

**Local Law No. 1 of 2022**

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

**Section 1:** The “Wind Energy Facility Law of the Town of Andover, New York,” is hereby authored to read in its entirety as follows:

**WIND ENERGY FACILITIES**

**Article I**

**§ 1. Title.**

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

**§ 2. Purpose.**

The Town Board of the Town of Andover adopted this Local Law so that the public health, safety, and welfare will not be jeopardized. The Town of Andover is supportive of responsible green energy development, and to promote the health, welfare and safety of the citizenry of the Town of Andover and to encourage economic development and opportunities this Local Law is intended to allow responsible development in a way that benefits the local community and citizenry.

**§ 3. Authority.**

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

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

**§ 4. Permits Required; Transfer; Modifications.**

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

B. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Andover except with a Wind Energy Facility Permit approved pursuant to this Local Law.

C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Andover except pursuant to a Wind Energy Facility Permit issued pursuant to this Local Law.

D. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Andover except pursuant to a Wind Energy Permit issued pursuant to this Local Law.

E. This Local Law shall apply to all areas of the Town of Andover.

F. Exemptions. No permit or other approval shall be required under this Chapter for Wind Energy Facility 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 wind energy permit in accordance with Article II of this Local Law, but shall not require a height variance. Prior to the construction of a Wind Energy Facility 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.

G. Transfer. No transfer of any Wind Energy Facility or Wind Energy Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Section, and the transferee's demonstration, in the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor nor of any other party under this Section unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations or violations.

H. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there will be no increase in Total Height; (2) no change in the location of the Wind Energy Facility; (3) no additional lighting or change in facility color; (4) no increase in noise produced by the WECS, and (5) the Wind Energy Facility is not currently in violation of any permit condition or provision of this Local Law.

**§ 5. Definitions.**

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

**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 subdivision thirteen of 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 non-contiguous to each other.

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

**RESIDENCE** — means any dwelling suitable for habitation existing in the Town of Andover on the date an application is received. A residence may be part of a multi-dwelling or multipurpose building, and includes but not limited to, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions, for purpose of applying substantive standards applicable to residences.

**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.

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

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

**TOTAL HEIGHT** — The height of the tower and the furthest vertical extension of the Wind Energy Facility.

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

**WIND ENERGY FACILITY** — A development project, consisting of an integrated system of Wind Energy Conversion Systems or Small Wind Energy Conversion Systems, including Wind Measurement Towers, and all associated Wind Energy Related Infrastructure..

WIND ENERGY RELATED INFRASTRUCTURE – the components of a Wind Energy Facility, excluding WECS and Wind Measurement Towers, that are necessary or convenient for the construction or operation of the Wind Energy Facility, including electric collection lines, substations, interconnection lines, switchyards, access roads, communication facilities, operation and maintenance buildings and facilities, and laydown yards and concrete batch plants.

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

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

AIRCRAFT DETECTION LIGHTING SYSTEM (“ADLS”) – A lighting system on an industrial wind turbine that continuously monitors the airspace surrounding an obstruction or group of obstructions such as industrial wind turbines. When the system detects an aircraft in its airspace the system sends an electronic signal to the lighting control unit which turns on the lights. Once the aircraft clears the obstruction area, and there is no longer a risk of collision, the detection system turns off the lights and the system returns to standby mode.

APPLICANT – Any Person who submits or joins in the submission of any application under this 2022 Local Law.

BLADE GLINT – The intermittent reflection of the sun or moon off the surface of the blades of one or more wind turbines.

CONSERVATION AREAS – Natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act, 33 U.S.C. Sec. 1251 et seq.; New York State Forest, sole source aquifers, shoreland areas; water bodies; riparian buffers; populations of endangered or threatened species, or habitat for such species; archaeological sites, cemeteries, and burial grounds; important historic sites; other significant natural features and scenic viewsheds; and existing trails or corridors that connect the tract to neighboring areas.

DEC – The New York State Department of Environmental Conservation.

DECOMMISSIONING FUND – A type of security or undertaking, acceptable to and approved by the Town Board, posted or deposited by an Applicant or Operator in favor of the Town, that is designed to provide guaranteed and uncontested access to funding to remove and decommission WTG and Wind Energy Facilities and restore and remediate the Site, in the form of cash or a letter of credit.

DECOMMISSIONING PLAN – A written detailed plan submitted by an Applicant or Operator that shows and verifies continual compliance with the requirements of this 2022 Local Law relative to the removal and decommissioning of large WTGs and Wind Energy Facilities and restoration and remediation of the Site.

DEIS – A Draft Environmental Impact Statement, as defined and construed under SEQRA.

ENFORCEMENT OFFICER – Any Person appointed by the Town Board to (i) review applications, (ii) interpret or enforce this 2022 Local Law, or (iii) take any action or make any determination under this 2020 Local Law. Unless the Town Board resolves otherwise, the Town’s Code Enforcement Officer(s) shall be deemed Enforcement Officers under this 2022 Local Law.

ESCROW ACCOUNT – An escrow account meeting the requirements of of this 2022 Local Law number 1.

FAA – The Federal Aviation Administration.

FEIS – A Final Environmental Impact Statement, as defined and construed under SEQRA.

OPERATOR – Any Person who owns, manages, operates, or otherwise exercises decision making authority for any Wind Energy Facility or WTG, but not including such Persons who own, manage or operate Small WTG.

PILOT AGREEMENT – A payment in lieu of taxes agreement pursuant to the New York State General Municipal Law Article 18-A.

LANDOWNER – With respect to parcel of property within the Town, a Person who has entered into a written lease, easement or other agreement to permit the construction and/or operation of a WTG or Wind Energy Facility on such parcel of property owned by such landowner.

LARGE WIND GENERATOR TURBINE or LARGE WTG – Any Wind Generator Turbine/WTG other than a Small Wind Generator Turbine/Small WTG. All Large WTG project proposals are “Type I” actions under SEQRA.

