Town of Ellington
Introductory Local Law No. 1 of the year, 2008
A local law to add chapter 19 to the code of the Town of Ellington entitled

"WIND ENERGY CONVERSION SYSTEMS"
which will regulate the placement and construction, maintenance, and removal of wind energy conversion systems in the Town of Ellington

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

Section 1: This local law shall be known as the Town of Ellington Wind Energy Conversion Systems Law.

Section 2: Introduction & Purpose
The Town of Ellington has determined that a comprehensive local law regulating the placement, construction maintenance and removal of wind conversion systems in the Town of Ellington is necessary to protect the interests of the Town of Ellington and its residents.

A. It is the purpose of this law to prevent and avoid serious detrimental health, environmental and planning conditions which threaten the Town of Ellington by allowing degradation of its significant environmental and agricultural resources and in order not to undermine the conscious and continuous determination by the Town to resolve and lessen such threats to the health, safety and welfare of the citizens of the Town of Ellington.

Section 3: Authority

A. The Town Board of the Town of Ellington adopts this Article 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).

5. 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).

6. New York Town Law § 64(17-a) (protection of aesthetic interests) and (23) (General powers).

Section 4: Findings

A. The Town Board of the Town of Ellington 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 sites and access roads, 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.

Section 5: Definitions

A. As used in this Article, the following terms shall have the

meanings indicated:

1. AGRICULTURAL OR FARM OPERATIONS - means "the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation, and marketing of crops, livestock, and livestock products as a commercial enterprise, including a commercial horse boarding operation," as defined in New York Agriculture and Markets Law § 301 and "timber processing," as defined in subdivision fourteen of New York Agriculture and Markets Law § 301. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

2. COMMERCIAL WIND ENERGY SYSTEM - A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity greater than 250 kilowatts, and a total height of more than 150 feet, and is intended to primarily supply electrical power into a power grid for sale.

3. 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.

4. RESIDENCE - means any dwelling suitable for habitation existing in the Town of Ellington on the date the SEQRA for the specific application is completed, including seasonal homes, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools or other buildings used for educational purposes, churches. A residence may be part of a multi-dwelling or multipurpose building, but shall not include correctional institutions.

5. SENSITIVE RECEPTORS - means residences and other facilities where quiet is important.

6. 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.

7. SMALL WIND ENERGY CONVERSION SYSTEM - One or more mechanical devices such as wind chargers, windmills or wind turbines which are designed and used to convert wind energy into a form of useful energy for sale, or redistribution to others. Hereinafter in this local law, a "Small WECS".

8. 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 and received the required variance shall not be considered off-site.

9. 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.

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

11. TOWER HEIGHT - The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.

12. TOWN - Shall mean the Town of Ellington.

13. TOWN BOARD - Shall mean the Town Board of the Town of Ellington.

14. WIND ENERGY CONVERSION SYSTEM - A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill"). Hereinafter in this local law, a "WECS".

15. WIND ENERGY FACILITY - Any Wind Energy Conversion System, including Commercial WECS's, Small WECS's, or Wind Measurement Towers, including all related infrastructure, electrical lines and substations, access roads, and accessory structures.

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

Section 6: PERMITS REQUIRED

A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Ellington except in compliance with this Chapter.

B. No WECS including Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Ellington except pursuant to an application for permit approved pursuant to this

Chapter and except as allowed by subdivision H of this Section.

C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Ellington except pursuant to a Permit issued pursuant to this Chapter, except as allowed by subdivision H of this Section.

D. Permits for Wind Energy Facilities shall be issued by the Town Board.

E. Exemptions. No permit or other approval shall be required under this Chapter for WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one and a half times its Total Height from a property line, and does not exceed 120 feet in height. Towers over 120 feet in Total Height utilized solely for agricultural operations in a state or county agricultural district shall apply for a permit in accordance with this Chapter, but shall not require a waiver of the height restriction. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.

F. This Chapter shall apply to all areas of the Town of Ellington.

G. Transfer. No transfer of any Wind Energy Facility or permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock or other equity interests 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 Chapter, the transferee's demonstration, in the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor and the transferee's provision of the financial security required by Section 18 of this Chapter as well as the transferee's provision of the insurance required by Section 9(A)(19) of this Chapter. No transfer shall eliminate the liability of the transferor nor of any other party under this Chapter unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations of the transferor to the Town or violations of any other Town law or ordinance.

