

Local Law No. 1 of 2010
Wind Energy Facilities

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

SECTION 1: Local Law No. 1 of 2010, entitled “WIND ENERGY FACILITIES LOCAL LAW,” is hereby, adopted to read in its entirety as follows:

ARTICLE I

§1. Title

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

§2. Purpose

The Town Board of the Town of Alfred adopts this Local Law to promote the appropriate use of the Town’s wind energy resource through Wind Turbine Generators (WTGs), and to regulate the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

§3. 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 this section and “timber processing” as defined in subdivision fourteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

AMBIENT SOUND -Ambient sound encompasses all sound present in a given environment, being usually a composite of sounds from many sources near and far. It includes intermittent noise events, such as, from aircraft flying over, dogs barking, wind gusts, mobile farm or construction machinery, and the occasional vehicle traveling along a nearby road. The ambient also includes insect and other nearby sounds from birds and animals or people. The near-by and transient events are part of the ambient sound environment but are not to be considered part of the long-term background sound.

ANSI - refers to or means the AMERICAN NATIONAL STANDARDS INSTITUTE.

APPLICANT - means the individual or business entity that seeks to secure a license under this section of the Town municipal code.

A-WEIGHTED SOUND LEVEL (dBA) - A measure of over-all sound pressure level designed to reflect the response of the human ear, which does not respond equally to all frequencies. It is used to describe sound in a manner representative of the human ear's response. It reduces the effects of the low with respect to the frequencies centered around 1000 Hz. The resultant sound level is said to be "Weighted" and the units are "dBA." Sound level meters have an A-weighting network for measuring A-weighted sound levels (dBA) meeting the characteristics and weighting specified in ANSI Specifications for Integrating Averaging Sound Level Meters, 51.43-1997 for Type 1 instruments and be capable of accurate readings (corrections for internal noise and microphone response permitted) at 20 dBA or lower. In this document dBA means LAeq unless specified otherwise.

BACKGROUND SOUND (L90) - refers to the sound level present at least 90% of the time. Background sounds are those heard during lulls in the ambient sound environment. That is, when transient sounds from flora, fauna, and wind are not present. Background sound levels vary during different times of the day and night. Because WTG operates 24/7 the background sound levels of interest are those during the quieter periods which are often the evening and night. Sounds from the WTG of interest, near-by birds and animals or people must be excluded from the background

sound test data. Nearby electrical noise from streetlights, transformers and cycling AC units and pumps etc. must also be excluded from the background sound test data. Background sound level (dBA and dBC (as L90)) is the sound level present 90% of the time during a period of observation that is representative of the quiet time for the soundscape under evaluation and with duration of ten (10) continuous minutes. Several contiguous ten (10) minute tests may be performed in one hour to determine the statistical stability of the sound environment. Measurement periods such as at dusk when bird and insect activity is high or the early morning hours when the 'dawn chorus' is present are not acceptable measurement times. Longer term sound level averaging tests, such as 24 hours or multiple days are not at all appropriate since the purpose is to define the quiet time background sound level. It is defined by the LA90 and LC90 descriptors. It may be considered as the quietest one (1) minute during a ten

(10) minute test. LA90 results are valid only when LA10 results are no more than 10 dB above L A90 for the same period. LA10 less LC90 that exceed 10 dB are deemed to be invalid. The background noise environment consists of a multitude of distant sources of sound. When a new nearby source is introduced the new background noise level would be increased. The addition of a new source with a noise level 10 below the existing background would increase the new background 0.4 dB. If the new source has the same noise level as the existing background then the new background is increased 3.0 dB. Lastly, if the new source is 3.3 dB above the existing background then the new background would have increased 5 dB. For example, to meet the requirement of $L90A + 5 \text{ dB} = 31 \text{ dBA}$ if the existing quiet nighttime background sound level is 26 dBA, the maximum wind turbine noise emission contribution independent of the background cannot exceed 29.3 dBA Leq at a dwelling. When adding decibels, a 26-dBA background combined with 29.3 dBA from the turbines (without background) results in 31 dBA. In addition, background L90 sound levels documenting the pre-construction baseline conditions should be

determined when the ten (10) minute maximum wind speed is less than 2 m/s (4.5 mph) near ground level/microphone location 1.5 m height.

C-WEIGHTED SOUND LEVEL (dBC) - Similar in concept to the A-Weighted sound Level (dBA) but C-weighting does not de-emphasize the frequencies below 1k Hz as A-weighting does. It is used for measurements that must include the contribution of low frequencies in a single number representing the entire frequency spectrum. Sound level meters have a C-weighting network for measuring C-weighted sound levels (dBC) meeting the characteristics and weighting specified in ANSI S1.43-1997 Specifications for Integrating Averaging Sound Level Meters for Type 1 instruments. In this document dBC means Lag unless specified otherwise.

DECIBEL (dB) - A dimensionless unit which denotes the ratio between two quantities that are proportional to power, energy or intensity. One of these quantities is a designated reference by which all other quantities of identical units are divided. The sound pressure level (L_p) in decibels is equal to 10 times the logarithm (to the base 10) of the ratio between the pressure squared divided by the reference pressure squared. The reference pressure used in acoustics is 20 MicroPascals.