PERSON – Any individual, partnership, limited liability company, corporation, joint venture, business, or other person or entity of whatever kind or nature, but not including the Town, the Town Board, the Planning Board, or any other employee, elected official, or agent of the Town, and not including the State of New York or the Federal Governments and their departments, bureaus, and employees thereof.

PRECAUTIONARY PRINCIPLE – This principle or precautionary approach generally defines actions on issues considered to be uncertain, for instance applied in assessing risk management. The principle is used by policy makers to justify discretionary decisions in situations where there is the possibility of harm from making a certain decision (e.g. taking a particular course of action) where extensive scientific knowledge on the matter is lacking. The Principle implies that there is a social responsibility to protect the public from exposure to harm, when scientific investigation has found plausible risk. These protections can be relaxed only if further scientific findings emerge that provide sound evidence that no harm will result.

SENSITIVE RECEPTOR – A Residence, a building where people work including farm

buildings, a church, a cemetery or a school.

SHADOW FLICKER – The visual effect that results when the blades of an operating wind energy turbine pass between direct and indirect light from the sun or moon and an observer, and cast an observable, moving shadow on a person or property in the vicinity.

SOUND PRESSURE LEVEL — means the level which is equaled or exceeded a stated percentage of time. An  $L_{eq} - 45$  dBA indicates that in any hour of the day 45 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. A measurement of noise or sound performed in accordance with the Type 1 or 2 specifications of the latest version of the American National Standards-Institute “American Standard Specifications for General Purpose Sound Level Meters”-(ANSI/ASA S3/SC1.100-2014/ANSI/ASA S12.100-2014) or the ISO 9613-2:1996

SEIS – A Supplemental Environmental Impact Statement, as defined and construed under SEQRA

VARIANCE – A process by which an Applicant or Operator or permit holder seeks to change or modify a requirement of this 2022 Local Law

## **§ 6. Applicability.**

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

## **§ 7 PERMITS REQUIRED; TRANSFER; MODIFICATIONS**

- A. Permit Requirements.

1. No Wind Energy Facility shall be constructed or operated in the Town except pursuant to a Wind Energy Permit approved pursuant to this 2022 Local Law.
2. No Large WTG shall be constructed or operated in the Town except pursuant to a Wind Energy Permit approved pursuant to this 2022 Local Law.
3. No Wind Measurement Tower shall be constructed or operated in the Town except pursuant to a Wind Energy Permit issued pursuant to this 2022 Local Law.
4. No Small WTG shall be constructed or operated in the Town except pursuant to a Wind Energy Permit issued pursuant to this 2022 Local Law.

B. Transfer. The transfer of any Wind Energy Permit for a WEF to an entity other than the Applicant to whom such permit was issued shall require approval of the Town Board, which approval may be conditioned upon any one or more reasonable factors, including, but not limited to, (i) full compliance with this 2022 Local Law, (ii) a determination by the Town Board that the transferee has the financial wherewithal to own and operate the WEF, (iii) a determination by the Town Board that the transferee has the experience necessary to own and operate the WEF, (iv) the written acceptance by the proposed transferee of all obligations imposed under any permit (including a Wind Energy Permit), Variance, Waiver, this 2022 Local Law, any Developer's Agreement, or any other applicable contract or agreement, and (v) such other terms as shall be reasonably determined by the Town Board. Whenever required by the Town Board, the transferee shall take such actions and submit such documentation as shall allow the issuance of a permit in the name of the proposed transferee. Prior to any transfer requiring the Town Board's consent, the Applicant and/or Operator shall provide the Town Board with the following: (1) a description of the business background and experience of the proposed transferee, (2) a draft copy of the proposed instrument by which the Applicant or Operator proposes to effectuate the transfer, and (3) a current audited financial statement for the proposed transferee. Within sixty (60) days after receiving this information, the Town Board shall notify the Applicant or Operator of its determination. If the Town Board consents to the transfer, the Applicant or Operator shall provide the Town Board with a copy of the executed instrument effectuating the transfer. Should the Town Board wish to withhold its consent, it must state in writing the specific reasons for its determination. Any costs related to the Town Board's review of such transfer shall be paid for by the transferor Applicant.

C. Modification of Application. Unless otherwise specifically waived by the Town Board, any modifications to an application for a Wind Energy Permit for a WEF following the date the Town Board determines, pursuant to Local Law 1 of 2022, that a valid, completed application has been received by the Town and prior to the date a Wind Energy Permit has been approved pursuant to Local Law 1 of 2022, shall be considered to be the submission of a new application that is subject to all of the provisions for a new application under this 2022 Local Law.

**Article II**  
**Wind Energy Conversion Systems**

**§ 8. Applications For Wind Energy Permits For Wind Energy Facilities.**

A. An application for a Wind Energy Permit for a Wind Energy Facility shall include the following, presented in the following order:

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 setback distances specified in Section 13.E 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 13.E 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 13.E.
  - (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. A written plan demonstrating that all wind turbines will have installed FAA ADLS;
  9. List of adjacent owners, with their mailing addresses, phone numbers, and email addresses within 1 Mile of the boundaries of the proposed Site. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.
  10. Location of all Residences and other existing structures on the Site and within one (1) mile of the Site boundaries;
  11. Stand Down Plan. A written plan outlining the stand down requirements for high wind conditions, ice conditions, or other health or safety issues (e.g., unusual levels of noise due to malfunctions, etc.) during the operation of the WEF;
  12. 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 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.