H. Notwithstanding the requirements of this Chapter, replacement in kind or modification of a Wind Energy Facility 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 noise produced by the WECS.

I. 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 Chapter shall not be deemed expansions of a nonconforming use or structure.

Section 7: Applications for Wind Energy Conversion Systems

A. An applicant for a Permit shall submit at least seven (7) full copies of an application, prepared by a Professional Engineer licensed to practice in New York State. The Professional Engineer shall certify, in writing, that the application meets all engineering requirements of this local law and shall specifically certify to the Town of Ellington that:

1. 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 or New York State Uniform Construction Code, whichever is more stringent.

2. That the electrical system design is in compliance with accepted engineering practices and with the appropriate provisions of the National Electric Code.

3. That the rotor over-speed control system is in compliance with accepted engineering practices.

The application shall also include:

4. 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.

5. 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.

6. Address, or other property identification, of each proposed tower location, including Tax Map section, block, and lot number.

7. A description of the project, including the number and maximum rated capacity of each WECS.

8. A plot plan or plans bearing the name of the project prepared by, and bearing the seal of, a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:

(a) Property lines and physical dimensions of the Site, showing all easements and rights-of-way and existing utility systems.

(b) Location, approximate dimensions, and types of major existing structures, including all residences, and uses on Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the Site.

(c) Location of the tower(s) on the Site and the tower height, including blades, rotor diameter and ground clearance.

(d) Location of all above and below ground utility lines on the Site or within one and one-half radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.

(e) The location and dimensions of all existing structures and uses on Site within 675 feet of the WECS.

(f) To demonstrate compliance with the setback requirements of this Chapter, circles drawn around each proposed tower location equal to: (i) One and a half times the tower height radius; (ii) Five-hundred foot radius; and (iii) Two-thousand foot radius.

(g) Location of residential structures within two thousand feet of each proposed tower. The distance from the center of the tower to any off-site residence within two thousand feet shall be noted.

(h) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.

(i) The date of the plan, a north arrow and the scale of the plan shall be shown.

9. 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, including blades, rotor diameter and ground clearance. The area of the base of each tower and depths of components of the base below ground level shall be indicated. One drawing may be submitted for each WECS of the same type and Total Height.

10. Landscaping Plan depicting existing natural land features, trees, forest cover and vegetation and describing all proposed changes to existing features,

the area to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.

11. A lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include but is not limited to the planned number and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring properties. 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.

12. A construction access plan prepared by a Professional Engineer licensed to practice in New York State, approved in advance by the Town, which access plan shall include the following:

    (a) Identification of all roads including seasonal roads, and rights of way within the Town to be used for site access during construction and a plan for marked detours where necessary so traffic to residences and businesses can continue unobstructed.

    (b) Estimate of the number of vehicle trips over each road by vehicle type and gross weight.

    (c) Indicate any areas where clearing of trees, road widening or realignment is necessary.

    (d) The Engineer shall provide an analysis of potential road damage and an estimate of the cost to maintain and repair or rebuild all affected roads.

    (e) A video of the current condition of all roads to be used for construction access.

13. 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 and no smaller than 6 inches, and the base map shall be a published topographic map showing cultural features.

14. No fewer than four (4), and no more than the number or proposed individual wind turbines plus three, color photos, no smaller than 8" x 10", taken from locations

within a three (3) mile radius from the location of the proposed WECS. The location from which the photos are to be taken shall be selected by the Town, and computer-enhanced to simulate the appearance of the as-built above ground facilities as they would appear from these locations.

15. List of property owners with their mailing addresses, within 500 feet of the boundaries of the Site. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.

16. Information relating to the construction/installation of the wind energy conversion facility as follows:

(a) an estimated timetable for each phase of construction.

(b) a Full Environmental Assessment Form ("EAF") and Visual EAF Addendum Form prepared in accordance with the State Environmental Quality Review Act. The Environmental Assessment Form must be reviewed by the Town or qualified individual as Lead Agency, with input from a licensed Environmental Engineering firm in accordance with all applicable and appropriate processes and procedures contained in the New York State Environmental Quality and Review Act (SEQRA).

17. 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. Also included shall be the manufacturer's dimensional drawings as well as installation and operation instructions.