DECOMMISSIONING- The process of removing the turbine from service.

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.

FREQUENCY - The number of oscillations or cycles per unit of time. Acoustical frequency is usually expressed in units of Hertz (Hz) where one Hz is equal to one cycle per second.

HEIGHT -means the total distance measured from the grade of the property as existed prior to the construction of the wind energy system, facility, tower, turbine, or related facility at the base to its highest point. Height shall include the blade extended in a fully vertical position.

HERTZ (Hz) - Frequency of sound expressed by cycles per second.

INFRA -SOUND -sound with energy in the frequency range of 0-20 Hz is considered to be infrasound. It is normally considered to not be audible for most people unless in relatively high amplitude. However, there is a wide range between the most sensitive and least sensitive people to perception of sound and perception is not limited to stimulus of the auditory senses. The most significant exterior noise induced dwelling vibration occurs in the frequency range between 5 Hz and 50 Hz. Moreover, levels below the threshold of audibility can still cause measurable resonances inside dwelling interiors. Conditions that support or magnify resonance may also exist in human body cavities and organs under certain conditions. See low-frequency noise (LFN) for more information.

Leq - means the equivalent steady-state sound level, which contains the same acoustic energy as the time varying sound level during a one-hour period. It is not necessary that the measurements be taken over a full one-hour time interval, but sufficient measurements must be available to allow a valid extrapolation to a one-hour time interval. [taken verbatim from NYSDEC landfill regulations, 6 NYCRR § 260.1.14(p)] Leq must be reported as an A-weighted or C-weighted

sound level, as appropriate, i.e., LAeq or Lceq . For more information, see “Statistical Noise Levels,” below.

LOW FREQUENCY NOISE (LFN) - refers to sounds with energy in the lower frequency range of 20 to 200 Hz. LFN is deemed to be excessive when the difference between a C-weighted sound level and an A-weighted sound level is greater than 20 decibels at any measurement point outside a residence or other occupied structure.

MEASUREMENT POINT (MP) - means location where sound measurements are taken such that no significant obstruction blocks sound from the site. The Measurement Point should be located so as to not be near large objects such as buildings and in the line-of-sight to the nearest turbines. Proximity to large buildings or other structures should be twice the largest dimension of the structure, if possible. Measurement Points should be at quiet locations remote from street lights, transformers, street traffic, flowing water and other local noise sources.

MEASUREMENT WIND SPEED - For measurements conducted to establish the background noise levels (LA90 10 min , LC90 10 min , etc.) the maximum wind speed, sampled within 5 meters (m) of the microphone and at its height, shall be less than 2 meters per second (m/s) (4.5 mph) for valid background measurements. For valid wind farm noises measurements conducted to establish the post-construction sound level the maximum wind speed, sampled within 5m of the microphone and at its height, shall be less than 4m/s (9 mph). The wind speed at the WTG blade height shall be at or above the nominal rated wind speed and operating in its highest sound output mode. For purposes of enforcement, the wind speed and direction at the WTG blade height shall be selected to reproduce the conditions leading to the enforcement action while also restricting maximum wind speeds at the microphone to less than 4 m/s (9 mph). For purposes of models used to predict the sound levels and sound pressure levels of the WTG to be submitted with the Application, the wind speed shall be the speed that will result in the worst-case LAeq and Lceq sound levels at the nearest non-participating properties to the WTG. If there may be more than one set of nearby sensitive receptors, models for each such condition shall be evaluated and the results shall be included in the Application.

MUNICIPAL OFFICER - means any officer or employee of a municipality, whether paid or unpaid and includes, without limitation, members of any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau, or committee of the municipality. “Municipal Officer” also includes any entity that is directly or indirectly controlled by, or is under common control with, such officer or employee.

NOISE -means any unwanted sound. Not all noise needs to be excessively loud to represent an annoyance or interference.

PROJECT BOUNDARY - means the external property boundaries of parcels owned by or leased by the WTG developers. It is represented on a plot plan view by a continuous line encompassing all WTG(s) and related equipment associated with the WTG project.

PROPERTY LINE - means the recognized and mapped property parcel boundary line.

PROPERTY OWNER - means the owner of a parcel within the project boundary.

QUALIFIED INDEPENDENT ACOUSTICAL CONSULTANT - means a consultant selected and hired by the Town Board meeting the following requirements. Qualifications include, at a minimum, demonstration of competence in the specialty of community noise testing. An example is a person with Full Membership in the Institute of Noise Control

Engineers (INCE). There are scientists and engineers in other professional fields that have been called upon by their local community for help in the development of a WTG Noise Ordinance. Many of these scientists and engineers have recently spent hundreds of hours learning many important aspects of noise related to the introduction of WTG into their communities. Then with field measurement experience with background data and wind turbine noise emission, they have become qualified independent acoustical consultants for WTG siting.

Certifications such as Professional Engineer (P.E.) do not test for competence in acoustical principles and measurement and are thus not, without further qualification, appropriate for work under this document. The Qualified Independent Acoustical Consultant can have no financial or other connection to a WTG developer or related company.