13. Fire Protection and Emergency Response Plan. A fire protection and emergency response plan that (i) complies with the Allegany County Multi-Jurisdictional Hazard Mitigation Plan, and (ii) is created in consultation with the fire department(s) having jurisdiction over the proposed Site. The plan shall address all activities at the WEF from the start of construction through the end of power generation and the final removal and restoration of the site and shall describe a response plan to address all identified potential fire, rescue and hazardous materials scenarios. The Applicant/operator shall ensure that the WEF complies with the following control and prevention measures and assumes responsibility for all associated incremental costs:
  - a) Use of fire-proof or fire-resistant building materials and buffers or fire-retardant landscaping around WTGs and WEFs as appropriate.
  - b) Incorporation of a self-contained fire protection system to address nacelle fires or a written explanation of why this standard would create an undue hardship.
  - c) Maintenance of firebreak areas as appropriate, cleared of vegetation maintained as a fire/fuel break as long as the WTG is in operation.
  - d) All private road access to the WEF shall be brought up to the Town's road standards to accommodate fire and rescue vehicles and paid for by the Applicant/operator.
  - e) Provision for any additional firefighting or rescue personnel, overtime costs, services, training, materials, incremental fire emergency equipment and/or vehicles as may be required to address any emergency related to the WEF that is beyond the current capabilities and duties of the local fire department, as determined in the sole and exclusive discretion of the Town's Fire Department.
  - f) Each WTG shall be equipped with an AED.
14. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a

complaint. The applicant shall make every reasonable effort to resolve any complaint. See Article V, Section C.

15. 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.
16. Completed Part 1 of the Full Environmental Assessment Form.
17. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the Wind Energy Facility application.
18. 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.
19. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board may issue a positive declaration of environmental significance.
20. 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. Noise Monitoring Plan: 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. The plan shall provide that a full electronic version of the noise measurements, inputs, assumptions and data shall be provided to the Town in usable form that will allow the Town's consultants to verify the measurements.
  - b. Environmental Monitoring Plan. The Applicant shall provide an environmental monitoring plan which shall, at a minimum, permit post-

construction environmental studies deemed appropriate by the Town Board. This plan will be funded by the Escrow Account. Post-construction field studies will include scientific assessments of regional nesting failures, avian mortality (birds and bats), and territory abandonment of special status species like raptors species, within two (2) miles of the WEF. All studies will conform to applicable state and federal agency guidelines.

1. IdentiFlight AI system for the protection and safety of Raptors and Bald Eagles. One System installed and monitored under maintenance plan of this local law.
2. A Bat deterrent system installed on each turbine and monitored under the maintenance plan of this local law.

c. Maintenance Plan. The Applicant shall provide a maintenance plan that details normal maintenance and storm follow-up and other actions that will be undertaken to keep the WEF operating quietly, efficiently, and not polluting land, air or water or vision. This will include, but not be limited to, the minimization of audible sounds, infra-sound, vibrations, Blade Glint, and fluid leaks. The plan shall also provide that: (i) the operator of the WEF shall conduct preventative maintenance inspections at least once every year as well as no later than seven (7) days after any wind event defined as a state declared emergency, tropical storm, Category I or higher hurricane or a high wind storm where wind exceeds 58 mph or hail reaches one inch or larger; (ii) each inspection shall look for such things as metal fatigue, nut loosening, and other potential failures that might impact health and safety; and (iii) shall require that inspection reports be provided to the Town Board within thirty (30) days of such inspection. The time limits in this section may be extended in the Town Board's discretion;

21. WEF Economic Impact Study. Following the submission of a completed application and as a condition to the issuance of any Wind Energy Permit for a WEF hereunder, a thorough, conservative assessment of the WEF's net economic impact on the community conducted by independent experts selected and hired by the Town and paid for by the Applicant. This will include but not be limited to possible reduced hunting, reduced agricultural yields due to bat takings, property devaluations (and the commensurate loss in tax base), cost to community due to adverse health effects, higher cost of electricity, among other relevant considerations. This will be compared to any guaranteed incomes from the WEF. The Applicant shall supply the Town Board with any information regarding the WEF necessary to complete such assessment.

22. Road Use and Property Damage Agreement. Following the submission of a completed application and as a condition to the issuance of any Wind Energy Permit for a WEF hereunder, the Applicant/Operator shall enter into a Road Use and Property Damage Agreement, reasonably acceptable to the Town Board, New York State Department of Transportation ("NYSDOT"), the Allegany County Highway Department ("CCHD") (as appropriate) agreeing, to the extent

practicable, to repair or replace all real or personal property, public or private, damaged at any time during (a) construction of the WEF or WMT Tower, (b) routine or extraordinary repairs or maintenance of the WEF, and/or (c) during the partial or full decommissioning of the WEF. Such agreement shall, at a minimum, include the following terms:

- a. The Applicant shall reimburse NYSDOT, ACHD and/or the Town Board (as appropriate) for any and all repairs and reconstruction to roads that are necessary due to the construction, repairs, maintenance and/or decommissioning of the WEF. A qualified independent third party or other qualified person, agreed to by the NYSDOT, the ACHD and/or the Town Board (as appropriate) and the Applicant/Operator, shall be hired to pre-inspect the roadways to be used during construction, maintenance, repairs and/or decommissioning. This third party shall be hired to evaluate, document, and rate the roads condition prior to construction, repairs, maintenance or decommissioning of the WEF, and again 30 days after the WEF is completed, maintained, repaired or removed. NYSDOT, ACHD and/or the Town Board may waive the requirement to evaluate, document and rate the roadways in those circumstances where the Applicant/Operator can demonstrate to the satisfaction of such agency that any repairs or maintenance are unlikely to cause any material damage to the roadways.
- b. Any road damage during construction, repairs, maintenance and/or decommissioning that is done by the Applicant/Operator and/or one or more of its subcontractors that is identified by this third party shall be repaired or reconstructed to the satisfaction and standards of NYSDOT, ACHD, and/or the Town Board (as appropriate and regardless of the initial condition of such roads prior to commencement of any construction or other activities by the Applicant/Operator) at the Applicant's/Operator's expense, prior to the final inspection. In addition, the Applicant/Operator shall pay for all costs related to this third-party pre-inspection work prior to receipt of the final inspection.
- c. The surety for removal of a decommissioned WEF shall not be released to the Applicant/Operator until the Town Board and Town Highway Superintendent are satisfied that any road damage that is identified by this third party during and after decommissioning that is done by the Applicant/Operator and/or one or more of its contractors or subcontractors has been repaired or reconstructed to the satisfaction of the NYSDOT, ACHD and/or the Town Board (as appropriate) at the Applicant's/Operator's expense. In addition, the Applicant/Operator shall pay for all costs related to work of this third party's inspection prior to receipt of the release of the surety.