18. Documentation of the proposed intent and capacity of energy generation as well as a justification for the height of any WECS and justification for any clearing required.

19. 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) Model and describe the zones where shadow flicker and blade glint will likely be present within the project boundary and a two-mile radius beyond the project boundary. Include the topography, existing

residences, wind speeds and directions and existing vegetation and roadways. The model shall represent the most probable scenarios of wind constancy, sunshine consistency, and wind directions and speeds.

(b) A visual impact study of the proposed WECS as installed, which shall 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 description of the general geographic areas that would be acceptable for wind projects within the Town of Ellington; furthermore, demonstration that the proposed site is the most appropriate site within the immediate areas for the location of the wind energy deriving tower facility.

(d) Digital elevation model-based project Visibility map showing the impact of visibility of the project from other locations, to a distance radius of three (3) miles from the center of the project. The base map used shall be a published topographic map showing natural and structural or built features.

(e) Report showing soil logs, soil profile analysis, and storm water run-off calculations for the area being disturbed.

(f) Plans to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive runoff, and flooding of other properties, as applicable. There should be pre-construction and post-construction drainage calculations for the site done by a certified engineer and certified to by said engineer. From this the engineer must show how there will be no increase in runoff from the site.

(g) If any license, approval, permit, certificate or any type of registration or similar type of endorsement is required from any other agency, the applicant shall notify the Board of such requirement and the Board shall coordinate the review as deemed appropriate.

(h) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed site which shall

include fire hazard protection: The applicant shall submit a Fire Control and Prevention Program that is appropriate and adequate for the proposed facility. The proposed program may include, but is not limited to, the following:

(a) Fireproof or fire resistant building materials.
(b) Buffers or fire retardant landscaping.
(c) Availability of water.
(d) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment-without regular human occupancy.
(e) Provision of training and fire fighting equipment for local fire protection personnel.

(i) Noise report. A noise report shall be furnished which shall include the following:

(a) A description and map of the project's noise-producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.

(b) A description and map of the noise sensitive environment, including any Sensitive Receptors, within two (2) miles of the proposed facilities.

(c) A survey and report prepared and certified by a qualified engineer, that analyzes the pre-existing ambient noise regime (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in) turbulence measurements, distance from the turbines, location of Sensitive Receptors relative to wind direction; and analyses at affected sensitive receptors located within two (2) miles of the proposed project site.

(d) A description and map showing the potential noise impacts, including estimates of expected noise impacts upon construction and operation workers, and estimates of expected noise levels at Sensitive Receptor locations.

(e) A description and map of the cumulative noise impacts.

(f) A description of the projects proposed

noise-control features, including specific measures proposed to protect workers, and specific measures; proposed to mitigate noise impacts for Sensitive Receptors consistent with levels in this ordinance.

(g) Identification of any problem areas.

(h) Manufacturers' noise design and field testing data, both audible (dB(A), and low frequency (deep bass vibration), for all proposed structures.

(i) A report that outlines issues and considerations for individuals that use hearing aids.

20. Ice throw calculations: A report from a Professional Engineer licensed to practice in New York State that calculates the maximum distance that ice from the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)

21. Blade throw calculations: A report from a Professional Engineer licensed to practice in New York State that: calculates the maximum distance that pieces of the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed).

22. Catastrophic tower failure: A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand (including all assumptions.)

23. FAA notification: A copy of written notification to the Federal Aviation Administration.

24. Utility notification: Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.

25. Notification to microwave communications link operators: An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.

26. Floodplain: An application that includes any wind turbine which is located within a 100-year floodplain area, as such flood hazard areas are shown on the floodplain maps, shall be accompanied by a detailed report which shall address the potential for wind erosion, water erosion,

sedimentation and flooding, and which shall propose mitigation measures for such impacts.

27. Other information: Such additional information as may be reasonably required by any engineer hired by the Town Board.

28. A geotechnical report shall be furnished which shall at a minimum include the following:

    (a) Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing. No permit will be issued issued for any site which is, or which in the past was, used for solid or hazardous waste disposal.

    (b) Foundation design criteria for all proposed structures.

    (c) Slope stability analysis.

    (d) Grading criteria for ground preparation, cuts and fills, and soil compaction.