RESIDENCE -means any structure used for human habitation on a regular ongoing basis, which is identified by property code numbers 113 (agricultural cattle, calves, hogs), 114 (sheep and wool), 210 (one family year round), 240 (rural year round residence, 10 or more acres), 270 (mobile home), 271 (multiple mobile homes) and 280 (more than one dwelling on one parcel of land) on the official Assessment Roll of the Assessor of the Town of Alfred. However, if evidence is provided that any such structures are not habitable, the Town may on a case-by-case basis deem such structures not to be residences. Properties with a validly issued building permit for such a structure shall be deemed to be residences for purposes of this local law.

SENSITIVE RECEPTOR - means a place or property intended for human habitation, whether inhabited or not, including but not limited to public parks, state and federal wildlife areas, the manicured areas of recreational establishments designed for public use, including but not limited to golf courses, camp grounds and other nonagricultural state or federal licensed businesses, hunting grounds, whether private or public, schools, daycare centers, elder care facilities, hospitals, places of seated assemblage, non-agricultural businesses and residences. These areas are more likely to be sensitive to the exposure of the noise, shadow or flicker, etc. generated by a WTG or WTGF.

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.

SHADOW FLICKER-occurs when alternating changes in light intensity are caused by the moving blades. This causes shadows on the ground and stationary objects such as the window at a dwelling. Shadow flicker only occurs when the sun is out and the turbine blades are rotating and the blades and sun are in juxtaposition. There is a sensation of moving light which is usually short lived and has been likened to the sensation of driving down a road lined with trees when the sun is out and it seems to move as one drives.

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 into an agreement for said Facility or a setback agreement shall be considered a site.

SMALL WIND TURBINE GENERATOR - (“Small WTG”) - a wind turbine generator 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 the site.

STATISTICAL NOISE LEVELS - Sounds that vary in level over time, such as road traffic noise and most community noise, are commonly described in terms of the statistical exceedance levels LNA , where LNA is the A-weighted sound level exceeded for N% of a given measurement period. For example, L10 is the noise level exceeded for 10% of the time. Of particular relevance, are: LA10 and LC10 the noise level exceed for 10% of the ten (10) minute interval. This is commonly referred to as the average maximum noise level. LA90 and LC90 are the A-weighted and C-weighted sound levels exceeded for 90% of the ten (10) minute sample period. The L90 noise level is defined by ANSI as the long-term background sound level (i.e. the sounds one hears in the absence of the noise source under consideration and without short term or near-by sounds from other sources), or simply the “background level.” Leq is the A-weighted or C-weighted equivalent noise level (the “average” noise level). It is defined as the steady sound level that contains the same amount of acoustical energy as the corresponding time-varying sound.

WIND TURBINE GENERATOR (“WTG”) - a machine that converts the kinetic energy of the wind into electricity available for use beyond that used by the machine.

WIND TURBINE ENERGY FACILITY - any WTG, Small WTG, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

§6. Permits Required; Transfer; Modifications

a. Permit Requirements.

- i. No Wind Energy Facility shall be constructed or operated in the Town of Alfred except in compliance with this Local Law.
- ii. No WTG shall be constructed or operated in the Town of Alfred except with a Wind Energy Facility Permit approved pursuant to this Local Law.
- iii. No Wind Measurement Tower shall be constructed in the Town of Alfred except pursuant to a Wind Energy Facility Permit issued pursuant to this Local Law.
- iv. No Small WTG shall be constructed or operated in the Town of Alfred except pursuant to a Wind Energy Permit issued pursuant to this Local Law.

b. Applicability. This Local Law shall apply to all areas of the Town of Alfred.

c. Agricultural Use Exemption. Approval shall be required under this Chapter for WTG utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one time 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 special use permit in accordance with Article II of this Local Law, but shall not require a height variance. Prior to the construction of a WTG under this exemption, the property owner or a designated agent shall submit a sketch plan and building permit application to the Town to demonstrate compliance with the setback requirements.

d. Transfer. Transfer of any Wind Energy Facility or Wind Energy Permit to an entity other than the applicant to whom the permit was issued shall require approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability of an applicant nor of any other party under this Local Law.

e. Facility Modifications. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town of Alfred Board approval when (i) there will be no increase in Total Height; (ii) no change in the location of the WTG; (iii) no additional lighting or change in facility color; and (iv) no increase in noise produced by the WTG.

§ 7. Applicability

a. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed but which have not yet been issued a permit by the Town of Alfred before 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

i. Any such pre-existing Wind Energy Facility, which does not provide energy for a continuous period of twelve (12) months shall be required to submit a new application before recommencing operations or production of energy from such facility, and must comply with all requirements of this local law.

ii. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.

ARTICLE II. WIND TURBINE GENERATORS (WTG)

§8. Applications for Wind Energy Permits for Wind Turbine Generators

a. Application Contents.