23. Environmental Studies. An Environmental Impact Study ("EIS") will ordinarily be required for Large WTGs in accordance with SEQRA. The study area for the EIS shall include the proposed WEF, as well as the area at least one (1) mile surrounding the proposed WEF. In addition to any SEQRA requirements, at a minimum the EIS shall include the potential impacts on:

- i. humans (such as audible and inaudible sounds, vibrations, Shadow Flicker, Blade Glint, ice throw, component separation and/or disintegration due to major storms, etc.);
- ii. wildlife, livestock and domestic animal populations, including migratory flyways and corridors (same concerns as with humans);
- iii. land and vegetation (such as Agricultural effects);
- iv. wetlands, water bodies, flowing water sources and groundwater (including aquifer impacts due to turbine foundations, etc.); and
- v. air (such as changes in humidity).

In particular, the following shall apply with respect to the EIS:

1. The Applicant shall provide the location and full description of any Conservation Areas.
2. The Applicant must provide a written report from all appropriate state and federal agencies detailing their evaluation of the proposed WEF.
3. The Applicant must demonstrate, to the satisfaction of the Town, that the proposed WEF will not have undue hydro-geological consequences (e.g. with surface or subterranean water resources, and storm water runoff), or adverse effects on geological stability, the sole source aquifer in the area, rare, threatened, or endangered wildlife, significant wildlife habitat, livestock, threatened or endangered plants, and rare or exemplary natural plant communities and ecosystems.
4. The Applicant must provide a cumulative-impact assessment of their WEF in the context of any other WEFs within twenty-five (25) miles, including migratory bird, bat and large mammal corridors, and demonstrate that the WEF is not located in an area that will result in degradation of important wildlife corridors or flyways.
5. Pre-construction field studies shall be conducted by the Applicant using the most advanced techniques available. If the preconstruction field studies demonstrate significant adverse effect to birds, bats, game animals, water resources, habitat fragmentation or other ecosystem degradation, the WEF Applicant shall propose a remediation plan for each such issue, subject to the Town Board's approval. If some environmental impacts cannot be satisfactorily mitigated, that will be factored into the Town Board's decision regarding the net benefits of the WEF.
6. In determining the nature and effectiveness of such remediation plans, the Town will be guided by input of its citizens, its own consultants, the appropriate state & federal agencies, and applicable state and federal laws and regulations. The WEF Applicant will be responsible for the full cost of implementing any approved remediation plan, under the supervision of

the Town Board and its designated agents.

7. A computer-generated "zone of visibility map" (covering at least a ten (10) mile radius from the proposed WEF) shall be created by the Applicant to illustrate locations from which the proposed installation may be seen, with and without foliage.
8. A visual impact assessment of each proposed WTG shall be prepared by the Applicant. A visual impact assessment shall include a computerized photographic simulation demonstrating any visual impacts from all reasonable strategic vantage points as identified or confirmed by the Town Board. The visual impact assessment shall also include (i) color photographs of the proposed Site from at least two locations accurately depicting the existing property conditions and proposed impacts of each WTG upon visual sight and horizon conditions, and (ii) a map showing the location of each WTG in relation and keyed to the color photographs referenced in item (i) of this paragraph;
9. The Applicant shall prepare a sound pressure study and noise analysis, which at a minimum, provides verification from a qualified party, selected by the Town Board, and using the Noise Measurement Standards and Procedures outlined in Appendix A hereto, that the pressure and noise levels associated with each proposed WTG as well as any substation does not exceed the sound levels set forth in Local Law 1 of 2022, as measured at various distances out to one (1) mile from each WTG and substation;
10. A study of potential Shadow Flicker and Blade Glint from each WTG shall be prepared by the Applicant. The study shall identify locations where Shadow Flicker or Blade Glint could be caused by the WTG and the expected durations of the same at these locations. Shadow Flicker and Blade Glint shall be mitigated, and such mitigation approved by the town board if their impact is more than is permissible under this Article, section 17 c. 10. on any property;
11. An assessment of potential interference of each proposed WTG with microwave, radio, television, personal communication and emergency systems and other wireless communications shall be prepared by the Applicant. If reasonably determined necessary by the Town, an EMI (electromagnetic interference) study and the method and manner of mitigation of any EMI impacts shall be supplied;
12. WEF Air Space Impact:
  - a) For all portions of the WEF more than 200 feet tall, the Applicant shall provide a copy of a FAA determination as a result of filing the FAA Form 7460-1, "Notice of Proposed Construction or Alteration

of an Object that may Affect the Navigable Airspace.”

- b) For all WEF more than three hundred feet tall, the Applicant shall install ADLS.
- c) If any portion of a WEF will be located within forty (40) miles of any private or civilian or military airport runway, or heliport, the Applicant shall demonstrate compliance with all local County, State and Federal airport related laws.
- d) The Applicant shall establish to the satisfaction of the Town Board that the WEF will not adversely impact the restricted air space in the area.
- e) The Applicant shall provide a narrative description of all risks to civil air navigation (including civilian radar) and NEXRAD weather radar systems of the WEF.