29. The applicant shall submit an Erosion Control Plan. If the proposed project disturbs over 1 acre, the applicant must comply with the New York State Department of Environmental Conversion SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-02-01). A copy of the Notice of Intent (N.O.I.) and Stormwater Pollution Prevention Plan (SWPPP) as required by the General Permit must be filed with the Town of Ellington prior to construction. Per the General Permit, construction cannot begin until the required time period for NYS DEC review has passed.

Section 8: 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.

B. Eight copies of the application shall be submitted to the Town Clerk at least ten days before a regularly scheduled meeting. Payment of all application fees shall be made at the time of application submission.

C. Town staff and 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.

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. The applicant shall post the completed application and any accepted environmental impact statements on the Internet.

F. The Town Board shall hold at least one public hearing on the application within 62 days after receipt by the Town Board of a completed application and completed SEQRA, full EAF or DEIS, as the case may be. Notice shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed Site 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. The application shall be made available for public review during those hours that the office of the Town Clerk is open for business.

G. 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 shall issue a positive declaration of environmental significance.

H. Notice of the project shall also be given, when applicable, to (1) the Chautauqua County Planning Board, if required by General Municipal Law §§ 239-1 and 239-m, and (2) to adjoining Towns under Town Law § 264.

I. SEQRA Review. Applications of WECS are deemed Type I projects under SEQRA. The Town shall conduct its SEQRA review in conjunction with other agencies, and the record of review by said agencies shall be part of the record of the Town's proceedings. The Town Board may hire a professional Engineer or consultant to assist in the review of an application at the applicant's expense. 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 within 62 days, the Town Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Chapter.

Section 9: Standards for WECS.

A. The following standards shall apply to all WECS and related infrastructure, unless specifically waived by the Town Board as part of a permit.

1. Wiring: All wiring between the wind turbines and the wind energy facility substation shall be underground in accordance with regulations for burial as set forth by the New York State Department of Agriculture and Markets. Notwithstanding the foregoing, all wiring shall be buried a minimum of eight feet below the ground surface. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the project.

2. All transmission lines from wind energy conversion systems to on site substations shall be underground as provided in subparagraph 1 above. The Town Board shall have the authority to waive this requirement if the owner of the property upon which the transmission line will be sited consents to aboveground transmission lines or if the Town Board has sufficient engineering data submitted by the applicant to demonstrate that underground transmission lines are unfeasible.

3. Any construction or ground disturbance involving agricultural land shall be done in accordance with the New York State Department of Agriculture and Markets' publication titled Guidelines for Agricultural Mitigation for Wind Power Projects.

4. No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the telecommunications provisions of the Town of Ellington Code. Application may be jointly submitted for WECS and telecommunications facilities.

5. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.

6. 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 permit. Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and direction lights at the ground.

7. All applicants shall use measures to reduce the visual of WECSs to the extent possible. WECSs shall use mono-pole construction. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs shall be constructed using wind turbines whose appearance with respect to one another, is similar within and throughout a Site, 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.

8. Self-supporting structures: All structures shall be of mono-pole construction (single pole). No lattice structures or guy wire supported structures shall be permitted.

9. No WECS shall be installed in any location where its proximity with or to 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. 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 as same from time to time be modified. If it is determined that a WECS is causing electromagnetic interference with an existing fixed broadcast or microwave communications link, the operator of the WECS 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 Permit for the specific WECS or WECSs causing the interference.

10. 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.

11. 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. Existing roadways shall be used for access to the site whenever

possible. In the case of constructing roadways, they shall be constructed in a way so that they are not conspicuous to the surrounding environment.

12. No individual WECS shall be installed in any location where there is a recognized migratory flight path for birds or at a location where birds commonly congregate, unless applicant can demonstrate that the operation of the wind energy-deriving tower will not have a significant impact on either migrating or resident birds.

13. WECS and related infrastructure shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations. Transmission facilities and/or buildings shall be located behind ridges or vegetation to screen from visibility.

