

Town of Barre, Orleans County, New York

Local Law No. 1 of the Year 2021

A local law amending, repealing and supplementing the Town of Barre Zoning Ordinance Chapter 350 referencing Zoning and Wind Energy Conversion Systems, with the addition of definitions and standards for the construction of such Wind Energy Conversion Projects within the Town.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF BARRE, ORLEANS COUNTY, NEW YORK, AS FOLLOWS:

**Section 1: Title**

This Local Law shall be known as the “Wind Energy Facilities Law of the Town of Barre.”

**Section 2:** Present Section 609 and recodified section 350-37 of the Town of Barre Zoning Laws, both entitled “Alternative energy systems” are hereby repealed.

**Section 3:** Present Article 11 of the Town of Barre Zoning Laws, Local Law No. 2 of the Year 2007 is hereby amended and restated in its entirety.

**ARTICLE XI  
WIND ENERGY OVERLAY ZONE**

**Section 350-95: Intent and Purpose**

The purpose of these supplemental requirements and standards is to regulate the development of a Wind Energy Conversion Project (wind turbines) and related structures in the Town of Barre. This law is to be consistent with the general purposes stated in the Comprehensive Plan of the Town, to accommodate the necessary infrastructure for the provision of commercial wind powered electricity generation facilities so that they may be developed in a manner hereby deemed to be compatible with the general health, welfare and safety of the residents of the Town of Barre. Furthermore, this local law is enacted to address the visual, aesthetic and the land use compatibility aspects of Wind Energy Conversion Units, and more specifically to:

- 1.- Encourage the location of Wind Energy Conversion Units in areas where adverse impacts on the community are minimized.
- 2.- Encourage the configuration of Wind Energy Conversion Units in a way that minimizes adverse visual impact of the towers.
- 3.- Encourage the co-location or shared use of proposed and existing Wind Energy Conversion Units sites.

## **Section 350-96: Authority and Delegation**

A. This law is enacted pursuant to the following authority granted by:

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

## **Section 350-97: Findings**

A. The Town Board of the Town of Barre finds and declares that:

1. Wind energy is an abundant, renewable, and nonpolluting energy resource of the Town, and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the emission of hydrocarbons that result from the use of conventional energy sources.
2. The generation of electricity from properly sited wind turbines, including private systems, can be cost effective, and in many cases, existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
3. Regulation of the siting and installation of wind turbines is necessary for the purposes of protecting the environment as well as the health, safety and welfare of neighboring property owners and the general public from any potential impacts, including but not limited to those set forth herein.
4. Wind energy systems represent significant potential aesthetic impacts because of their large size, lighting, shadow flicker effects, and visual impacts associated with collection systems.
5. If not properly regulated, installation of wind energy conversion systems can create drainage problems through erosion and lack of sediment control for system sites and access

roads, and harm farmlands through improper construction methods.

6. Wind energy conversion systems may present a risk to bird and bat populations if not properly sited.

7. If not properly sited, wind energy conversion systems may present risks to the property values of adjoining property owners.

8. Wind energy conversion systems can be a significant source of noise, which if unregulated, can negatively impact adjoining properties.

9. Construction of wind energy conversion systems can create traffic problems and damage local roads.

10. Wind energy conversion systems can cause electromagnetic interference issues with various types of communications.

11. Wind energy conversion systems can impact on emergency and response services.

12. Wind energy conversion systems can have environmental impacts on wetlands, streams and other natural habitats.

13. Wind energy conversion systems can impact area groundwater, private wells and particularly as a result of blasting operations that might be necessary for construction of such systems.

### **Section 350-98: Definitions**

**Applicant:** Any person or entity applying to develop, own, locate, construct or operate a Wind Energy Conversion System within the Town. All requirements placed upon an Applicant under this local law or by way of approval of a permit issued hereunder, shall be fully and completely binding upon the owner, his/her/its successors, heirs and assigns, of the Wind Energy Conversion System being submitted for review hereunder.

**Accessory Facilities or Equipment:** Any structure, other than a Wind Energy Conversion Unit, related to the use and purpose of deriving energy from such towers located at the Wind Energy Conversion System.

**Blade Glint:** The intermittent reflection of the sun off the surface of the blades of a Wind Energy Conversion Unit.

**Decommissioned:** Status applied to a Wind Energy Conversion Unit when it has been nonproductive for a period of one year, or when the unit or project no longer provides a useful service.

**Fall Zone:** Fall Zone shall be a level distance perpendicular to the base equal to the total height of the Wind Energy Conversion Unit plus the rotor at a full and upright vertical position.

**Nacelle:** The portion of the Wind Energy Conversion Unit that connects the rotor to the support

tower and houses the generator, gearbox, drive train and braking system.

**Non-Participating Property:** Real property not under lease or other use agreement with a wind generating company.

**Participating Property:** Real property where the owner has a lease or other use agreement with a wind generating company.

**Non-Participating Structure:** Any structure regularly occupied by a person or persons located on real property not under lease to or other use agreement with, a wind generating company

**Participant Structure:** Any structure regularly occupied by a person or persons located on real property under lease to, or other use agreement with, a wind generating company

**Planning Board:** For the purposes of this Local Law shall mean the Town of Barre Planning Board.

**Public Hearing:** A meeting announced and advertised in advance, and open to the public, with the public given an opportunity to talk, participate and express their opinions, support or concerns.

**Residential Structure:** Any permanent structure or mobile home for human habitation with electric power and running water.

**Right of Way:** A strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, and other similar uses.

**Set Back:** The area of land measured along the ground out a horizontal distance in any direction from the structure or facility being regulated under this local law.

**Shadow Flicker:** The effect from the sun shining through the turning blades on the Wind Energy Conversion Unit and casting a shadow over the landscape - most noticeably during sunrise and sunset.

**Tip Height:** Tip height is equal to the distance from the ground to the tip of the rotor blade in a full and upright vertical position.

**Tower Height:** Tower height is equal to the distance from the ground to the top of the tower not including the nacelle or rotor blades.

**WECS or Tower Site:** Site where one or more Wind Energy Conversion Units or wind turbines will be located, including all accessory facilities or equipment.

**Wind Energy Conversion Unit/ Wind Turbine:** Any tower, pole or other structure, whether attached to a building or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as a nacelle and generator for the purpose of producing electricity.