All costs and expenses incurred related to the environmental tests for the WEF shall be paid for by the Applicant. The Town shall use the Escrow Account funds to hire independent qualified experts, as needed, to do review of any of the studies included in the SEQRA requirements or to comply with 2022 Local Law requirements.

- f) Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact on values of properties neighboring WECS Sites.
  - g) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, and other wireless communication.
24. 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.
25. A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

## **§ 9. Application Review Process.**

- A) Applicants may request a pre-application meeting with the Town Board or with any consultants retained by the Town Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meetings Law.
- B) Eight copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any waivers are requested, waiver application fees shall be paid at the time of the receipt of the application.
- C) Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Town Board waives any application requirement, no application shall be considered until deemed complete.
- D) If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- E) Upon submission of a complete application, including the granting of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town Board.
- F) The Town Board shall hold at least one public hearing on the application. Notice shall be published in the Town’s official newspaper and posted at the Town Hall, no less than ten nor more than 20 days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication shall be required. The Town shall prepare the Public Hearing Notice.
- G) The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers.
- H) Notice of the project shall also be given to the Allegany County Planning Board, when required by General Municipal Law §§ 239-l and 239-m.
- I) SEQRA review. Applications for WECS are deemed Type I projects under SEQRA. The Town may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Town’s proceedings.
- J) Escrow Agreement. As a condition to submitting an application for a WEF, the Town Board shall require the Applicant to execute an escrow agreement (hereinafter “Escrow Agreement”) reasonably acceptable to the Town Board, to establish an escrow account
- L) (hereinafter “Escrow Account”) that will be used to cover the amount by which the Town’s estimated costs and expenses of review, including, but not limited to, reasonable legal, consulting, and engineering fees, exceed (or will exceed) the application fees paid by the Applicant. The Escrow Agreement shall, at a minimum, include the following terms:
  - 1. The Applicant shall reimburse the Town for all oversight expenses incurred relating to the WEF, from application through decommissioning.
  - 2. Large WEF-related 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 commence any proceeding against the Applicant. It shall also include any oversight expenses related to the transfer of any building permit or license of a WEF.

3. Any interest earned on the Escrow Account shall stay with the account and be considered new principal.

4. This Escrow Account shall be setup by the Applicant at the time of the WEF permit application.

5. This Escrow Account will be at a financial institution approved by the Town Board, solely in the name of the Town, to be managed by the Town Board subject to majority vote. The Applicant will make an initial deposit of \$500,000 plus \$225,000 for every WTG to be sited within the Town.

6. A WEF permit application will not be processed until proof of deposit has been provided by the Applicant.

7. A WEF permit application determination will not be made until all costs incurred by the Town to date, have been reimbursed by the Applicant.

8. If the WEF application is denied, 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 120 days of the Application being formally denied, or receipt of a letter of withdrawal. Permit fees are non-refundable.

9. This Escrow Account will be funded during the life of the WEF by the Applicant/Operator. The Applicant/Operator will replenish any Escrow funds used by the Town within 14 days of being sent written notification (and explanation) of said withdrawals. Failure to maintain the Escrow Account at \$500,000 plus \$225,000 for every turbine located within the Town (within 30 days of being given notice) shall be cause for revocation (or denial of extension) of the application and/or revocation of the Wind Energy Permit.

10. During any period in which the Escrow Account is not fully funded pursuant to this 2022 Local Law, all work by the Town Board and its agents on the project shall cease (except to the extent such failure to act would be in violation of any other laws, including SEQRA) until such Escrow Account has been brought back into compliance with this law. 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 starts over. Otherwise the Town will return all Escrow Account funds to the Owner, less related expenses incurred by the Town, along with an explanatory statement.

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

**§ 10. Standards for Wind Energy Facilities and WECS.**

A. The following standards shall apply, as part of a Wind Energy Permit.

1. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
2. No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECS and telecommunications facilities.
3. No advertising signs are allowed on any WECS, including fencing and support structures. Nothing in this provision shall prohibit identification information or safety notifications.
4. Lighting of tower. No tower shall be lit except to comply with FAA requirements and for safety/security needs at the tower entrance. All Towers to have ADLS where required by the permit for safety reasons. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan.
5. All applicants shall minimize the visual impact of WECS on the community and individual residences. All WECS shall be sited in a manner that minimizes visual impacts, and avoids changes in community character. WECSs shall use tubular towers. All structures in a project shall be finished in a single color or a camouflage scheme. WECSs within a Wind Energy Facility shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Project. No lettering, company insignia, or advertising, shall be on any part of the tower, hub, or blades, except for tower identifier numbers near the tower base and safety signage.
6. Guy wires shall not be used for wind turbines.
7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or

wireless phone or other personal communication systems would materially degrade signal transmission or reception without mitigation. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing material electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the affected parties. Failure to remedy material electromagnetic interference is grounds for modifying the Wind Energy Permit to eliminate the specific WECS or WECSs causing the interference.

8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.
9. WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when practicable. The use of previously developed areas will be given priority wherever practicable.
10. WECSs shall be located in a manner that minimizes and avoids adverse impacts on animal species in the vicinity, particularly bird and bat species.
11. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
12. The maximum Total Height of any WECS shall be 600 feet.
13. Construction of the WECS shall be limited to the hours of 7 a.m. to 7 p.m. Monday through Friday and not on any federal holidays, except for certain activities that (i) require otherwise, due to temperature or other engineering circumstances, and (ii) are so approved in writing by the Town Board in their sole and exclusive discretion.
14. The standards for restoration and preservation of farm land of the New York State Department of Agriculture and Markets' "Guidelines for Agricultural Mitigation for Windpower Projects" shall be followed.
15. 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.
16. Appropriate warning signs shall be posted, visible in all directions upon approaching the tower, warning of electrical shock or high voltage and containing

emergency local contact information. The Town Board may require additional signs based on safety needs.