14. Storm-water run-off and erosion control, both during construction and thereafter, shall be managed in a manner consistent with all applicable state and Federal laws and regulations and with the Erosion Control Plan provided for in §7 of this local law. Before the Town of Ellington shall issue a grading or building permit for the WECS, the applicant shall submit an Erosion Control Plan to the Board for its review and approval. The Plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and to minimize erosion or sedimentation. If the proposed project disturbs over 1 acre, the applicant must comply with he New York State Department of Environmental Conversion SPDES General Permit for Stormwater Discharges from Construction Activity (Permit NO. GP-02-01). A copy of the Notice of Intent (N.O.I.) and Stormwater Pollution Prevention Plan (SWPPP) as required by the General Permit must be filed with the Town of Ellington prior to construction. Per the General Permit, construction cannot begin until the required time period for NYS DEC review has passed.

15. The maximum Total Height of any WECS shall be 420 feet.

16. The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.

17. Construction of the WECS shall be limited to the hours of 7 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.

18. Appropriate landscape and screening is required to keep the site in a neat and orderly fashion. Appropriate screening is required to screen accessory structures

from adjacent residences.

19. The Town of Ellington shall be named as an additional insured under the general liability policy of the applicant, the amount of which insurance shall be no less than an amount to be determined by the Town Board from time to time before commencement of site preparation and during and after construction of the WECS given the nature and scope of the project proposed and constructed by the applicant.

Section 10: Required Safety Measures

1. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks 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. All structures which may be charged with lightning shall be grounded according to applicable electrical codes.

3. If the property owner submits a written request that fencing be required, an eight-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 application as safety needs dictate.

4. No Wind Energy 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.

5. No Wind Energy 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 other personnel communication systems would produce electromagnetic interference with signal transmission or reception.

6. 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.

7. Notice and Safety Considerations.

(1) Signs.
(a) Caution signs shall be placed at the setback limits warning of ice and blade throws. Signs shall be placed at 100 foot intervals and be 4 to 6 feet high (at eye level). Said signs shall be a minimum of one foot square and no larger than two square feet in size and shall have the words "CAUTION:FALLING OBJECTS" printed thereon. In addition, the owner's name and address shall be printed thereon.

(b) There shall be no other signs affixed to the windmill, accessory buildings or enclosure.

(2) Fencing.
Access to the tower shall be limited either by means of a fence six (6) foot high around the tower base with a locking gate or by limiting tower climbing apparatus to no lower than twelve (12) feet from the ground.

(3) Limit Tip Speed.
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.

8. The Town Board may require additional signs based on safety needs.

9. 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.

10. The minimum distance between the ground and any part of the rotor or blade systems shall be thirty (30) feet.

11. 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 when operator personnel are not present.

12. Accurate maps of the underground facilities shall be filed with the town and with "Dig Safety New York (1-800-962-7962)" or its successor.

13. 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 Code. The manufacturer normally supplies this certification. All equipment and material shall be used or installed in accordance with such drawings and diagrams. 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.

Section 11: 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 buss activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Permit condition may require remediation during construction, limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public, and all applicable state, county, and municipal highway authorities and superintendents whose roads are included in the WECS traffic routes plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips, and the dates and time periods of expected use of designated traffic routes.

B. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. The applicant shall deposit an amount to be agreed upon by applicant and the Town, with guidance from the Town's consultants and experts and the engineering report, in an escrow account to be used by the Town, in their discretion for road repairs. Said account will be maintained for one (1) year after completion of the construction. Any unused funds will be returned to the applicant. The applicant is to provide a written guarantee to the Town that it will provide additional funds as needed to insure that all roads are in as good condition as prior to construction, in the event that such funds are exhausted and additional work is still required.

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.

Section 12: Noise Control Requirements

A. The statistical sound pressure level generated by a WECS shall not exceed L_{10} - 50 dBA measured at the closest exterior wall of any residence existing at the time of completing the SEQRA review of the application. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification by an engineer acceptable to the Town shall be provided before and after construction demonstrating compliance with this requirement.

B. In the event audible noise due to WECS 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 six (6) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing Sensitive Receptors. 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, a minimum distance of:

1. Setbacks from adjacent property lines, rights-of-way, easements, public ways or power lines (not to include individual residential feed line) shall be one and

one-half times the maximum structure height or 1¼ times the maximum engineer-calculated ice or blade throw distance to the maximum point of impact, whichever is greater.

2. 1,000 feet from the nearest off-Site Residence existing at the time of application, measured from the exterior of such residence.

3. 100 feet from the state-identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the Town Board, based on topography, land cover, land uses, and other factors that influence the flight patterns of resident birds.