- i. Applicant Information. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
- ii. Property Owner Information and Authorization. Name, address, telephone number of property owner. If the property owner is not the applicant, the application shall include proof of a recorded lease or easement with each participating landowner.
- iii. Adjacent Owners. A list of property owners, with their mailing address, within 500 feet of the boundaries of the project boundaries identifying each as participants or non-participants in the project.
- iv. Parcel Information. Address, or other property identification, of each proposed tower location, including tax map section, block and lot number.
- v. Project Description. A description of the project, including the number and maximum rated capacity of each WTG.
- vi. Site Plans. A set of plans for the site prepared by a Licensed Professional Engineer containing sufficient detail to clearly describe the following:
 - (1) Property lines and physical dimensions of the Site, including the project boundary;
 - (2) Locations of all proposed facilities, including WTG, access roads, electrical lines, , substations, storage or maintenance units, and fencing.
 - (3) Locations of Residences and other permanent structures on the Site and within five hundred (500) feet of the Site boundaries.
 - (4) Locations of parcels adjoining the Site.
 - (5) Locations of public roads on the Site.
 - (6) Locations of all aboveground utility lines on the Site.
 - (7) To demonstrate compliance with the setback requirements of this Article, circles drawn around each location equal to two thousand six hundred forty (2,640) foot radius.

vii. Wind Turbine Information. One drawing or other set of information may be submitted for each WTG of the same type and Total Height. For each type of WTG proposed, the application shall include:

(1) A vertical drawing of the WTG showing Total Height, turbine dimensions, tower and turbine colors, distance between ground and lowest point of any blade, location of climbing pegs, and access doors.

(2) Make, model, picture and manufacturer's specifications, including information on noise levels during WTG operation.

(3) Manufacturer's Material Safety Data Sheet documentation for the type and quality of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.

viii. Landscaping Plan. A plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added.

ix. Lighting Plan. A plan showing any FAA- required lighting and other proposed lighting.

x. Decommissioning Plan. The applicant shall submit a decommissioning plan, subject to the approval of the Town Board, which shall include:

- (i) the anticipated life of the WTG;
- (ii) the estimated decommissioning cost in current dollars;
- (iii) how said estimate was determined;
- (iv) the method of ensuring that funds will be available for decommissioning and restoration considering the effects of inflation;
- (v) the method that the decommissioning cost will be kept current;
- (vi) the manner in which the WTG will be decommissioned and the Site restored.

xi. Complaint Resolution Plan. The application will include a complaint resolution process to address complaints from nearby residents that includes the following:

(1) The owner/operator of the WTG shall respond within five (5) business days after notified of a noise complaint by any property owner within the project boundary and a one-mile radius beyond the project boundary.

(2) Sound tests, including background sound level and operating sound level at the complainant's property boundary, shall be performed by a qualified independent acoustical consultant acceptable to the complainant and the local agency charged with enforcement of this local law.

(3) Testing shall commence within ten (10) working days of the complaint. If testing cannot be initiated within ten (10) days, it shall be initiated within a

reasonable time under the circumstances.

(4) A copy of the test results shall be sent to the property owner, and the Town Board of Alfred within thirty (30) days of test completion.

(5) If a Complaint is made, the presumption shall be that it is reasonable. The Town of Alfred Code Enforcement Officer shall undertake an investigation of the alleged operational violation by a qualified individual acceptable to the Town Board.

xii. Construction Information. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:

(1) A construction schedule describing commencement and completion dates; and

(2) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of the loaded vehicles.

(3) A description of how roads will be maintained if damaged during the construction process. The repairs will be completed within two (2) weeks of damage, to the satisfaction of the Highway Supervisor.

xiii. EAF. Completed Part 1 of the Full EAF as required by SEQRA.

xiv. Signed Statement. A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

xv. All return receipts required pursuant to Section 14 of this Wind Energy Facilities Local Law.

xvi. A baseline road quality study that complies with the requirements of Section 12(b) of this local law.

b. Positive Declaration. If the applicant agrees in writing in the application that the proposed WTG may have a significant adverse impact on the environment, the Town Board may issue a positive declaration of environmental significance.

c. Environmental Studies. 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 to the Town Board for its use in reviewing the application:

i. Visual Impact Assessment. A visual impact assessment (VIA) of the proposed WTG as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. The VIA shall include: (i) color photographs of the proposed Site from at least two locations accurately depicting the existing and proposed conditions, and (ii) a map showing locations where proposed WTG could be visible.

ii. Shadow Flicker Study. A study on potential shadows from the WTG. The study shall identify locations where shadows could be caused by the WTG and the expected durations of the shadows at these locations. Measures to decrease Shadow Flicker will also be described.

iii. Communications Impacts. An assessment of potential interference of the proposed WTG with microwave, radio, television, personal communication systems and other wireless communication.

iv. Fire Protection Plan. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Site.

v. Noise Study. The application will include a study of potential noise impacts that includes the following:

(1) Preconstruction Background Noise Survey. The Town reserves the right to require the preparation of a preconstruction noise survey for each proposed WTG location conducted per procedures provided in the section on Measurement Procedures in George Kamperman and Richard R. James, Simple guidelines for siting wind turbines to prevent health risks, The Institute of Noise Control Engineering of the USA, 117 Proceedings of NOISE-CON 2008, Dearborn, Michigan, to determine long term background LA90 and LC90 sound levels. These Measurement Procedures are readily available.