17. No climbing pegs or tower ladders shall be located closer than 12 feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
18. The minimum distance between the ground and any part of the rotor or blade system shall be 25 feet.
19. 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.
20. The statistical sound pressure level generated by a WECS shall not exceed  $L_{eq} - 45$  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 45 dBA above local ambient noise, the standard shall be ambient dBA plus five dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
21. 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 § 15(A) 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.
22. 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 and schools. 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 30 mph at the ambient noise measurement location.
23. Any noise level falling between two whole decibels shall be the lower of the two.

24. Each WECS shall be setback as follows, as measured from the center of the WECS:
1. Residences, Property Line. Three thousand (3,000) feet from any Residence or property line; and
  2. Roads and WTG. Two Thousand (2,000) feet from any road (whether seasonal, regular or limited use), or other WTG (as measured horizontally from the center-point of the proposed WTG to the center-point of any existing WTG); and
  3. Conservation Areas, Wetlands, Public Utilities. One mile from any Conservation Areas, mapped or jurisdictional wetlands, dams, except where wetlands fill or construction permits have been issued by the DEC or ACE, as applicable or any public utilities; and
  4. Churches, Schools, Cemeteries. One mile from the property line of any property containing a Church (all buildings on Amish owned land capable of permitting a gathering of the local Amish church district for worship or other religious services shall be considered a Church for the purpose of this standard), School (including Amish schools and home schools) or Cemetery; and
  5. Electric Transmission Lines and Buried Gas Lines. 2.0 x tip height or 1000 feet, whichever is more.
  6. Bat Roosts, Maternity Roosts, or Hibernacula. 1.5 miles/7920' turbine setbacks. Bats are incredibly important to the Town's farming communities and to decreasing insect populations thus reducing impacts to crops and diseases and costs to farmers, along with reducing the use of pesticides and protecting the Town's water supply from chemical runoff.
  7. FEMA 100-year floodplain. One thousand feet from any FEMA 100-year floodplain.
  8. Private or public wells and natural springs for domestic use. Three thousand (3,000) feet from any private, or public Well and natural springs for domestic use.
  9. Regulated Dams. 1.5 miles from any regulated dam.
  10. Property Lines. The setbacks of industrial wind turbines shall be sufficient such that shadow flicker (whether falling on a structure or land) shall be limited to eight (8) hours per year and one (1) hour per month.

**§ 11. Traffic Routes.**

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

**§ 12. Issuance Of Wind Energy Permits.**

- A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review.
- B. If approved, the Town Board will direct the Town Clerk to issue a Wind Energy Permit upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this Local Law.
- C. The decision of the Town Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- D. If any approved Wind Energy Facility is not substantially commenced within one year of issuance of the Wind Energy Permit, the Wind Energy Permit shall expire, unless renewed by the Town Board after payment of a renewal fee equal to the original application fee.

**§ 13. Abatement.**

- A. If any WECS remains non-functional or inoperative for a continuous period of one year, the applicant agrees that, without any further action by the Town Board, the applicant shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including, without limitation, 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, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from the Wind Energy Facility, if requested, necessary to prove the Wind Energy Facility is functioning, which reports may be redacted as necessary to protect proprietary information.
- C. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of non-functional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully funded before a building permit is issued. The Town may enter into an agreement to maintain security for a multiple-jurisdiction project without further action by the Town Board

**§ 14. Limitations On Approvals; Easements On Town Property.**

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

**§ 15. Permit Revocation.**

- A. Testing fund. A Wind Energy Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as bi-annually, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate

compliance with the terms and conditions of the Wind Energy Permit and this Local Law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

- B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.
- C. Notwithstanding any other abatement provision under this Local Law, and consistent with § 19(A) and § 21(B), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe or (2) order modification of the Wind Energy Permit so as to eliminate the unrepaired 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 III Wind Measurement Towers**

#### **§ 16. Wind Site Assessment.**

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

#### **§ 17. Applications For 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 location, including Tax Map section, block, and lot number.
4. Proposed Development Plan and Map.
5. Decommissioning Plan, including a security bond for removal.

**§ 18. Standards For Wind Measurement Towers.**

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

**Article IV  
Small Wind Energy Conversion Systems**

**§ 19. Purpose and Intent.**

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

**§ 20. Applications.**

- A. Applications for Small WECS Wind Energy 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, 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 location, including Tax Map section, block, and lot number.
4. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.
6. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
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 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.

**§ 21. Development Standards.**

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

- A. 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.
- B. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Article.
- C. Small Wind energy systems shall be used primarily to reduce the on-site consumption of electricity.

- D. Tower heights may be allowed as follows:
1. 65 feet or less on parcels between one and two acres.
  2. 120 feet or less on parcels of two or more acres.
  3. 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.
- E. The maximum turbine power output is limited to 300 kW.
- F. 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.
- G. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
- H. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- I. 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.
- J. 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.
- K. Signs shall be posted, visible from all directions, on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery, and giving a local contact number in case of emergency. 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.
- L. 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 12 feet from the ground.
  2. A locked anti-climb device installed on the tower.
  3. A locked, protective fence at least six feet in height that encloses the tower.
- M. 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.
- N. 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.
- O. 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.
- P. 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.
- Q. 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.

## **§ 22. Standards.**

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

- A. 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.
- B. 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.

## **§ 23. Abandonment of Use.**

- A. Small WECS which is not used for 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.