**Wind Energy Conversion Unit/ Wind Turbine (Large Project):** One or more towers, poles or other structures, whether attached to a building or freestanding, designed to be used for the

support of a rotor that consists of blades and hub, as well as a nacelle and generator for the purpose of producing electricity intended to provide wholesale electricity production for delivery on the local transmission network. Any Wind Energy Conversion Unit/ wind turbine not meeting the definition of a Wind Energy Conversion Unit/wind turbine (Small Project) shall, for the purposes of this Local Law, be considered a Wind Energy Conversion Unit/ wind turbine (Large Project).

**Wind Energy Conversion Unit/ Wind Turbine (Small Project):** One or two towers, poles or other structures, whether attached to a building or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as nacelle and generator for the purpose of producing electricity intended to reduce on-site consumption of utility power. Such towers shall be limited in height to 150' and to a power generating rating of 250 kw (kilowatts). Any Wind Energy Conversion Unit/wind turbine not meeting this definition shall, for the purposes of this Local Law, be considered a Wind Energy Conversion Unit/ wind turbine (Large Project).

**Wind Energy Conversion System (WECS):** All structures and facilities utilized or necessary for the normal operation of the project being submitted by an Applicant under this local law, including, but not limited to, Wind Energy Conversion Units, all accessory facilities and equipment thereto, and/or any portion thereof.

**Wind Energy Overlay District:** A district which encompasses part or parts of one or more underlying districts and that establishes requirements for Wind Energy Conversion Systems.

**Wind Measurement Tower (MET Tower):** A tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.

### **Section 350-99: Wind Energy Overlay Zone and District Rules.**

1. The Town Board of the Town of Barre hereby adopts the rules and procedures for creating Wind Energy Overlay Zones to allow consideration of the effective and efficient use of the Town's wind energy resource through Wind Energy Conversion Systems (WECS), and to regulate or prohibit the placement of such systems so that the public health, safety and welfare will not be jeopardized.

2. A Wind Energy Overlay District may be created in any zoning districts of the Town of Barre consistent with the rules and procedures established herein.

3. Initial requests for Wind Energy Overlay Districts shall be submitted with applications for WECS Special Use Permits. No Wind Energy Overlay District may be initially created without specific requests for Special Use Permits for individual WECS.

4. Once a Wind Energy Overlay District has been created, new WECSs or accessory structures or facilities may be added in that District by grant of a Special Use Permit pursuant to the requirements of this Local Law.

5. No overlay zone shall be required for WECS (small project).

## **Section 350-100: Permits and Rezoning Required, Exemptions, Transfer.**

1. The Town Board is hereby authorized to approve, approve with conditions, or disapprove Wind Energy Conversion Project applications with the advice and written recommendations of the Town Planning Board.
2. No wind energy conversion system or any portion thereof shall be located or operated in the Town unless and in accordance with a Special Use Permit duly issued by the Town Board under this local law and the other applicable provisions of the Town of Barre Zoning laws.
3. No wind energy conversion system or any portion thereof shall be constructed, reconstructed, modified, or operated in the Town of Barre, except in a Wind Energy Overlay District, pursuant to an application for a Special Use Permit and Building Permit approved pursuant to this law.
4. The Town Board shall determine on a case by case basis, based upon the specific aspects of the application and the complexity of the application, whether an independent professional Engineers and/or consultants will be required to assist in the review of an application, including review of SEQRA documentation and outside legal services on behalf of the Town. If so determined that such independent professional or consulting services are required, the applicant shall be responsible for any and all fees associated with such services. The costs of such services shall be limited to the reasonable standard fees for such independent third party as determined upon review of such fees charged by such consultant in the Town and surrounding municipalities to the Town. Upon submission of the application, the Town shall obtain a good faith estimate of the fees to be charged by said independent third party consultant and advise the applicant of said estimate of fees to which the applicant shall remit an amount to the Town equal to such estimate within 15 days of such demand. These funds shall be held by the Town in trust to reimburse and be drawn upon by the Town when the Town incurs and pays the appropriate voucher for such third-party services. Should the fees for such third-party consultant exceed said estimated amount, the applicant shall immediately deliver and file with the Town an additional sum in an amount equal to the original estimated amount, or such sum as deemed appropriate and necessary to cover the remaining charges anticipated to be incurred by the Town thereafter. Any funds held in trust following completion of said third party review, shall be returned to the applicant upon presentation of a duly executed voucher seeking the same. If the applicant fails to pay any and all such fees incurred relative to such independent third party services or the estimated fees to be deposited in trust with the town prior to the date such fees are demanded to be paid by the Town to the Town, such failure shall constitute a withdrawal of the applicant's application under this local law and thereafter such application shall be considered null and void by the Town for all purposes relative thereto.
5. No Wind Measurement Tower (MET Tower) shall be constructed, reconstructed, modified or operated in the Town of Barre except pursuant to a Special Use Permit and Building Permit issued pursuant to this law, and any other applicable zoning ordinances of the Town.
6. Notwithstanding any other provisions of this Zoning Local Law or other portions of the Town of Barre Zoning laws, Special Use Permits for Wind Energy Conversion Systems shall be issued by the Town Board.

7. Transfer. No transfer of any Wind Energy Conversion System or Special Use Permit will occur without prior approval of the Town, which approval shall be granted upon written acceptance by the transferee of the obligations of the transferor under this local law, 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 local law unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations or violations.

8. Notwithstanding the other requirements of this local law, replacement in kind or modification of a wind energy conversion system may occur without Town Board approval when (1) there will be no increase in Tip Height; (2) there will be no change in the location of any wind energy conversion unit; (3) there will be no additional lighting or change in color to any such unit; and (4) there will be no increase in noise produced by any such unit.

**Section 350-101: Procedure-Applications for Wind Energy Conversion Systems Special Use Permits and Wind Energy Overlay District.**

A. The Applicant for the proposed development of a Wind Energy Conversion Project shall submit fifteen (15) copies of the application and site plan showing the following information, unless such information requirements are waived by the Town Board for good cause shown. In addition, the Town Board may request, and the Applicant shall provide, any and all additional information the Town Board and Town Planning Board might deem necessary for review of such application.

1. - Name of the project, an instrument survey map indicating boundary lines of the parcel (or parcels) that the project will include and the proposed site location(s), date, North arrow, scale of the plan, and tax map identification number(s). The maps shall include an overall map of the project, as well as individual site maps for each proposed Wind Energy Conversion Unit location.

