. 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.
- J. At least one (1) sign shall be posted on the tower at a height of five (5) 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 vain where it would be visible from the ground, except that a system or motor’s manufacturer’s logo may be displayed on system generator housing in an unobtrusive manner.
- K. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
 - 1. Tower-climbing apparatus located no closer than twelve (12) feet from the ground.
 - 2. A locked anti-climb device installed on the tower.
 - 3. A locked, protective fence at least six (6) feet in height that encloses the tower.
- L. 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 (6) feet high or sheathed in bright orange or yellow covering from three (3) to eight (8) feet above the ground.
- M. 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.

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- N. 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 thirty (30) feet above the highest structure or tree within a two hundred and fifty (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,
- O. 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.
- P. 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 manufacturer.
- Q. Setback requirements. A SWECS shall not be located closer to a property line, dwelling, or structure occupied by humans or animals, than one point one (1.1) times the Total Height of the facility.
- R. Noise. Except during short-term events including utility outages and severe wind storms, a SWECS shall be designed, installed, and operated so that noise generated by the system shall not exceed ambient noise levels (exclusive of the development proposed) by more than 6 dBA at the nearest property line to any proposed SWECS. Sites can include more than one piece of property and the requirement shall apply to the combined properties. In the event the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus a maximum of 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

Section 25 Abandonment of Use

A SWECS 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 Planning Board. If not removed within 90-days from revocation, weather permitting, the Town shall have the right to remove the SWECS at the owner's expense.

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

Article VIII
Waivers

Section 26 Waivers

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- A. The Planning Board may, after a public hearing, grant a waiver from the requirements of this Local Law after considering any 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. Waivers granted under this Section shall run with the land and are the equivalent of variances granted by the Zoning Board of Appeals.
- B. The Planning Board may attach such reasonable conditions as it deems appropriate to waive application requirements as it deems necessary to minimize the impact of the waiver.
- C. Any request by an applicant for a variance from the dimensional requirements set forth in this Local Law shall be made to the Town Zoning Board of Appeals.

Article IX
Miscellaneous

Section 27

WECS Escrow Account. The Applicant shall pay to the Town a non-refundable Application Fee as set forth in §28 of this Local Law. The Town Board and Planning Board reserve the right to obtain engineering, economic impact, environmental impact, or reasonable charges of other reasonable professional services to aid it in the review of any submitted WECS application. These costs (and other expenses incurred by the Town) are reimbursable only from the Escrow Account, not the Application Fee.

- A. The Applicant shall reimburse the Town for all reasonable oversight expenses incurred relating to the WECS, from application through decommissioning.
- B. These WECS-related reasonable oversight expenses include (but are not limited to) amounts required for Building Permits, Licensing, Re-Licensing, and Decommissioning — e.g. administration, engineering, expert health and wildlife evaluations, handling complaints, legal, etc. “Legal” includes reasonable attorney fees for the Town if the Town has to sue the Applicant.
- C. Any Escrow Account interest shall stay with the account and be considered new principal.
- D. This Escrow Account will be set up by the Applicant at the time of the WECS permit Application. This Escrow Account will be at a financial institution approved by the Town, solely in the name of the Town, to be managed by the Town Board (or designee). The Applicant will make an initial deposit of \$25,000. A WECS Permit Application will not be processed until proof of deposit has been provided by the Applicant. A WECS Permit Application determination will not be made until all costs incurred by the Town to date have been reimbursed by the Applicant.

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- E. If the WECS Application is denied or withdrawn, all Escrow Account funds will be returned to the Applicant, less related expenses incurred by the Town. The money will be returned, along with a statement as to these costs, within 30 days of the Application being formally denied, or receipt of a Letter of Withdrawal. Application and Permit Fees are non-refundable.
- F. This Escrow Account will be funded during the life of the WECS by the Applicant/Owner/Operator. The Applicant/Owner/Operator will replenish any Escrow funds used by the Town within 14 days of being sent written notification (and explanation) of authorized withdrawals. Failure to maintain the Escrow Account at \$25,000 (within 30 days of being given notice) shall be cause for revocation (or denial of renewal) of the WECS Permit.
- G. Once the Owner believes that they have satisfactorily complied with the decommissioning conditions specified herein, they will send the Town written notification. The Town then has sixty (60) days to verify to their satisfaction that all decommissioning conditions have been complied with. If there is material non-compliance, the Town will so notify the Owner and the process will start over. Otherwise the Town will return all Escrow Account funds to the Owner, less related expenses incurred by the Town, along with explanatory statements/invoices.

Section 28 Fees

- A. Non-refundable Application Fees shall be as follows:
 - 1. WECS Wind Energy Permit: \$150 per megawatt of rated maximum capacity.
 - 2. Wind Measurement Towers Wind Energy Permit: \$100 per tower.
 - 3. Small WECS Wind Energy Permit: \$100 per WECS
 - 4. Wind Measurement Tower Wind Energy Permit renewals: \$100 per Wind Measurement Tower.

The Town Board may establish revised fee schedules by Resolution.

- B. Wind Energy Permits. The review of permits for WECS require expertise and will require the Town to engage the services of professional consultants such as attorneys and engineers, the expenses for which cannot be accurately established in advance. Therefore, in addition to the above, the applicant shall be responsible for all of the Town's reasonable expenses incurred in the permit review process including, but not limited to, all

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administrative costs, attorney's fees and engineering fees, and the applicant shall be required to enter into an escrow agreement with the Town in advance of such review to provide for the payment of such costs and expenses of review 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, and the costs of decommissioning the WECS.

