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Town of Dix

Local Law No. 1 of the year 2015

**A local law AMENDING LOCAL LAW NO. 2 OF THE YEAR 2006, THE ZONING LAW OF TOWN OF DIX, TO ENACT THE WIND ENERGY CONVERSION SYSTEMS LAW OF THE TOWN OF DIX.**

Be it enacted by the Town Board of the

Town of Dix as follows:

Section 1. Authority.

This Local Law is adopted pursuant to

1. Article IX of the New York State Constitution, Sections 1(a), 2(c)(6) and (10);
2. New York Statute of Local Governments, Sections 10 (1) and 10 (7);
3. New York Municipal Home Rule Law, Article 2, Sections 10 (1)(i) and (ii), 10 (1)(a)(6), (11), (12) and (14) and 10 (2)(d)(3);
4. New York State Town Law, Article 16, Section 271. Section 130, Sections 64 (17-a) and (23); and
5. New York Real Property Tax Law, Section 487.

Section 2. Purpose.

By the adoption of this Local Law it is the intent of the Town Board of the Town of Dix:

1. To promote the efficient use of the Town's wind resources;
2. Regulate the development, size, placement and operation of wind energy conversion facilities in consideration of the character and peculiar suitability for the particular land uses of the Town of Dix;
3. To regulate the construction of wind energy conversion facilities within the Town;
4. To protect and preserve the health, safety and well-being of persons, property and environmental resources in the Town of Dix.

Section 3. Findings.

The Town Board of the Town of Dix finds and declares that:

1. Wind energy is an abundant, renewable, and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy

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(1)

- sources.
2. The generation of electricity from properly sited wind turbines can be cost effective, and can be used to reduce or offset on-site consumption.
  3. The Town of Dix wishes to encourage the residential, commercial, industrial and institutional use of alternative energy-generating facilities for the purposes of reducing on-site consumption of utility power provided a project can be defined that is in general harmony with, and promotes, the general purposes and intent of related town laws, and ordinances regulating land use.
  4. Careful regulation and monitoring of the siting, installation, height, distance from populated areas, operation, maintenance, repair and removal of wind power facilities in the Town of Dix is necessary.
  5. The Town of Dix finds that the visual impact, including lighting, of wind energy conversion facilities is significant. Particularly for Utility-Scale (Non-Private) facilities of multiple, large turbines.
  6. If not properly regulated, installation of wind energy conversion facilities can create drainage problems through erosion and lack of sediment control for facility sites and access roads, and harm farmlands through improper construction methods.
  7. Wind energy conversion facilities may present a risk to bird and bat populations if not properly sited.
  8. Construction of wind energy conversion facilities can create traffic problems and damage local roads.
  9. Regulation of the siting and installation of wind energy conversion facilities is necessary for the purpose 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, the following:
    - a. Wind energy conversion facilities represent significant potential aesthetic impacts because of their size, height, lighting, and shadow flicker effects.
    - b. If not properly sited, wind energy conversion facilities may present risks to the property values of adjoining property owners.
    - c. Wind energy conversion facilities are sources of noise, which, if unregulated, can negatively impact adjoining properties.
    - d. Wind energy conversion facilities can cause interference issues with various types of communications.
  10. Appropriate road use agreements and financial assurances need to be a part of any plan for the construction and operation of any such facility, because construction of wind energy facilities can be disruptive to traffic and destructive to roads.
  11. Adequate financial and other assurances are necessary as a condition to permitting, because decommissioning of wind energy facilities is complicated and expensive.
  12. Since the State of New York has enacted Article X of the Public Service Law that could permit the construction of industrial scale wind energy facilities in the Town, it is necessary to establish reasonable substantive development standards as guidance and benchmarks to be given effect in the State review process.

#### Section 4. Amendment to Town of Dix Zoning Law:

Local Law No. 2 of the Year 2006, The Zoning Law of the Town of Dix, shall be amended by adding and inserting into said law as new Article XVI as follows:

**XVI-1**        Applicability. The requirements of this Law shall apply to all Wind Energy Conversion Systems proposed, operated, modified, or constructed after the effective date of this Law.

**XVI-2**        Definitions. As used in this Law, the following terms shall have the meanings indicated:

**ACCESSORY USE** - A use customarily incidental and subordinate to the principal use or building, located on the same lot or premises as the principal use or building.

**AMBIENT NOISE LEVEL** - The noise level which is exceeded 90 percent of the time (expressed as L90) or 54 minutes of every hour.

**APPLICANT** - the entity or individual seeking a Special Use Permit pursuant to this Article and any affiliate, developer, builder or operator who may subsequently develop, build or operate a project covered by the provisions of this Article including their successors and assigns.