A Pre-construction Background Noise Survey that complies with these procedures must be completed and accepted prior to approval of the final layout and issuance of project permits.

a. If any proposed wind farm project locates a WTG within two miles of a sensitive receptor the survey as provided in the previous paragraph is mandatory. The survey shall be conducted by a Qualified Independent Acoustical Consultant.

b. The applicant shall be responsible for paying the reasonable fees of the Qualified Independent Acoustical Consultant and costs associated with conducting the survey. These fees and cost shall be negotiated with the consultant and determined prior to any work being done on the survey. The applicant shall be required to set aside 100% of these fees in an escrow account managed by the Town Board before the survey is commenced by the consultant. Payment for this survey does not require the WTG developer's acceptance of the survey's results.

c. The applicant shall calculate, model or otherwise estimate LAeq and LCEq sound levels using the criteria in §13. Sound Levels and WTG Setbacks in accordance with ANSI standards. If the estimate shows that the predicted LAeq and LCEq sound levels exceed any of the criteria specified in Section 13 of

this Wind Energy Facilities Local Law then the application cannot be approved.

d. Standardized acoustical instrumentation and sound measurement protocol shall meet all the requirements of the following ANSI Standards:

1. ANSI S1.43 Integrating Averaging Sound Level Meters: Type-1 (or IEC 61672-1)

2. ANSI S1.11 Specification for Octave and One-third Octave-Band Filters (or IEC 61260)

3. ANSI S1.40 Verification Procedures for Sound Calibrators

4. ANSI S1.9 Part 3 Procedures for Measurement of Environmental Sound

5. ANSI S12.18 Measurement of Outdoor Sound Pressure Level

6. IEC 61400-11 Wind turbine generator systems -Part 11: Acoustic noise measurements

(2) The Town Board of Alfred will refer the application to a qualified independent acoustical consultant for further review and comparison of the long-term background sound levels against the predicted LAeq and LCEq sound levels reported for the model using the criteria in §13. Sound Levels and WTG Setbacks. The reasonably necessary costs associated with such a review shall be the responsibility of the applicant, in accordance with the terms of this Wind Energy Facilities Local Law.

(3) Post Construction Noise Measurement Requirements.

a. Sound Regulations Compliance: A WTG shall be considered in violation of this Wind Energy Facilities Local Law or its permit unless the applicant demonstrates that the project complies with all sound level limits using the procedures specified in this local law. Sound levels in excess of the limits established in this local law shall be grounds for the Town Board to order immediate shut down of all noncompliant WTG units.

b. Post-Construction Sound Measurements: Within twelve months of the date when the project is fully operational, and within four weeks of the anniversary date of the pre-construction background noise measurements, the applicant must repeat the existing sound environment measurements taken before the project approval. Post-construction sound level measurements shall be taken both with all WTGs running and with all WTGs off. At the discretion of the Town, the preconstruction background sound levels (L90A and L90C) can be substituted for the “all WTGs off” tests if a random sampling of 10% of the pre-construction study sites

shows that background L90A and L90C conditions have increased less than 3 dB from those measured under the pre-construction nighttime conditions. The post-construction measurements will be reported to the Town Board (available for public review) using the same format as used for the preconstruction sound studies. Post-construction noise studies shall be conducted by a firm chosen and hired by the Town Board. Costs of these studies are to be reimbursed by the WTG applicant in a similar manner to that described above. The WTG applicant may ask to have its own consultant observe the publicly retained consultant at the convenience of the latter. The WTG applicant shall provide all technical information and wind farm data required by the qualified independent acoustical consultant before, during, and/or after any acoustical studies required by this document and for acoustical measurements.

d. Disclosure of Financial Interests. For any financial interest held by a Municipal Officer or his or her relative in any wind development company or its assets within ten years prior to the date of an application for a permit under this local law, the Wind Company shall disclose in a separate section of the application the Municipal Officer or his or her relative, the addresses of all persons included in the disclosure, and the nature and scope of the financial interest of each such person. The disclosure shall include all such instances of financial interest of which the Wind Company has knowledge, or through the exercise of reasonable diligence should know, and the format of the submission shall be subject to the approval of the town board.

e. Permit Fee and Other Fees and Costs. The permit fees required under Section 26 of this local law and a proposed Escrow Agreement required under Subsection 9(b) shall be submitted with the application required under this Section. The applicant is also responsible for all consulting and other fees and expenses that the Town incurs in processing the application.