Section 29 Inspections

- A. WECS shall not begin operation until all approvals required under this law are obtained and all required certifications are provided.
- B. Following the issuance of any approval required under this Local Law, the Planning Board or its designee shall have the right to enter onto the Site upon which a WECS has been placed, at reasonable times in order to inspect such facility and its compliance with this Local Law.
- C. After undertaking such inspection, the Planning Board or its designated representative shall provide notice of any non-compliance with the terms of this Local Law or the conditions of approval of any permit issued hereunder, and shall provide the owner or applicant with a reasonable time frame to cure such violation, such timeframe to be determined based upon the seriousness of the violation, its impact upon public safety, and the impact of the violation upon residents of the Town.

Section 30 Construction Related Damage

The owner of every WECS constructed pursuant to this law shall, to the extent practicable, repair or replace all real or personal property, public or private, damaged during the construction of such facility.

Section 31 Enforcement; Penalties and remedies for violations

- A. The Town Board, Town Zoning Enforcement Officer and such Town staff or outside consultants as appointed by the Town Board shall administer and 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 \$250.00. Every such person shall be deemed guilty of a separate offense for each day such violation shall continue. The Town may

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institute a civil proceeding-to collect civil penalties in the amount of \$250.00 for each violation and each day 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.
- D. An Applicant/Owner/Operator not responding to the following condition in the manner specified shall be considered to be in violation of this Local Law.
1. Unsafe Operation/Condition. If a Wind Turbine or the WECS presents an imminent physical threat of damage to life or significant threat to property, as determined by the Zoning Enforcement Officer, Town Board, or one of their designated agents, it shall be deemed unsafe and immediately shut down and repaired or otherwise made safe and certified so by a New York licensed Professional Engineer approved by the Town Board prior to resumption of operation. Members of the Town Board, the Zoning Enforcement Officer, or their agent/designee, shall have the right to access the WECS to verify conditions and/or progress of repair.
 2. Serious Violations. The Applicant./Owner/Operator of the WECS is responsible for mitigating any serious violations of standards within ten (10) business days upon receipt of written notification of determination of any cause attributed to operation of the WECS. A serious violation is defined as any of the following:
 - a. Any measured Noise Level which exceeds the standard specified in Section 14 of this Local Law where the Wind Turbine(s) or ancillary facility is the dominant and controlling source.
 - b. The occurrence of Shadow Flicker, Tower Shadowing or Blade Glint exceeds the standards specified in Section 9 of this Local Law.
 - c. Degradation or contamination exceeding US Environmental Protection Agency standards of any surface or subsurface water resource. (in the case of degradation or contamination of a well, the obligation for mitigation shall be deemed satisfied if the Applicant/Owner/Applicant immediately provides the affected well owner with a potable emergency water supply and within thirty (30) days commences implementation of corrective measures to the satisfaction of the well owner and subject to the approval of the Planning Board.

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- d. Any hazardous substance spill.
 - e. Communication/electromagnetic interference (other than emergency communication).
3. Emergency Communications. Interference with emergency communications must be mitigated within 24 hours.
 4. Other Violations. If the Zoning Enforcement Officer or Town Board determines that a violation of this Local Law has occurred, and the violation is determined neither to be unsafe, nor a serious violation, nor interferes with emergency communication, the Officer or Town Board shall provide written notice to the Applicant/Owner/Operator, and the Applicant/Owner/Operator is responsible for mitigating the problem within thirty (30) days. Mitigation involving significant construction or physical modification may take up to ninety (90) days to be completed, at the Town Board's discretion.
- E. An Applicant/Owner/Operator failing to comply with any provision of this Local Law by failing to resolve a violation before the expiration of the mitigation periods defined in subsection D of this section may be subject to:
1. Revocation of WECS permits, shut down and removal of any Wind Turbine(s);
 2. Fines pursuant to subsection B and F of this Section;
 3. Any other remedies the Town Board deems necessary to assure the safe operation of the WECS and protection of residents; and
 4. Reimbursement to the Town for expenses incurred in obtaining relief, including, but not limited to, court costs and reasonable attorney fees.
- F. Complaint Resolution Fines specific to WECS: (does not apply to small WECS) Fines for violations will be levied and reviewed on an annual basis by the Town Board and will include, but not be limited to, the following categories.
1. Shadow Flicker Complaint: If the developer does not comply within said time limits, the Town Board will impose a fine of \$250 per complaint, per day, starting from first day of complaint.
 2. Setback Violation Complaint: If the developer does not comply with setback violation within said time limits, the Town Board will impose a fine of \$250 per

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day, per complaint, starting from first day of violation and/or revoke the permit to operate.

3. Electromagnetic-Stray Voltage Complaint: If the developer does not comply within said time limits, the Town Board will impose a fine of \$ 250 per day, per complaint, starting from first day of complaint,
4. Protection of Aquifers, Ground Water and Wells: If developer fails to comply, the fine will be \$250 per complaint, per day, starting from the first day of complaint.

Section 32 Fiscal Responsibility

No transfer of any WECS or permit, or sale of the entity owning such facility, including the sale of more than 30% of the stock of such entity (not counting sale of shares on a public exchange) shall occur without written acceptance by such entity of the obligations of the permittee under this Local Law and the terms of the permit. Any such transfer shall not eliminate the liability of any entity for any act occurring during its ownership or status as permittee.

Section 33 Certification

Prior to operation of any approved and constructed Wind Energy Conversion System, the applicant must provide a certification that the project complies with applicable codes, industry practices and conditions of approval (where applicable).

Section 34 Severability

Should any Section, sub-section, article, clause or provision of this Local Law be declared by a court of competent jurisdiction to be unconstitutional or invalid in any particular circumstance, 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 35 Effective Date

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