2. - Name and address of the owner(s) of record of the parcel(s) where the project is proposed to be sited, Name and address of the project sponsor and the seal, including the name and address, of the engineer, architect, or surveyor preparing, or assisting in the preparation of, the site plan. 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(s) and (ii) authorizing the submission of the application(s).

3. - Name and addresses of all property owners of record, as indicated in the Town Assessor's Office, of all adjacent property owners to the project and all property owners of any and all parcels within the property setback requirements as specified in Section 350-103 (h) 2 of this law.

4. - A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail and scale to clearly describe the following:

(A) Property lines and physical dimensions of the Site;

(B) Location, approximate dimensions and types of major existing structures, including all residences and uses on the Site, public roads, and adjoining properties within one thousand (1,000) feet beyond the boundaries of the proposed Wind Energy Overlay Zone.

(C) Location and elevation of each proposed Wind Energy Conversion Unit.

(D) Location of all above ground utility lines on the site or within one radius of the total (tip) height of the proposed Wind Energy Conversion Unit(s), transformers, power lines, interconnection point with transmission lines, microwave and communication towers, and other ancillary facilities or structures.

(E) Location of all structures, both residential and commercial, within the set-back requirements of Section 350-103 for each proposed tower.

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

(G) Proposed boundaries of the Wind Energy Overlay Zone.

(H) The location, alignment and width of existing and proposed easements and rights of way.

5. - A map showing existing and proposed topography at five-foot intervals.

6. - Vertical drawing of the Wind Energy Conversion System showing Tip 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 Wind Energy Conversion System of the same type and Tip Height.

7. - A landscape plan showing all existing natural land features, trees, forest cover and all proposed permanent changes to these features, including size and type of plant material and erosion control measures, to be included in the project upon completion. Also to be included are temporary erosion control methods to be used during the construction of the WECS.

8. - A fully completed State Environmental Quality Review Act (SEQRA) Environmental Assessment Form (EAF). If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information, at a minimum, shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Conversion System. Otherwise, the following studies, at a minimum, shall be submitted with the application:

A. A visual impact study assessing the visibility of the project from key viewpoints relative to such project, existing tree lines, and proposed elevations. This study shall be digitally enhanced to simulate the appearance of the as-built project as such completed project would appear from distances specified by the Town Board or Planning Board within a five (5) mile radius of the location of such project, or any portion thereof. Additional pictures from specific locations may be required by the Town Board or Planning Board, and all such pictures shall be in color and no smaller than 8" x 10".

B. The Applicant shall provide a shadow flicker and blade glint study for the area within the boundaries of the parcel upon which the project, or any portion thereof, is to be sited and for any additional area located within a radius of one mile beyond the boundaries of each wind turbine. Such information shall include a shadow flicker zone map and documentation of the non-reflective coating for the blades. Accompanying such information shall be the proposed schedule with which the non-reflective coating for the blades shall be reapplied as based on the manufacturers suggested life of the coating



product. The study will (i) designate and describe the zones within the project where shadow flicker is likely to affect existing residential structures, roadways and other similar areas of public or private use. The study shall represent the most probable scenarios of wind constancy, sunshine constancy, and wind direction and speed; (ii) Identify the most likely locations of shadow flicker, estimate the expected duration of such shadow flicker at these locations per day, and calculate the potential total number of hours per year at each location such shadow flickers may occur; (iii) Identify potential problem zones where shadow flicker may interfere with existing residences and roadways, and describe proposed measures to mitigate these problems- including but not limited to a change in siting of the unit, a change in operation of the unit, or grading or landscaping mitigation measures; and (iv) Provide tax identification numbers for all properties within the potential shadow flicker zones.

C. Noise Analysis. The applicant shall provide a noise analysis prepared by a competent acoustical consultant documenting the noise level as associated with the proposed Wind Energy Conversion System. The study shall predict 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 provide pre-existing ambient noise levels and include low-frequency noise.

D. Property Value Analysis. This study shall be prepared by a licensed and certified real estate appraiser in accordance with industry standards, regarding the potential impact of values of properties adjoining Wind Energy Conversion System Sites, including properties across public roads from the Site.

E. An assessment of potential electromagnetic interference with microwave, radio, television, personal communications systems and other forms of wireless communication.

9.- Tower design information sufficient to demonstrate compliance with wind-loading, and other applicable State and Federal Codes and requirements.

10.- An analysis of potential ice-throwing and damage from blade throw impacts.

11.- Documentation of the proposed intent and capacity of energy generation to be derived from the completed project. In addition, the applicant shall, prior to the receipt of a building permit, demonstrate that the proposed WECS meets system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York State Independent Operator and/or the applicable Transmission Owner.

12. - Preliminary report prepared by the Applicant describing:

a. Surrounding topography in relation to the capabilities for generation of electricity by wind and why the project site was selected for development.

b. Required improvements for construction activities, including those within the public right of way or land controlled by the Town of Barre.

c. Proposed mitigation measures for visual impacts of any and all components, structures, and materials related to the Wind Energy Conversion Project including, but

not limited to, Wind Energy Conversion Units, substation(s), meteorological (MET) towers, support structures and access roads.

d. Proposed safety measures to mitigate any potential Wind Energy Conversion Unit failure.

e. Documentation and justification for any proposed land clearing around structures within the project.

13. - Elevation map showing the Wind Energy Conversion Unit's height and design, including a cross-section of the structure and components of the nacelle; statement of compliance documenting the unit's compliance with applicable structural standards; and the Wind Energy Conversion Unit's abilities in terms of producing energy.

14. - Lighting plan. This must include location and type of lighting, as well as the expected impact on residential property within a five-mile radius of the project and must be in compliance with Federal Aviation Administration (FAA) minimum lighting requirements. The application should include a copy of the determination by the FAA to establish required markings and/or lights for the structures. But if such determination is not available, at the time of the application, no Special Use Permit or building permit for any lighted facility may be issued until such determination is submitted.