4. 500 feet from existing gas wells, unless waived in writing by the property owner and well owner.

F. The Town Board may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.

G. The applicant shall submit a noise complaint and investigation process. The Town Board shall determine the adequacy of the noise complaint and investigation process.

Section 13: Waivers of Noise and Setback Requirements

A. Notwithstanding the provisions set forth in this Chapter, such setbacks from lot lines do not apply if the application is accompanied by a legally enforceable agreement for a period of 25 years or the life of the permit, whichever is longer, that the adjacent landowner agrees to the elimination of the setback.

B. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easements, shall be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and 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.

Section 14: Issuance of Permit

A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Chapter and the record of the SEQRA review, issue a written decision setting forth the reasons for approval, conditions of approval, or disapproval.

B. If approved, the Town Board will authorize Town staff to issue a Permit for each WECS upon satisfaction of all condition 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 Chapter.

C. If construction of any approved WECS is not substantially commenced within two years of issuance of the permit, the permit shall expire.

Section 15: Application and Development Fees and Costs

[1] Application fee: The applicant shall pay all costs associated with the Town of Ellington's review and processing of the application. The applicant shall submit a deposit with the application in an amount determined by resolution by the Town Board. The Town of Ellington may require additional deposits to cover the costs of reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the application, any unused amount of the deposit(s) shall be returned to the applicant with a summary of the costs incurred.

[2] Development fees to be paid: A one-time or periodic fee and a requirement to provide public works or services may be imposed as a condition of a WECS permit. Such fees must be related to the public need created by the wind energy development. The purposes for which the permit fee may be used, but are not limited to, providing roads required by the wind energy development, providing fire protection services, and establishing and operating a monitoring system.

[3] Payment in lieu of taxes (host community agreement): Prior to a building permit being issued, the applicant is required to negotiate a Payment in Lieu of Taxes (Host Community) agreement with the Town of Ellington.

[4] Proof of insurance: Prior to the issuance of a building permit, the applicant shall have provided the Town Clerk with proof of the insurance required by this Chapter.

[5] The Town of Ellington reserves the right to, by Local Law, provide that no exemption pursuant to the provision of the New York State Real Property Tax Law (RPTL) Section 487 shall be applicable within its jurisdiction.

[6] Bonds: Prior to issuance of a building permit, the applicant shall have provided the Town Clerk with all bonds required by this Chapter.

Section 16: Monitoring

(1) Right to enter premises for monitoring: Upon reasonable notice, Town of Ellington officials or their designated representatives may enter a Site on which a commercial wind energy facility permit has been granted for the purpose of compliance with any permit requirements. Twenty-four hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.

(2) Avian/bat impact study plan: the applicant shall submit a plan for monitoring the avian impact of the commercial wind energy facility to the Town Board for its review and approval. Such plan shall document and follow accepted scientific study procedures. In addition, the applicant shall agree to submit a report to the Town Board according to the requirements of the applicable regulatory agencies that identifies all dead birds found within 500 feet of the commercial wind energy facility.

(3) Periodic reporting required: The applicant shall agree to submit periodic monitoring reports to the Town Board. The report shall contain data on the operations and environmental impacts, and shall be in the form prescribed by the Town Board.

(4) Power production report required: The applicant shall agree to submit a quarterly power production report to the Town Board. The power production report shall cover the preceding calendar quarter, and shall be in the form prescribed by the Planning Board and shall include actual power production in kilowatt hours for each commercial wind energy facility.

(5) Inspections: Unless waived by the Town Board, wind turbines or poles over 150 feet in height shall be inspected annually by a New York State Licensed Professional Engineer that has been approved by the Town or at any other time upon a determination by the Town's Code Enforcement Office that the wind turbine, tower or pole may have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.

(6) General complaint process:

(a) During construction, the Town of Ellington Code Enforcement Officer can issue a stop order at any time for any violations of the permit.

(b) Post construction: After construction is complete, the permit holder shall establish a contact person including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of complaint from the Town of Ellington Code Enforcement Officer, the permit holder/contact person shall have 7 working days to reply to the Town in writing.

(7) All requirements detailed in this Section shall remain in force for the life of the permit.