**AREA OF MASS GATHERING** - facilities established and maintained to host gatherings of 100 or more people to view or participate in demonstrations or displays of artistic, cultural, sporting, culinary, or other events, as well as areas having characteristics that would make them particularly appropriate for these gatherings.

**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.

**EIS** – Environmental Impact Statement used in the implementation of the SEQRA as the term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

**FAA** – Federal Aviation Administration

**FCC** – Federal Communications Commission

**DOD** – United States of America, Department of Defense

**HEIGHT or TOTAL HEIGHT**- 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.

**NON-RESIDENTIAL WECS** - Private WECS whose power output serves an agricultural, commercial, industrial, institutional use or building. For the purposes of this law, any Private WECS not meeting the requirements of a Residential WECS shall be considered a Non-Residential WECS even if located within a residential zoning district.

**NON-PARTICIPATING PROPERTY OWNER** - a Property Owner who has no contractual agreement with the Applicant.

**PARTICIPATING PROPERTY OWNER** – a Property Owner, all or any portion of whose land or any interest therein is leased, optioned or otherwise encumbered by a contractual agreement with the Applicant or any affiliate of Applicant. The fact that an otherwise non-participating property owner consents to a waiver of setback requirements, even if for no considerations, shall make that property owner a participating property owner.

**PRIVATE WIND ENERGY CONVERSION SYSTEM (“Private WECS”)** - A wind energy conversion system (WECS) consisting of one or more wind turbines with associated towers, buildings, equipment, and control or conversion electronics, meeting the requirements of this law whose power output is primarily intended to be used on-site by the property owner or tenant to reduce or offset on-site consumption of utility power. Private WECS include Residential and Non-Residential WECS.

**RESIDENCE** - Any dwelling suitable for habitation existing in the Town on the date that a specific application is deemed complete, including seasonal homes, but not including hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools, correctional institutions or other buildings used for educational purposes. A residence may be part of a multi-dwelling building.

**RESIDENTIAL WECS** - Private WECS whose power output serves a residence as defined herein.

**ROOF-MOUNTED WIND TURBINE** - A relatively small Private WECS, whether Residential or Non-Residential, mounted on a building's roof.

**SEQRA** - the New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

**SITE** - The parcel(s) of land where the Wind Energy Conversion Facility is to be placed. The Site may be publically or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where there are multiple applicants, their joint lots shall be treated as one lot for purposes of applying the requirements of this law. Any property which has a Wind Energy Conversion Facility or has entered an agreement for said Facility or a setback agreement shall be considered part of the site.

**UTILITY SCALE WIND ENERGY CONVERSION SYSTEM (“Utility Scale WECS”)** - Wind energy conversion systems consisting of wind turbines, towers, and all related infrastructure including electrical lines and substations, access roads, and accessory structures which generates original power on-site to be transferred to a transmission system for distribution to customers. The definition of Utility Scale WECS shall not include wind power-generating facilities whose power output is primarily intended to be used on-site by the property owner or tenant to reduce or offset on-Site consumption of utility power. Any Wind Energy Conversion System not meeting the definition of a Private Wind Energy Conversion System shall, for the purposes of this Article, be considered a Utility Scale Wind Energy Conversion System.

**WECS OPERATIONAL SOUND PRESSURE LEVEL** - means the level which is equaled or exceeded a stated percentage of time. An L10 – “X” dBA indicates that in any hour of the day “X” dBA can be equaled or exceeded only 10% of the time, or for six minutes. The measurement of the sound pressure level shall be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures. Unless otherwise described herein, WECS operational sound pressure level restrictions shall mean the cumulative existing ambient sound pressure level (as defined herein) plus the sound generated by the WECS.

WIND ENERGY CONVERSION FACILITY ("WECF") - Any Wind Energy Conversion System, Wind Measurement Tower, electric substation, associated equipment, infrastructure, and structures.

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

WIND MEASUREMENT TOWER ("Met Tower" or WMT) - A tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.