15.- Decommissioning Plan. The applicant shall submit a decommissioning plan, which shall include at a minimum: (1) the anticipated life of the Wind Energy Conversion System; (2) the estimated decommissioning costs in current dollars; (3) how said estimate was determined; (4) the method of insuring that funds will be available for decommissioning and restoration; (5) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; (6) the manner in which the Wind Energy Conversion System will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of three feet, or greater where required by other law, regulation or guideline, restoration of vegetation (consistent and compatible with surrounding vegetation) less any fencing or residual minor improvements requested by the land owner. The Plan shall include the Decommissioning Security or Assurance required by this local law. The decommissioning plan shall be in accordance with New York State Department of Agriculture and Markets regulations and guidelines where applicable.

16. - Description of the Applicant's plan for the project that shall include the estimated market demand and long term project expansion needs within the Town associated with the project for the duration of the project.

17. - Report showing soil logs and soil profile analysis for any area being disturbed as part of the project. The report shall indicate any anticipated need for blasting and the information relied upon for such anticipated blasting.

18. Plans to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive runoff, and flooding of other properties. The plan shall outline the following:

a. - the impact the project will have on surface runoff and erosion, groundwater and wells, including projected impact on existing downstream drainage infrastructure.

b. - steps to mitigate any anticipated issues including a Stormwater Pollution Prevention Plan (SWPPP) in accordance with NYSDEC General Permit requirements.

c. - plans to revisit the project at no less than two-year intervals, for a period of four (4) years, to confirm the impact was as anticipated, and take corrective action if necessary

19. - The Applicant shall, in consultation with the Town of Barre Volunteer Fire Department and Orleans County Hazardous Response Teams, establish an Emergency Preparedness Plan, in the event of an emergency requiring immediate response or attention during the construction and operation of the Wind Energy Conversion Project or any portion thereof.

20. - The Applicant shall present a spill containment response plan, to be implemented in the event of any environmental contamination resulting from, but not limited to, oil or other chemicals. A performance bond or other appropriate mechanism shall be required to deal with this situation.

21. - Proof of all required financial surety or other similar financial requirements relative to the project. Such proof may include, but is not limited to, proof of liability insurance, decommissioning funds, development mitigation funds and whatever other financial requirements relative to the application.

22.- Complaint Resolution. The application will include a complaint resolution process to address complaints from nearby residents both during construction and while any WECS is in place. The process may use an independent mediator or arbitrator and include a reasonable time limit for acting on a complaint.

23.- An application shall include information relating to construction /installation of the Wind Energy Conversion System as follows:

- (A). A construction schedule describing commencement and completion dates;
- (B). A WECS Traffic Routes Plan addressing the standards set forth in Section 350-103.7(c) herein below.

24.- A statement, signed under penalty of perjury, that the information contained in the application is true and accurate.

B. Waivers. In the case of applications for Small WECS projects, the Town Board may reduce the required number of copies of the application to be submitted and may waive those application requirements set forth above that may not be relevant to the project.

### **Section 350-102: Application Review Process.**

1. Applicants may request a pre-application meeting with the Town Board, or with any consultants retained by the Town Board for application review with at least one Town Board member present.

2. Payment of all application fees shall be made at the time of application submission. If variances are requested, variance application fees shall also be paid at the time of application submission.

3. Town staff or Town-designated consultants shall, within 60 days of receipt, or such longer time if agreed upon by the applicant, determine if all information required under this local law is included in the application.
4. 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 application fees shall be required upon submission of the additional information unless the number of Wind Energy Conversion Units proposed is increased.
5. Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town Board and the Town Planning Board. The applicant shall post the completed application and any accepted environmental impact statements on the Internet.
6. The Town Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 1,000 feet of the boundaries of the proposed Wind Energy Overlay District, and published in the Town's official newspaper, no less than 10 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 or mailing shall be required. The Town will prepare the mailing and mail the Notice of Public Hearing prepared by the Town. The assessment roll of the Town shall be used to determine mailing addresses.
7. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances.
8. Notice of the project shall also be given, when applicable, to (1) the Orleans County Planning Board, if required by General Municipal Law sections 239-1 and 239-m, and (2) to adjoining Towns under Town Law section 264.
9. SEQRA Review. Applications for Wind Energy Conversion Systems are deemed Type I projects under the State Environmental Quality Review Act (SEQRA). The Town shall conduct its SEQRA review in conjunction with other agencies, and the record of the review by said agencies shall be part of the record of the Town's proceedings. At the completion of the SEQRA review process if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings, which statement may also serve as the Town's decision on the application(s).
10. Upon receipt of the report of the recommendations of the County Planning Board, where applicable, and the report of the recommendation of the Town 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 application(s).

### **Section 350-103: Standards**

Wind Energy Conversion Systems and all related structures thereto may be permitted to be constructed within the Town only upon receiving prior Special Use Permit approval from the Town Board and issuance of building permits. The application for a Special Use Permit shall only be granted if the application complies with the following requirements and such other reasonable conditions that the Town Board requires as part of any conditional approval issued hereunder:

1. - Location - All Wind Energy Conversion Systems shall be located, erected and sited in accordance with the following requirements:

a. No individual Wind Energy Conversion Unit shall be installed in any location along the major axis of existing communications links or telephone transmission lines where the operation is likely to produce interference in said link's operation. If such problem is found to exist, the Applicant shall correct (or document significant progress toward corrective action on) any unforeseen interference to the satisfaction of the Code Enforcement Officer within thirty (30) days of any complaint being given to the applicant by the Code Enforcement officer or affected person to correct such problem.

b. No individual Wind Energy Conversion Unit shall be installed in any location where such unit's proximity with existing fixed broadcast, or reception antenna (including residential reception antenna or satellite system) for radio, television or wireless phone or other personal communication systems where unit would produce interference with signal transmission or reception. The Applicant shall correct (or document significant progress toward corrective action on) any unforeseen interference to the satisfaction of the Code Enforcement Officer within thirty (30) days of any complaint being given to the applicant by the Code Enforcement officer or affected person to correct such problem:

1. - The Applicant shall provide the affected person(s) with service equal to or better than the service that was interrupted, or an acceptable alternative to such service has been agreed to by the Code Enforcement Officer and the affected property owner.