Section 17: Abatement

A. Public nuisance: Every unsafe commercial wind energy facility and every inoperable commercial wind energy facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. If any WECS remains non-functional or inoperative for a continuous period of 12 months, 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 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 WECS, if requested, necessary to prove the information. Failure to provide any such report within 60 days of the mailing of a written request for such information mailed to the owner of the WECS at the address of the contact person as provided pursuant to §16 by certified mail, return receipt requested shall create an irrebuttable presumption of non-function or inoperation.

Section 18: 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 from time to time, for the period of the life of the facility and until its removal. This fund may consist of a letter of credit from a State of New York-licensed financial institution acceptable to the Town Board as to amount, content and issuer. Shall the Town Board at any time determine after notice to applicant, or successors, and an opportunity to be heard, that the issuer of a letter of credit or bond or the holder of a fund is not financially stable, then the Town Board may require the issuance of a replacement bond or letter of credit or

the establishment of a new fund reasonably satisfactory to the Town Board. All costs of the financial security shall be borne by the applicant. Proof of the existence of such fund or bond shall be provided to the Town before commencement of land clearing.

Section 19: Permit Revocation

A. Testing fund. A 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 Article 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 (except in the case of a failure to maintain the insurance coverage required under this Chapter, which violation shall be remedied within 5 days) after written notice from the Town Board. 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 Chapter, if the WECS is not repaired or make 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 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 pursuant to the provisions of Section 18 of this Chapter to remove the WECS.

Section 20: Limitations on Approvals/Easements on Town Property.

A. Nothing in this Chapter 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 Chapter 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 law or this Chapter.

Section 21: Findings

The Town Board acknowledges that prior to construction of a WECS, a wind Site assessment is often conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of Wind Measurement Towers, also known as anemometer ("Met") towers.

Section 22: Applications of Wind Measurement Towers

A. An application for a Wind Measurement Tower shall include:

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 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, based on the criteria in this Article for WECS, including a security bond or cash for removal, as provided in Section 18 of this Chapter.

Section 23: 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 this requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the written consent of those property owners, acknowledged in the manner provided for the recordation of a deed.

B. No wind measurement tower shall exceed 420 feet in height from the ground elevation to the highest point on the tower.

C. Permits for Wind Measurement Towers may be issued by the Town Board for a period of up to two years. Permits may be renewed one time for an additional 2 year period if the Facility is in compliance with the conditions of the existing Permit. All provisions of the original permit shall continue in effect unless modified by the Town Board.

Section 24: Small Wind Energy Conversion Systems

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.

Section 25: Applications for Small WECS

Applications for Small WECS permits shall include:

1. Name, address, and 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 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 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 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 Electric Code.

6. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.

7. 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.

8. A visual analysis of the Small WECS, as it is to be 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.

9. A Short Form Environmental Assessment Form.

Section 26: Development Standards

All Small WECS 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 Chapter.

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) 120 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 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 100 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. A 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 manufacturer.

Section 27: Noise and Setback Requirements for Small WECS

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.

Section 28: Abandonment of Use

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 Town.

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

Section 29: Miscellaneous

A. Fees. There shall be non-refundable Application fees as follows:

1. WECS Permit: $300 per megawatt of rated maximum capacity.

2. Wind Measurement Towers Permit: $20 per tower.

3. Wind Measurement Tower Permit renewals: $20 per Wind Measurement Tower.

4. The cost of all legal notices and mailings shall be assessed to and promptly paid by the applicant.

5. No building permit shall be issued until the Town has been paid the fees set forth in subparagraphs "1" through "4" above and paragraph "B" below.

B. Building Permits.

1. 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 be increased by administrative costs which shall be $100 per permit request, 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 any event, 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 or certifications, or to conduct inspections as agreed by the parties.

2. 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.

C. Nothing in this Article 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.

Section 30: Enforcement; Penalties and Remedies for Violations.

A. In addition to the Code Enforcement Officer, the Town Board may 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 the construction, use, operation or maintenance of a Wind Energy Facility in violation of this Article or in noncompliance with this local law or 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 fifteen days, or subject to both such fine and imprisonment for a first offense, for a Second offense (both within a period of five years), a fine not less than $350 nor more than $700, or imprisonment not to exceed six months, or both, and for a Third or more offense (all of which occurred within five years), a fine not less than $700 nor more than $1,000, or imprisonment not to exceed six months, or both. 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 amounts set forth herein 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 31: 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 32: Effective Date

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