§ 9. Application Review Process

a. Pre-Application Meeting. Applicants may request a pre-application meeting with the Town Board or with any consultants retained by the Town of Alfred Board for application review. Meeting with the Town Board shall be conducted in accordance with the Open Meetings Law.

b. Escrow Agreement. The Town of Alfred shall require the applicant to fund an escrow agreement to cover the amount by which the Town's cost to review the applicant's applications exceed the application fees paid by the applicant.

c. Application Submittal. Six copies of the application shall be submitted to the Town of Alfred Clerk.

d. Application Completeness Review. Town of Alfred designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information and financial agreements required under this Article is included in the application.

i. Unless the Town of Alfred Board waives any application requirement, no application shall be

considered, until deemed complete.

ii. If the application is deemed incomplete, the Town of Alfred 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 WTG proposed is increased.

e. Board Receipt of Applications. Upon submission of a complete application, including the grant of any application waiver by the Town of Alfred Board, the Town Clerk shall transmit the application to the Town Board.

f. Public Hearing. The Town Board shall hold at least one public hearing on the application.

i. The applicant shall provide notice of the public hearing by first class mail to property owners within 1/2 mile of the boundaries of the base of the WTG, and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.

ii. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers.

g. County Planning Board Notice. Notice of the project shall also be given, when applicable, to the Allegany County Planning Board, if required by General Municipal law §§2394 and 239-m.

h. SEQRA Review. WTG applications shall be 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 agencies shall be part of the record of the Town's proceedings.

i. SEQRA Findings. 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.

j. Application Decision. 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 application, in accordance with the standards in this Article.

§ 10. Standards for Wind Energy Facilities

The following standards shall apply to all Wind Energy Facilities, unless specifically waived by the Town Board as part of a Wind Energy Permit.

- a. Transmission Lines. All distribution/power transmission lines from the tower to any building or other structure shall be located underground in accordance with National Electric Code Standards.
- b. WTG Height. The maximum Total Height of any WTG shall be Four hundred fifty (450) feet.
- c. Antennae Co-Location. No television, radio or other communications antennas may be affixed or otherwise made part of any WTG, except pursuant to the Town Code. Applications may be jointly submitted for WTG and telecommunications facilities.
- d. Advertising. No commercial advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- e. WTG Lighting. No WTG shall have external lighting except to comply with government agency requirements. All such required lighting should restrict glare visible from ground level to the maximum extent possible be lit except to comply with FAA requirements.
- f. Visual Impact Mitigation. Applicants shall use measures to reduce the visual impact of WTG to the extent possible.
- i. WTG shall use tubular towers.
 - ii. WTG shall be finished in a single, non-reflective matte finished color.
 - iii. WTG within a multiple WTG project shall be constructed using WTG whose appearance, with respect to one another, is similar within and throughout the project, to provide reasonable uniformity in overall size, geometry, and rotational speeds.
- g. Guy Wires. The use of guy wires for WTG is disfavored. A WTG using guy wires for tower support shall incorporate appropriate measures to protect the guy wires from damage which could cause tower failure.
- h. Microwave Links. No WTG shall be installed in any location along the major axis of an existing FCC-licensed microwave communications link where its operation is likely to interfere in the link's operation. If it is determined that a WTG is interfering with a microwave path, the WTG operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy interference with existing microwave links is grounds for revocation of the Wind Energy Permit for the specific WTG causing the interference.
- i. Waste Removal. Solid waste, hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.
- j. Clearing. Wind Energy Facilities shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.

k. Wildlife. WTG shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.

l. Wetlands. Wind Energy Facilities shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations as described on page 17, b3.

m. Storm-water. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations.

n. Construction Times. Construction of the Wind Energy Facilities shall be limited to the hours of 7 a.m. to 6 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town.

o. Water Supply. Construction of Wind Energy Facilities shall be managed in a manner that minimizes the impact upon private and public, if any, water supplies.

p. Environmental Restoration. An Environmental Restoration Plan should be prepared that describes re-grading and stabilization of temporary impacts to wetlands and streams, restoration of disturbed habitat, including re-planting suitable species in wetlands, adjacent areas and streams, wetland mitigation project construction, stabilization of disturbed areas subject to the SPDES Stormwater General Permit, removal and proper disposal of temporary road materials and regrading soil in agricultural and forested areas in accordance with NYS Department of Agriculture and Markets guidelines or other Best Management Practices.

§ 11. Required Safety Measures

a. Controls. Each WTG shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.

b. Minimum Blade Height. The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet according to NYSERTA regulations.

c. Signs. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. The Town Board may require additional signs based on safety needs.

d. Climbing Pegs. No climbing pegs or tower ladders shall be located closer than fifteen (15) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.

e. Access Control. WTG shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

f. Setbacks, Ice and Blade Throw from Property Line. The minimum setback distance between each production industrial WTG from adjacent property lines, rights-of-way, easements, public

ways, power lines, other generation units or areas 100 feet plus the maximum structure height. Structure height includes the blades.

The property line setback requirement may be reduced by the Town Board as an incident of special permit review when the Board finds the following: (1) both parties on each side of the property line in question will have electric generation or transmission facilities constructed on them as part of the project review or (2) the owner of the property for which the reduced setback is sought executes and presents for recording a development easement satisfactory to the Town in which the reduced setback is consented to and construction within, and use of the easement area is appropriately restricted.

g. Setbacks , Ice and Blade Throw from Dwellings. The minimum setback distance between each WTG from adjacent dwellings, areas or structures customarily used by the public shall be 1500 feet. Structure height includes the blades. The dwelling setback requirement may be reduced by the Town Board as an incident of special permit review when the Board finds the following: (1) both properties on each side of the property line in question will have electric generation or transmission facilities constructed on them as part of the project review or (2) the owner of the property for which the reduced setbacks sought executes and presents for recording a development easement satisfactory to the Town in which the reduced setback is requested and use of the easement area is appropriately restricted.