2. - If emergency service needs have been affected, such problem shall be remedied by the Applicant within 36 hours of notification being given to the Applicant by the Code Enforcement Officer or affected person.

c. All Wind Energy Conversion Unit shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.

d. No individual Wind Energy Generating Unit shall be installed in any location where it may interfere with the normal flight patterns at area airports and private airstrips.

e. Wind Energy Conversion Systems and related infrastructure shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.

f. The use of guy wires is prohibited, except if otherwise unfeasible in the case of a Wind Energy Conversion Unit/Wind Turbine (Small Project), meteorological towers or transmission infrastructure.

g. No advertising signs, or television, radio, cellular telephone or other communication antennas, are allowed on any part of the Wind Energy Conversion System including fencing and support structures. Signage to inform persons of ownership and contact information is permitted so long as such signage is erected in accordance with Town Law.

h. All Wind Energy Conversion Units shall only be located, installed, or constructed on the subject parcel in accordance with the following set backs:

1. A distance not less than 1.5 times the tip height of the Wind Energy Generating Unit as measured from any and all public roadways or above ground power lines in the vicinity of said unit, to the base of such unit.
2. A distance not less than two (2) times the tip height from any existing residential or commercial buildings. This distance may be reduced for WECS Small Projects.
3. A distance not less than 1.5 times the tip height of the Wind Energy Generating Unit as measured from the property lines of any Non-Participating Property.

2. - Noise-

a. The level of noise produced by or from the operation of the Wind Energy Conversion System shall not exceed the following:

1. 45dBA Leq 8-hour at non-participating structures and 40dBA Leq night (10:00 p.m. to 7:00 a.m.) outside at non-participating structures.
2. 55 dBA Leq 8-hour at participating structures and 50 dBA Leq night (10:00 p.m. to 7:00 a.m. outside at participating structures.
3. 65 dBZ Leq 1-hour at 16 Hzm 31.5 Hz and 63 Hz full octave bands.

b. In addition, the system shall not produce any audible prominent tones, as defined under ANSI (American National Standards Institute) S12.9, Part 4-2005 Annex C, as amended from time to time at any non-participating structures.

c. The system shall not produce human perceptible vibrations inside any non-participating structures that exceed the limits for residential use recommended in ANSI Standard 52.71-1983, as amended.

d. In the event that 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 not exceeded for more than six (6) minutes per hour. Ambient noise levels shall be measured at a distance of 1000 feet from the base of the Wind Energy Conversion Unit. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind-generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

e. Any noise level falling between two whole decibels shall be the greater of the two.

3. - Emergency Shutdown / Safety Operations -

a. The Applicant shall file emergency contact information, including but not limited to a telephone number and unique ID number, for each Wind Energy Conversion Unit with the Town Clerk. At least one sign shall be posted at the base of each tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of the fence around each tower or group of towers and any building (or on the tower or building if there is no

fence) containing emergency contact information, including a local or toll-free telephone number with 24 hour, 7 day a week coverage. The Town Board may require additional signs based on safety needs.

b. Each Wind Energy Conversion Unit shall have an automatic manufacturer certified or engineer certified braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components or nacelle.

C. All nacelles shall have fire suppression systems.

#### 4. - Lighting -

The final project design shall incorporate the following measures for visual impact minimization:

a. the use of aircraft detection lighting system(s) (ADLS) or other similar lighting minimization technologies or technologies at the WECS that avoids visual lighting impacts at night. Details of the ADLS technology shall be submitted to the Town Board and its consultants along with the FAA's approval of the specific system used. If for any reason ADLS is not permitted by the FAA, the Certificate Holder shall provide communications and documents showing the FAA's determination and rationale for its determination. In the event that ADLS is not used, the Applicant shall submit a mitigation plan proposal for other measures, such as light shields, to minimize visual nighttime impacts, which must be approved prior to commencement of project operations.

b. Prior notification of any changes in the lighting plan for the project must be communicated to the Town Planning Board prior to installation of such new lighting scheme, and such alterations shall only be approved for installation for good cause shown or in order to bring such project into compliance with any and all statutory and regulatory requirements.

c. If the minimum lighting requirement, as determined by applicable federal, state or local rules, regulations or statues change during the course of operation of the Wind Energy Conversion System, the applicant shall alter the lighting plan and install such lighting in the Wind Energy Conversion System that is at a level equal to such revised minimum requirements.

#### 5. - Utility Service-

a. All power transmission lines servicing the project or any portion thereof shall be underground to a minimum depth of forty-eight (48) inches or to such depth as required by applicable State and Federal regulations and codes, whichever is greater. If this standard is deemed to be technically infeasible, rationale and alternative solutions and designs shall be submitted with the completed application for review and approval by the Town Board. Such approval shall be granted if such alternative is deemed acceptable by the Town Board based upon substantial evidence in the record ensuring such alternative provides the level of protection and safety afforded by the standard set forth hereinabove.

b. In the event of a stray voltage occurrence, the applicant shall be notified, and corrective action shall be taken immediately by the applicant fully remedying such occurrence.

6. - Blade Sweep and Tip Height - The minimum height of the lowest part of the blade sweep area shall be thirty (30) feet above the highest existing structure or tree within a one-hundred-fifty (150) foot radius of the base of the Wind Energy Conversion Unit. The total tip height for each Wind Energy Conversion Unit cannot exceed seven hundred (700) feet as measured from the base of the unit to the tip of the unit's longest blade.

7. - Access Roads and Road Mitigation -

a. In an effort to minimize curb cuts, existing roadways shall be used for access to the site whenever possible.

b. If existing roadways are not practicable to be utilized for such access, any necessary new roadway, shall be constructed in a way so that they are level to the surrounding environment. Unless the landowner upon which such new access road is located signs a waiver requesting such property not be gated, new access roads constructed from existing roadways shall be gated and locked near the vicinity of the intersection of the access road and the existing roadway with breakaway gates allowing emergency access to the roadway.

c. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and 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. Special Use Permit conditions may require documentation of road conditions prior to and following construction from the Town Highway Superintendent, remediation during construction, limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public and all applicable State, County and municipal highway authorities and superintendents whose roads are included in the WECS traffic routes plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips per day and the dates and time periods of expected use of designated traffic routes. The applicant shall obtain any necessary Road Use Agreements with agencies and municipalities over whose roads and rights-of-way will be used in the construction or reconstruction of any WECS, and provide documentation of same to the Town.

d. The applicant, or its successor, is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount determined by the Town Board, sufficient to compensate the Town for any damage to local roads.

e. If the applicant or successor uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway including, but not limited to, snow plowing. No acts of maintenance on a seasonal use highway by an applicant or successor shall be considered as Town maintenance of that highway for purposes of determining the



seasonal use status of the highway.