**Article V**  
**Waivers, Abatement, Complaint Resolution, Insurance**

**§ 24. Waivers.**

- A. The Town Board may, after a public hearing (which may be combined with other public hearings on Wind Energy Facilities, so long as the waiver request is detailed in the public notice), grant a waiver from the strict application of the provisions of this Local Law if, in the opinion of the Town Board, the grant of said waiver is in the best interests of the Town. The Town Board may consider as reasonable factors in evaluating the request, which may include, when applicable, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives, and the scope of the request. Waivers so granted run with the land, and Wind Energy Facilities granted a waiver are deemed to be in compliance with the relevant provision of this local law.
- B. The Town Board may attach such conditions as it deems appropriate to waiver approvals as it deems necessary to minimize the impact of the waiver.
- C. **Complaint Resolution Process.**
  - 1. Any property owner or resident within the Town of Andover may register a complaint with the Enforcement Officer that a Wind Energy Facility is being operated in violation of the Wind Energy Permit or otherwise in violation of the criteria set forth in this 2022 Local Law. Additionally, due to the Amish community's inability to travel far distances by horse and buggy and their inability to engage in telecommunications due to their religious restrictions, the Applicant shall be required to maintain a field office in the Town which shall be staffed during the hours of construction. Both Amish and non-Amish may make complaints to the field office. Such complaints may include, but will not be limited to: noise, flicker or shadow effect, change in water quantity or quality, loss of or diminished telephone, television, or radio reception, interference with a medical device, or the new presence of radon gas. The Enforcement Officer shall inform the Town Board of such complaint within three (3) business days and the Town Board shall investigate (or cause to be investigated) the complaint in accordance with this Article VI and, where necessary, may engage the services of an expert to assist in such investigation. The cost for such expert services shall be

paid from the Escrow Account. In the event that the Town Board determines that the complaint is valid, and that the Wind Energy Facility is being operated in violation of its Wind Energy Permit or otherwise in violation of the criteria as set forth in this 2022 Local Law, the Town Board shall issue written notice to remedy such violation to the Applicant and/or Operator of the Wind Energy Facility, which notice shall specify the actions required to be taken by the Applicant/Operator of the Wind Energy Facility in order to cure the violation, and the time period within such action must be taken.

2. In the event that the Applicant/Operator of the Wind Energy Facility fails to comply with such notice to remedy, the Enforcement Officer shall report such failure to the Town Board with a recommendation that the Town Board proceed with the enforcement provisions contained in Articles VI and IX of this 2022 Local Law.

3. If the Town Board determines that the Wind Energy Facility is not being operated in violation of the Wind Energy Permit or otherwise in violation of the criteria set forth in this 2022 Local Law, the Town Board shall set forth its findings which shall be filed with the Town Clerk and forwarded by registered mail to the complaining party. The complaining party shall have a right to challenge such determination in a proceeding commenced pursuant to the provisions of Article 78 of New York's Civil Practice Law and Rules.

4. The following criteria/process for WEFs shall apply to the specific areas of complaints as identified below, and where the complaint falls outside of the specific areas outlined in this paragraph C.4., the general provisions in this Article VI shall apply:

(a) Shadow flicker: Upon the receipt of a written complaint of disturbance due to shadow flicker filed by a resident together with a video thereof identifying the particular Large WTG(s) by number within the Wind Energy Facility, or other comparable corroborating evidence, the Town Board shall notify the Applicant/Operator of the Wind Energy Facility that such complaint has been received, and that the Town Board shall meet at a date and time certain, in a public hearing, to review the complaint. The Applicant/Operator of the WEF may present evidence to the Town Board to contradict the evidence presented by the complaining party. The Town Board shall hold a public hearing at the date and time stated in the notice to review the complaint and the evidence provided therewith, together with any evidence provided by the Applicant/Operator of the WEF, and shall make a determination as to the validity of the complaint. In the event the Town Board determines that the complaint is valid, it will notify the Applicant/Operator of the WEF and order that the disturbance be mitigated within 48 hours. Mitigation may be accomplished by ceasing operation of the identified WTG during flicker hours or in another manner acceptable to the Town Board as proposed by the Applicant/Operator of

the Facility. In the event that the Applicant/Operator of the Facility fails to provide the required mitigation as indicated in the order issued by the Town Board, the Enforcement Officer shall render a written report to the Town Board, which shall also be filed with the Town Clerk, with the recommendation that the Town Board commence enforcement proceedings pursuant to this local law 2 of 2022.

(b) Setbacks: Upon receipt of a written complaint filed by a resident that a setback requirement for a WEF or any component of a WEF imposed under the provisions of this 2022 Local Law, or specified in the Wind Energy Permit has been violated, the Town Board shall investigate such complaint (or cause such complaint to be investigated) and shall meet, in a public hearing, to review the results of such investigation. In the event a setback violation is confirmed, the Town Board shall notify the Applicant/Operator of the WEF in writing by personal service or registered mail of such violation. The notification shall include an order to remedy which shall set forth the particular method by which such violation may be cured and the time period within which the same shall be completed. Failure to comply with the notice to remedy may result in enforcement pursuant to Article IX of this 2022 Local Law, which may include, but is not limited to, the revocation of the Wind Energy Permit.

(c) Noise/sleep interference: Upon receipt of a written complaint filed by a resident that a noise disturbance related to a WEF in violation of the provisions of this 2022 Local Law and/or the Wind Energy Permit issued thereunder is occurring, together with a documented noise log of the specific Large WTG alleged to be in violation, the Town Board shall conduct an investigation and may, in its discretion, retain an independent acoustic investigator to investigate the complaint. The fees for such services shall be paid from the Escrow Account. The Town Board shall prepare a written acoustical investigation report, which shall include the results of any third party reports provided to the Town Board as part of the investigation. Copies of the acoustical investigation report shall be supplied to the complaining party, the Applicant/Operator of the WEF, and the Town Board. The Town Board shall meet, in a public hearing, to review the results of the written acoustical investigation report, and in the event that the investigation confirms a violation of the noise requirements, the Town Board shall issue a notice which shall require the WTG causing the noise violation to be shut down until such WTG can be brought into compliance with the provisions of this 2020 Local Law and/or the Wind Energy Permit. Failure to comply with the notice to remedy may result in enforcement pursuant to Article IX of this 2020 Local Law, which may include, but is not limited to, the revocation of the Wind Energy Permit.