§ 12. Roads and Traffic

a. Traffic Routes. Construction and delivery vehicles for WTG and Wind Energy Facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (i) minimizing traffic impacts from construction and delivery vehicles; (ii) minimizing WTG related traffic during times of school bus activity; (iii) minimizing wear and tear on local roads; and (iv) minimizing impacts on local business operations. Wind Energy Permit conditions may limit WTG-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.

b. Road Maintenance. The applicant shall be responsible for maintaining roads during the process of construction. Damage must be repaired within two (2) weeks to the satisfaction of the Town Highway Supervisor.

c. Road Remediation. The applicant shall be responsible for remediation of damaged roads upon completion of the installation of WTG. 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 that is not corrected by the applicant. An applicant shall submit an estimate of costs for restoration to the pre-construction quality and character of local roads for the Town's approval prior to construction, and this estimate shall be the basis for the bond.

§ 13. Sound Levels and WTG Setbacks

a. Sound Levels. The statistical LAeq sound level generated by a WTG shall not exceed 6 dBA above the A-weighted background sound levels measured at the nearest non-participating property boundary, and the statistical LCeq sound level generated by a WTG shall not exceed 5 dBC above the C-weighted background sound levels measured at the nearest sensitive receptor located off the Site, measured from the property boundary of the receptor.

b. Setbacks. Each WTG shall be located with the following minimum setbacks, as measured from the center of the WTG:

- i. 2,640 feet from off-Site Residences, measured from the exterior of such Residence.
- ii. At least 1,000 feet from the nearest Nonparticipating property owner's property line.
- iii. At least 1500 feet from state-identified wetlands, except where permits for other setbacks have been received from the New York State Department of Environmental Conservation, or from the federal Environmental Protection Agency.
- iv. At least 500 feet from right away of public roads.

§ 14. Noise and Setback Easements

a. In the event a Wind Energy Facility does not meet a setback requirement or exceeds noise or other criteria established in this Local law as it existed at the time the Wind Energy Permit is granted, a waiver will be granted from such requirement by the town board in the following circumstances:

- i. A notice, mailed by U.S.P.S. certified mail, return receipt, has been obtained by the applicant, stating the owner of the noncompliant property is aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (i) allow noise levels to exceed the maximum limits otherwise allowed or (ii) setbacks less than required; and
- ii. A notice advising all subsequent owners as to the consent required in the previous subparagraph, in the form required for an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties. Such notices or easements shall be permanent and shall state that they may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WTG in accordance with this Article, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WTG.
- iii. The Applicant has included all notices, easements and receipts required by this section in its application materials.

§15. Issuance of Wind Energy Permits

a. Upon completion of the review process, and subsequent to the execution of a PILOT

Agreement, the Town Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.

b. If approved, the Town Board will direct the Town Clerk to issue a Wind Energy Permit upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this Local Law.

c. The decision of the Town Board shall be filed within five (5) days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

d. A Wind Energy Permit issued under this Article shall require an annual permit fee payable to the Town for the costs of administering the local law and impacts related to the presence of a permitted project in the Town, in the amount of \$8,000.00 per megawatt of rated capacity of all WTGs.

§16. Limitations on Approvals: Easements on Town Property

a. Wind Flow. 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. Easements on Town Property. 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.

§ 17. Permit Revocation; Abatement

a. Operation. A WTG 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.

b. Violations of Permit Conditions. A WTG is non-compliant and must be shut down immediately if it exceeds any of the limits in Section 13 of this Wind Energy Facilities Local Law. Should a WTG 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, and the Town Board may grant extensions of the 90-day cure period.

A WTG that has not cured a deficiency within the time allotted must be decommissioned within 90 days following the cure period, including any extensions.

c. Public Hearing and Remedial Action. Notwithstanding any other abatement provision under this Local Law, if the WTG is not brought into permit compliance after said notice, the Town Board 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, (i) order either remedial action within a particular time frame, or (ii) order revocation of the Wind Energy Permit for the WTG and require the removal of the WTG within 90 days. If the WTG is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Fund to remove the WTG.

d. Inoperative WTG. If any WTG remains non-functional or inoperative for the continuous period of one (1) year, the applicant agrees that, without any further action by the Town Board, the applicant shall remove said WTG.

i. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WTG to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.

ii. WTG 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. Upon request of the Town Board, the applicant shall make available (subject to a non-disclosure agreement) to the Town Board, all reports to and from the purchaser of energy from individual WTG necessary to prove the WTG is functioning, which reports may be redacted as necessary to protect proprietary information.