8. - Accessory Structures/Facilities- Transmission facilities and/or buildings shall be located along roadways, below ridgelines or behind vegetation to screen such facilities and/or buildings from visibility. If such a facility or building is to be located in or along the side of an open field, the facility or building shall be landscaped in such a way as to blend such facility or building in with the surrounding environment.

9. - Physical Security - To Secure each and every Wind Energy Conversion Unit so constructed within the Town, each such unit shall:

a. Not have any climbing pegs, tower ladders or other climbing device of any kind attached to the Wind Energy Conversion Unit closer than fifteen (15) feet from the ground.

b. Have a locked anti-climbing device installed on the unit.

c. If the property owner submits a written request that fencing be required, a minimum six-foot (6') high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.

d. WECS shall be designed to prevent unauthorized external access to electrical and mechanical components, and shall have access doors that are kept securely locked.

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

10. - Shadow Flicker - The Wind Energy Conversion System shall be designed such that shadow flicker from an individual Wind Energy Conversion Unit will not fall on any portion of a residential or commercial building in excess of twenty five (25) hours per year. If an individual residence is being impacted by multiple Wind Energy Conversion Units, the cumulative effect of said impact shall not exceed twenty-five (25) hours per year. If shadow flicker exceeds these conditions, the source Wind Energy Conversion Unit shall be shut down until the offending condition is remedied.

11. - Environmental Contamination by Oil or Other Chemicals - The Applicant of a Wind Energy Conversion System, after such application has been approved and before a Special Use Permit is issued, shall submit the maximum amount letter of credit or other mechanism necessary to ensure the clean-up of any contamination according to DEC requirements. The Town Board and the attorney for the Town shall judge the letter of credit or other surety as adequate and satisfactory before such a Special Use Permit is granted.

12. Construction Hours- Except where certain activities (e.g. cement pours or component deliveries) or other conditions (such as high wind speeds during the day) demand from time to time require deviation from the hours set forth herein, no construction or reconstruction of any WECS shall begin before 6:00 a.m. nor end after 8:00 p.m. Mondays through Saturdays. Such activities will be limited to turbine sites and the immediately surrounding area. Except in cases of emergencies, all maintenance of WECS shall take place within those same time frames.

3. Removal of Solid Waste- The applicant/operator of a WECS shall remove and properly dispose

of any solid waste or other unused construction materials in accordance with applicable laws and regulations.

#### 14. Post Installation.

a. - On an annual basis a post-installation field report identifying the Wind Energy Conversion System's generation of electricity and impacts upon the environment, including but not limited to any adverse drainage patterns then existing, sites of erosion in vicinity of the system, and other potential adverse environmental conditions, shall be submitted by the applicant to the Town Board. The report shall also include any and all work related calls logged by the Applicant, and any other reasonable items that may be requested by the Town Board. This report shall be filed with the Town Clerk annually on or before June 1<sup>st</sup> for review at the July Town Board Meeting.

b. - If it is determined that any Wind Energy Conversion System or portion thereof is operating outside the parameters of the zoning requirements and conditions of approval, the Applicant shall be notified, and any and all necessary remedies implemented. If the problem cannot be remedied within an appropriate amount of time, based on its nature and severity, the Code Enforcement Officer may require the Wind Energy Conversion System or portion thereof be shut down until such repairs can be affected. If the Applicant and the Code Enforcement Officer are unable to agree on an appropriate time or method for remedying such problem, either party shall ask the Town Board to determine such a reasonable time or method of remedy, which determination shall be final unless successfully appealed to the Orleans County Supreme Court by way of a CPLR Article 78 proceeding, which said petition must be filed with said Court within 30 days of the issuance of the determination by the Town Board being so appealed.

c. - Safety issues deemed to be of an imminent significant threat to the health, safety and/or welfare of any person affected by the Wind Energy Conversion System or any portion thereof as determined by the Code Enforcement Officer shall require the immediate shut down of the Wind Energy Conversion System or portion thereof system until corrective action is taken and the imminent significant threat fully mitigated.

d. - In the event a Wind Energy Conversion System or portion thereof requires attention, whichever entity is notified first - the Applicant or the Code Enforcement Officer - such entity shall immediately contact the other party to report the matter being attended to.

### **Section 350-104: Noise and Setback Easements-Variances**

#### A. Waiver.

1. In the event the noise levels resulting from a WECS exceed the criteria established for participating properties in this Local Law, or shadow flicker or set back requirements are not met for participating properties, a waiver may be granted from such requirements where the property adjacent to that hosting the Wind Energy Conversion Unit is also part of the WECS site due to hosting a Wind Energy Conversion Unit or other ancillary components.

2. Written consent from the affected property owners shall be obtained stating that they are aware of the WECS and the noise, shadow flicker and/or setback limitations imposed by this law, and that they wish to be a part of the Site as defined herein, and that consent is granted to (1) allow noise or shadow flicker levels to exceed the maximum limits otherwise allowed, or (2) allow distance setbacks less than required; and

3. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, shall be recorded in the County Clerk's Office describing the benefitted and burdened properties. Such easements shall be permanent and may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefitted WECS in accordance with this law, or the acquisition of the burdened parcel by the owner of the benefitted parcel or the WECS.

**Section 350-105: Decommissioning.**

1. At the end of its useful life, or where otherwise necessary, an individual turbine may need to be decommissioned, or the entire project will be decommissioned. Decommissioning includes dismantling and removing wind turbines and project components on property owned or leased by the Applicant. The Applicant must perform decommissioning activities in accordance with this section.

The Applicant, and its successors or assign or heirs, are responsible for the decommissioning and all costs associated with decommissioning the project and associated facilities. All above-ground components being decommissioned, including but not limited to turbines, blades, nacelles, towers, transformers, above ground collection cables and poles, permanent meteorological towers and the collection substation must be removed. Foundation and collection lines buried less than a depth of 36 inches in non-agricultural lands and 48 inches in agricultural lands, must be removed, Foundations and buried project components below a depth of 36 inches on non-agricultural land and 48 inches in agricultural land may remain in place with the written consent of the property owner.

The areas disturbed by decommissioning shall be restored in accordance with subdivision 11 of this section.