(d) Electromagnetic-stray voltage: Upon receipt of a written complaint from a resident of electromagnetic interference or stray voltage by a WEF,

the Town Board shall conduct an investigation and may, in its discretion, retain the services of an electrical engineer to conduct a stray voltage or electromagnetic interference investigation with the cost of such services to be paid from the Escrow Account. The Town Board shall prepare a written investigation report, which shall include the results of any third party reports provided to the Town Board as part of the investigation. Copies of the investigation report shall be supplied to the complaining party, the Applicant/Operator of the WEF, and the Town Board. The Town Board shall meet, in a public hearing, to review the results of the written investigation report and, in the event that the complaint is determined to be valid, the Town Board shall issue a notice to the Applicant/Operator of the WEF to cure the violation within a period of one (1) week from the date of such notice. Failure to comply with the notice to remedy may result in enforcement pursuant to Article IX of this 2020 Local Law, which may include, but is not limited to, the revocation of the Wind Energy Permit.

(e) Contamination of aquifers, ground water, or wells: Upon receipt of a complaint, written or oral, from a resident that an aquifer, ground water, or well water has been disturbed by the Wind Energy Facility, the Town Board shall immediately notify the Applicant/Operator of the WEF that such complaint has been received, and the Applicant/Operator shall have seventy-two hours (72) hours from receipt of such notice to determine whether the complaint is due to development impact from the WEF. If the Applicant/Operator of the WEF determines that the disturbance is not related to the development and notifies the Town Board thereof, the Town Board may undertake its own investigation and may, in its discretion, engage the services of a professional engineer to conduct appropriate and necessary tests and to render a report as to the causation of the disturbance. The expense for such services shall be paid from the Escrow Account. If the Town Board's investigation establishes that the WEF development is the cause of such impact, the Town Board may order the Applicant/Operator of the WEF to provide potable water to the affected residents and to file with the Town Board an action report of the proposed resolution of the disturbance. In the event of verification of toxic contamination to a well, ground water or aquifer, the Applicant/Operator of the WEF and/or the Town Board shall notify the DEC. In the event the incident falls under the jurisdiction of the DEC, the Town shall defer to the DEC for remediation/action in connection therewith. In the event the incident is not within the jurisdiction of the DEC, but disturbance or contamination is found, the Applicant/Operator of the WEF shall have five (5) days from receipt of such findings to correct the disturbance/contamination in a manner satisfactory to the Town Board. Failure to comply with an order of the Town Board issued hereunder shall subject the Applicant/Operator of the Facility to the enforcement pursuant to Article IX of this 2022 Local Law, which may include, but is not

limited to, the revocation of the Wind Energy Permit.

#### D. INDEMNITY AND LIMITATION UPON TOWN LIABILITY

The granting of the Town's WEF Permit shall contain an indemnification provision. This clause shall require the Applicant to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town (and affected municipalities), and its officers, councils, employees, committee members, attorneys, agents, insurers, residents and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by delivery, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Large WEF, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the gross negligence or intentional acts or omissions of the Town, or its employees or agents. With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

#### E. LIABILITY INSURANCE

The Applicant and/or Operator for any WEF other than a Small WEF shall agree to secure and maintain for the duration of the Wind Energy Permit public liability insurance, as follows:

A. Commercial general liability covering personal injuries, death and property damage in the following amounts:

- a. \$10,000,000 per occurrence (\$20,000,000 aggregate), which shall specifically include the Town and its officers, councils, employees, committee members, attorneys, agents and consultants as additional named insureds.
- b. Umbrella coverage: \$50,000,000.

B. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in New York State and with at least a rating of "A" from AM Best.

C. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days prior written notice in advance of a cancellation.

D. Renewal or replacement policies shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

E. No more than fifteen (15) days after the grant of the Wind Energy Permit and before construction is initiated, the permit holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

F. A certificate of insurance that states that it is for informational purposes only and does not confer sufficient rights upon the Town, shall not be deemed to comply with this 2022 Local Law.

G. At any time the Applicant/Owner shall fail to provide evidence of such required insurance or lapse of the same, upon ten (10) days written notice by the Town Board to the Applicant/Owner, the WEF shall be shut down until such time as the Applicant/Owner comes into compliance with all insurance requirements as stated herein.

## **Article VI Miscellaneous**

### **§ 25. Fees.**

A. Non-refundable Application Fees shall be as follows:

1. WECS Wind Energy Permit: \$300 per megawatt of rated maximum capacity.
2. Wind Measurement Towers Wind Energy Permit: \$200 per tower.
3. Small WECS Wind Energy Permit: \$150 per WECS.
4. Wind Measurement Tower Wind Energy Permit renewals: \$50 per Wind Measurement Tower.
5. Waiver Application Fee \$100 per tower site.

B. Building Permits. Building permits are required for each Wind Energy Facility. The Town believes the review of building and electrical permits for Wind Energy Facilities other than Small WECS requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be \$300 per permit request for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties.

C. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

### **§ 26. Tax Exemption.**

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

**§ 27. Enforcement; Penalties and Remedies For Violations.**

- A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.
  
- B. Any person owning, controlling, or managing any building, structure or land who shall undertake a wind energy facility or wind energy related infrastructure conversion facility or wind monitoring tower in violation of this Local Law, or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than 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 provided here, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct, or abate such violation, to prevent the illegal act.

**Section 2: Severability**

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

**Section 3 Repealer; Effect On Other Laws.**

All resolutions, ordinances, and local laws or parts thereof in conflict herewith or which in any manner, in the absence of this Local Law, would address or apply to the approval, construction, operation, or decommissioning of Wind Energy Facilities are superseded by this Local Law.

**Section 4: Effective Date**

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