e. WTG Removal and Remediation. WTG removal shall include removal of all aboveground equipment, excavation and removal of foundations to a depth of four (4.0) feet below grade, removal and disposal of all fencing and signs from the site, restoration of soil conditions, and restoration of vegetation to be consistent and compatible with surrounding vegetation.

f. Decommissioning Fund. The Permittee, or successors, shall continuously maintain a financial assurance mechanism for the costs of decommissioning and removal of all WTGs on site and the remediation of all disturbed areas of land sufficient to assure no discharge of sediments or other pollutants following decommissioning (decommissioning, removal and remediation) in a form approved by the Town, for the period of the life of the facility. The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed. The Permittee shall submit to the Town Board a detailed written estimate, in current dollars, of the cost of hiring a third party to decommission, remove and remediate the Site, due each year by the last of day of January. During the active life of the facility, the Permittee must annually adjust the cost estimate for inflation. All decommissioning, removal and remediation fund requirements shall be fully funded before a building permit is issued.

ARTICLE III. WIND MEASUREMENT TOWERS

§ 18. Wind Site Assessment

The Town Board acknowledges that prior to construction of a WTG, 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 meteorological (“Met”) towers, shall be permitted on the issuance of a Wind Energy Permit in accordance with this Article.

§ 19. Applications for Wind Measurement Towers

- a. Applications. An application for a Wind Measurement Tower shall include the following:
 - i. Applicant Information. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
 - ii. Property Owner Information and Authorization. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
 - iii. Site Information. Address of each proposed tower location, including tax map section, block and lot number.
 - iv. Map. A map showing proposed location of the Wind Measurement Tower and any roads, parcel boundaries or structures within one times the height of the wind measurement tower.

§20. Standards for Wind Measurement Towers

- a. Setback. The distance between a Wind Measurement Tower and the property line shall be at least one times the height of the wind measurement tower. Sites for a Wind Measurement Tower 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. Permit Duration. 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.

ARTICLE IV. SMALL WTG

§21. Purpose and intent

The purpose of this Article is to provide standards for small WTG 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.

§22. Applications

a. Applications for Small WTG Wind Energy permits shall include:

- i. Applicant Information. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
- ii. Property Owner Information and Authorization. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
- iii. Site Information. Address of each proposed tower location, including tax map section, book and lot number.
- iv. Height Information. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
- v. Electrical Drawing. A line drawing of the electrical components of the system is sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.
- vi. Electric Use. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
- vii. Utility Notice. 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.
- viii. Visual Analysis. A visual analysis of the Small WTG 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.

§23. Development Standards

All Small WTGs shall comply with the following standards. 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. Lot Size. 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. Number. 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. Use. Small Wind energy systems shall be used primarily to reduce the on-site consumption of electricity.
- d. Height. Tower heights may be allowed as follows:
 - i. 65 feet or less on parcels between one and five acres.
 - ii. 80 feet or less on parcels of five or more acres.
 - iii. 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. Output. The maximum turbine power output is limited to 100 kW.
- f. Color. 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. Visual Impact. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
- h. Lighting. 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. Electric Lines. 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. Electromagnetic Interference. 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. At least one sign shall be posted on the tower at a reasonable height warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.

l. Access Control. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:

- i. Tower-climbing apparatus located no closer than 12 feet from the ground.
- ii. A locked anti-climb device installed on the tower.
- iii. A locked, protective fence at least six feet in height that encloses the tower.

m. Anchors. 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. Code Compliance. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.

p. Controls. 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.

§24. Standards

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

a. Setbacks. A Small WTG shall not be located closer to a property line than 1.3 times the Total Height of the Small WTG.

§25. Abatement

a. Operation. All small WTG shall be maintained in good condition and in accordance with all requirements of this section.

b. Removal. Small WTG which is not used for a continuous period of one (1) year shall be deemed abandoned and shall be dismantled 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.

ARTICLE V. MISCELLANEOUS

§26. Fees

Permit fees, host community payments, and escrow payments are in addition to application fees.

a. Wind Energy Permits. Non-refundable application fees shall be as follows:

i. WTG Wind Energy Permit: \$250 per megawatt of rated maximum capacity

ii. Wind Measurement. Towers Wind Energy Permit: \$200 per tower

iii. Small WTG Wind Energy Permit: \$150 per WTG

iv. Wind Measurement Tower Wind Energy Permit renewals: \$50 per tower.

b. Building Permits. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be \$250 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. 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.

c. Host Community Agreements. 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.

d. Escrow Agreement. The agreement required under Subsection 9(b) of this Article must be executed and funded before any application is deemed complete.

§27. Enforcement; Penalties and Remedies for Violations

a. Staff. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law at the expense of the applicant.

b. Penalties. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of a violation and subject to a fine of not more than \$350 per day per violation. Every such person shall be deemed guilty of a separate offense for each day such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$350 for each violation and each day said violation continues shall be deemed a separate violation.

c. Other Remedies. In case of any violation or threatened violation of any of the provisions of

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

§28. Tax Exemption

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

§29. Severability

Should any section 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 that specific part so decided to be unconstitutional or invalid.

§ 30. Effective Date

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