The Applicant is responsible for obtaining all applicable permits and approvals for the activities associated with decommissioning and site restoration, including compliance with the State Environmental Quality Review Act (SEQRA).

2. Prior to application approval, the Applicant must provide a Decommissioning Plan, including financial assurance for decommissioning costs in accordance with this section.

3. Prior to the erection of any wind turbines, the Applicant will post and maintain financial assurance in the amount of the net decommissioning costs, on a per turbine basis, to be determined by a qualified, independent engineer at the Applicant's expense. No offset for projected salvage value is permitted on the estimate. The net decommissioning cost shall be updated by a qualified, independent engineer licensed to practice engineering in the State of New York to reflect inflation and any other changes after one year of facility operation, and every fifth year thereafter.

4. Financial assurance may be in the form of a bond, escrow account, irrevocable letter of credit from a State of New York licensed financial institution or other form approved by the Town Board.

5. The applicant, shall notify the Code Enforcement Officer within thirty (30) days of the discontinuance of use of the Wind Energy Conversion System or any portion

thereof.

Should the applicant fail to notify the Town Code Enforcement Officer as required, the applicant shall be subject to all penalties provided under this local law and the following additional penalties: \$200.00 per day from the time the Applicant should have notified the Town Code Enforcement Officer and the date the Wind Energy Conversion System or portion thereof is removed or made operational as set forth under subparagraph (e) of this section.

6. Should the Wind Energy Conversion System or any portion thereof not operate for a total period of 60 days within any 90-day period, the Town shall notify the applicant that such offending Wind Energy Conversion System or portion thereof shall be removed or made operational as provided in subdivision 7 of this section.

7. The Applicant shall remove any discontinued, decommissioned, obsolete or unused Wind Energy Conversion System or portions thereof and restore the site to pre- construction conditions, or make the Wind Energy Conversion System or portion thereof fully operational, within ninety (90) days of delivery or receipt of the notification set forth in subdivision 5 of this section, unless such time limit is extended by the Town Board for good cause shown, but the total period shall not exceed one-hundred eighty (180) days. Non-function or lack of operation may be proven, among other means, by reports to the Public Service Commission, NYSEERDA, or by lack of income generation. The applicant or its successor shall make available (subject to a non-disclosure agreement, if requested) to the Town Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested, necessary to prove the system is functioning, which reports may be redacted as necessary to protect proprietary information.

8. Prior to the expiration of this time, the applicant may apply to the Town Board for a further extension in time for which such Wind Energy Conversion System or portion thereof needs to be removed or made operational, up to an additional time of one hundred eighty (180) days. Such extension shall only be granted if the applicant demonstrates good cause that such extension is necessary as a result of uncontrollable events such as weather delays, repair delays or other similar conditions requiring the need for such extension.

9. Failure to notify and/or remove any discontinued, decommissioned, obsolete or unused Wind Energy Conversion System or portion thereof in accordance with this local law shall be in violation of this local law and subject the applicant to the penalties set forth herein. In addition, the cost of removing the offending Wind Energy Conversion System or portion thereof shall be drawn against the financial surety posted by the applicant for demolition or decommissioning of the project as set forth in this section.

10. Any costs incurred by the Town that exceeds the amount of such financial surety or not be covered by said surety shall be the complete and sole responsibility of the applicant. If the applicant is insolvent and such costs cannot be practicably collected from said applicant, then such costs shall become a lien upon the property upon which the costs were incurred and said lien shall thereafter be assessed on the next succeeding year's tax bill for such parcel and collected in accordance with normal tax foreclosure proceedings if such tax bill remains unpaid thereafter.

11. Restoration: The Applicant and its successors, heirs or assigns, are responsible for

restoration and all costs associated with restoring the project site. Ground disturbance must be minimized to the extent practical, and the site restored to its original condition, to the extent practicable, and re-established using native seed mix or, in any agricultural areas, in coordination with the landowner to allow desired crops to be replanted.

Roads must be adequately restored to their original condition, or better, following decommissioning activities. Access roads, and residual minor improvements may remain with the written consent of the land owner.

12. Upon completion of all such removal activities by the Town, any remaining portion of the posted surety shall be returned to the applicant forthwith.

### **Section 350-106: Other Operating Considerations and Permit Revocation**

1. Landscaping - Unless otherwise agreed to in writing by the land owner, upon completion of installation, the site shall be returned as close as possible to its natural state, and in conformity with applicable State and Federal regulations and guidelines, including, but not limited to restoring the subsoil and topsoil to preconstruction condition and reforestation for any woodlands that have been cleared.
2. Building and Grounds Maintenance - Any damaged or unused parts shall be removed from the premises within thirty (30) days or stored in a locked on-site storage building. All maintenance equipment, spare parts, oil or chemicals (cleaning, pesticides, fuels), shall also be stored in said on-site locked storage building.
3. Testing and Inspection Fund- A Special Use Permit shall contain a requirement that the applicant, or successor, fund periodic structural inspections and noise testing by a qualified, independent, third-party consultants, which may be required as often as every two (2) years, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the inspections and noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Local Law, and shall also include an evaluation of any complaints received by the Town. The applicant or successor shall have 30 days, after written notice from the Town Board, to cure any deficiency. Any extension of the 30-day period may be considered by the Town Board, but the total period may not exceed 90 days.
4. 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 Special Use Permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a Special Use Permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant, or successor, shall have 90 days, after written notice from the Town Board, to cure any deficiency. Any extension of the 90-day period may be considered by the Town Board, but the total period may not exceed 180 days.
5. Compliance with New York State Department of Agriculture and Markets (NYSDAM) Guidelines.

The Applicant shall plan, construct and mitigate the Facility consistent with the NYS Department of Agriculture and Markets Guidelines for Agricultural Mitigation for Wind Power Projects, to the maximum extent practicable, This condition also requires the Applicant to locate collection wires and facility components underground in prime agricultural land except

where, in consultation with NYSDAM, the parties agree that subsurface placement is impracticable, The Applicant and/or environmental monitor will consult with NYSDAM staff during construction when deviation from the Guidelines is necessary. Mitigation measures shall include full restoration of temporarily disturbed agricultural land.

#### 6. Environmental Monitor:

An experienced firm shall be hired by the Applicant to act as Environmental Monitor to oversee compliance with State or local permit conditions, or certificate conditions, associated with any Article 120 or Section 94-c approvals, during project construction, The Environmental Monitor shall also oversee compliance with agricultural requirements and restoration in accordance with NYSDAM Guidelines. The proposed Environmental Monitor shall be submitted by the Applicant for approval by the Town Board. All costs associated with Environmental Monitoring shall be borne by the Applicant. All reports of the Environmental Monitor shall be provided to the Town.

7. Revocation of Special Use Permit- Notwithstanding any other abatement provision under this Local Law, if the WECS is not repaired or made operational, or brought into Special Use Permit compliance after notice and within the time limitations set forth above, the Town may, after a public meeting at which the operator or owner shall be given an opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular time frame, or (2) order revocation of the Special Use Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

### **Section 350-107: Certifications**

1. Routine Inspection Report - An inspection report prepared by an independent professional engineer licensed in the State of New York shall be required at the completion of the installation of the Wind Energy Conversion System. Said inspection report shall certify the Wind Energy System and any portion thereof complies with all manufacturing specifications and any and all rules, regulations and statues pertaining thereto. Said inspection report shall be filed with the Code Enforcement Officer and the Town Clerk.

2. Insurance - Liability - Prior to the issuance of a building permit regarding an approved Wind Energy Conversion System, the Applicant shall file with the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance in a reasonable level as determined by the Town Board in consultation with the Town's insurer, guided by industry standards, to cover damage or injury which might result from the Wind Energy Conversion System or any portion thereof. Such liability insurance shall also name the Town and the current property owner of record as an additional insured, unless said property owner waives such coverage in writing.

3. National and State Standards - In addition to any requirements of this local law, the applicant shall show that all applicable manufacturer's, New York State and U.S. standards and guidelines for the construction, operation and maintenance of the proposed Wind Energy Conversion Units have been met or are in compliance. Wind Energy Conversion Units shall be built, operated and maintained to applicable industry standards, including but not limited to the Institute of Electrical and Electronic Engineers (IEEE), the International Electrotechnical Commission (IEC) the American National Standards Institute (ANSI).

4. Continuing Obligations - All requirements detailed in this local law shall remain in full force and effect for the duration of the granted Special Use Permit.

### **Section 350-108: Wind Measurement Towers**

#### 1. Wind Site Assessment.

The Town Board acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of wind measurement towers shall be permitted as a Special Use in the Town.

#### 2. Applications for Wind Measurement Towers Special Use Permits.

A. An application for a wind measurement tower shall be made to the Town Board and shall include:

(I). The name, address and telephone number of the applicant.

(II). The 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 application(s) and (ii) authorizing the submission of the application(s).

(iii). The address of each proposed tower Site, including tax map number.

(iv). Site plan.

(v). Decommissioning Plan based on the same criteria for WECS including a security bond or cash for removal.

#### 3. Standards for Wind Measurement Towers.

A. The distance between a Wind Measurement Tower and the property line shall be at least the Total Height of the tower. Sites can include more than one piece of property, and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent, in writing, of those property owners.

B. Special Use Permits for Temporary Wind Measurement Towers may be issued by the Town Board annually for a period of three (3) years with annual extensions up to an aggregate of seven years. Special Use Permits shall be renewed annually if the facility is in compliance with the conditions of the Special Use Permit.

C. Special Use Permits for Permanent Wind Measurement Towers may be issued by the Town Board. Special Use Permits for Permanent Wind Measurement Towers shall be renewed annually for the duration of the project, if the facility is in compliance with the conditions of the Special Use Permit.

### **Section 350-109: INCONSISTENCY**

All other local laws and ordinances of the Town of Barre inconsistent with the provisions of this Local law are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this Local Law shall be in addition to such other local laws or ordinances regulating and governing the subject matter covered by this local law.

To the extent this local law is pre-empted by New York State law, and specifically Article 10 of the Public Service Law and Section 94-c of the Executive Law and the regulations promulgated thereunder, then this local law shall be superceded thereby.

### **Section 350-110: UNCONSTITUTIONALITY AND ILLEGALITY**

If any clause, sentence, paragraph, word, section or part of this Local Law shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair, or invalidate any paragraph, word, section or part thereof not directly involved in the controversy in which such judgment shall have been rendered.

### **Section 350-111: PENALTIES**

1. Any person who violates or knowingly permits the violation of this Local Law shall be deemed to have committed a violation and shall be subject to the following penalties: a minimum of \$25.00 up to the maximum of \$1,000.00 or 15 days imprisonment, or both. Each separate violation shall constitute a separate additional offense for which a penalty may be assessed thereon. Further, every day such violation is determined to have existed shall be deemed to constitute a separate and additional offense for which the person may be subject to the penalties set forth herein for each and every day violation so existed.

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

### **Section 350-112: FEES**

1. There shall be non-refundable application fees for each of the following categories, to be fixed by resolution of the Town Board from time-to-time:

A. Wind Overlay Zone.



- B. WECS Special Use Permit.
- C. Wind Measurement Towers.
- D. Wind Measurement Tower Special Use Permit renewals.
- E. Small WEC Project.
- F. The cost of all legal notices and mailings shall be assessed to the applicant.

## 2. Building Permits:

The Town believes the review of building and electrical permits for WECS requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be increased by administrative costs which shall be fixed by resolution of the Town Board from time-to-time but no less than \$ 100.00 per permit request, plus the amount charged to the Town by the outside consultants 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 or certifications, or to conduct inspections as agreed by the parties.

## 3. Host Community Agreements.

Nothing in this section shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant. The applicant, or its successors, shall be required to pay the Town a "host community fee" semi-annually to compensate the Town for expenses or impacts on the community. The amount of the host community fee shall be determined by applying a rate per MW (megawatt), or part thereof, of rated maximum generation capacity per year, prorated for any portion of a year of energy production. The host community fee may be in addition to any Payment in Lieu of Taxes which may be authorized to be collected by the Town pursuant to section 487 of the Real Property Tax Law of the State of New York. The amount of the host community fee will be determined by the Town Board from time to time but not more frequently than annually. All such fees shall be negotiated and determined prior to the approval and issuance of a Special Use Permit for any WECS.

4. 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.

### **Section 350-113: TAX EXEMPTION.**

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

### **Section 350-114: EFFECTIVE DATE**

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