### **XVI-3**        Permits Required.

- A. No Utility Scale Wind Energy Conversion Facility or Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Dix except pursuant to a Special Use Permit approved pursuant to this law, site plan review and approval, and issuance of a building permit.
- B. No Private Wind Energy Conversion Facility shall be constructed, reconstructed, modified, or operated in the Town of Dix except pursuant to a site plan review and approval, and issuance of a building permit.
- C. Special Use Permits for Utility Scale Wind Energy Conversion Facilities and Wind Measurement Towers shall be approved by the Town Planning Board and issued by the Town Code Enforcement Officer.
- D. No Special Use Permit for a Wind Energy Conversion Facility or MET Tower shall be issued unless and until the Site Plan has been reviewed and approved by the Planning Board pursuant to this law.
- E. Special Use permits for Wind Measurement Towers ("MET") may be issued for a period of up to five years. Special Use Permits for WECF may be issued for a period of up to 20 years. Permanent MET's associated with the project shall be permitted as a project component for up to 20 years. Permits may be renewed with the approval of the Town Planning Board if the Facility is in compliance with the conditions of the Special Use Permit.
- F. No Special Use Permit shall be issued allowing construction, reconstruction, modification or operation of a WECS, until all other permits as may be required (e.g., FAA, DEC, etc.) have been issued and evidence of same provided.
- G. The DOD has also established an early consultation process through the DOD Siting Clearinghouse that can alert project developers to concerns regarding radar interference prior to filing for official feedback through the FAA process. Other federal agencies with radar assets, such as the Department of Defense (DOD), the Department of Homeland Security (DHS), and the National Oceanic and Atmospheric Administration (NOAA), are notified of proposed projects through the FAA process and have the opportunity to raise objections with the FAA on which a presumed hazard determination may be based. No Special Use Permit shall be issued allowing, construction, reconstruction or operation of a WECS until evidence of a determination of no radar interference is provided from all potentially effected agencies.
- H. It is hereby determined that as a specific condition to the approval and issuance of any Special Use Permit or Building Permit for any Wind Energy Conversion Facility, or component thereof, the owner, developer, operator, or other entity in the position of authority over such facility and project shall produce and submit to the Code Enforcement Officer a full and complete set of "AS BUILT" engineering drawings of the facility, its components, and of the entire project for verification of compliance with the SUP requirements. Such "AS BUILT" engineering drawings shall be submitted no later than 120 days after start-up of the Facility. For every day such drawings are submitted later than 120 days after start-up, the owner, developer, operator, or other

entity in the position of authority over such facility and project shall be liable for and shall pay to the Town the sum of \$120.00 for each day the submission exceeds the 120 day grace period.

- I. A different existing use or an existing structure on the same site shall not preclude the installation of a WECS, WMT or a part of such facility on a site. WECS and WMT constructed and installed in accordance with this Article shall not be deemed expansions of a nonconforming use or structure.
- J. The Town Planning Board acknowledges that prior to construction of a WECF, a Wind Measurement Tower is commonly erected to measure the wind speeds and this data is used to determine the feasibility of using a particular site to generate power. Installation of WMT shall be permitted as a Special Use pursuant to the requirements of this law.
- K. No additions or modifications to the WECF or WMT, of any nature, shall be permitted without application to and approval of amendments to the applicable Special Use Permit and/or Site Plan by the Planning Board. In order to gain such approval, the applicant shall be required to show or provide the following:
  - 1. That the proposed addition or modification is necessary and appropriate for the full implementation and usage of the WECS or WMT.
  - 2. That the WECS or WMT can structurally accommodate the additions or modifications. Plans shall be provided which are stamped and certified by a Professional Engineer licensed in the State of New York.
  - 3. That any proposed additions or modifications will not interfere with existing or proposed radar, telecommunication, radio, television, or microwave signals. The Applicant shall coordinate with the FCC and FAA for review of proposed installations.
  - 4. That the visual effects of any additional equipment will not unduly or unreasonably interfere with or restrict the visual aesthetics of the surrounding neighborhood.
  - 5. That the health, safety or general welfare of the public will not be otherwise impaired.
  - 6. Additional information as may be requested by the Planning Board for review of the application.
- L. Transfer - No sale or other transfer (a "Transfer") of any WECS or any Special Use Permit issued in connection therewith may occur without the prior approval of the Town Board, which approval shall be granted upon (i) receipt of proof, acceptable to the Town Board, both financial and otherwise, of the ability of the transferee or successor to meet all requirements of this Article and (ii) written assumption by the transferee or successor of all of the obligations of the transferor under this article, provided however, collateral assignments for the purpose of project financing shall not require Town Board approval so long as such collateral assignment documentation contains the assumption by the assignee financing agency of all of the obligations of the assignor under this article in the any assignment is enforced, including without limitation the right of the Town to act on the Decommissioning surety and to collect salvage value of the turbines if enacted. No such Transfer shall relieve the transferor of any liability for the performance of all requirements and obligations set forth in this article. The sale or transfer of more than 30% of the interest of any entity owning such facility or permit shall constitute a Transfer. Notwithstanding anything set forth to the contrary above, the Town Board shall not be required to approve any Transfer if the transferor shall be in default of any of its obligations under this article at the time of such Transfer. Any Transfer without the approval of the Town Board shall be null and void and constitute grounds for immediate revocation of the applicable permit.
- M. Should any WECF be proposed for siting pursuant to Public Service Law Article X and the regulations promulgated thereunder, no Town road may be crossed, cleared, widened or used in connection with such WECF unless and until a road use agreement providing adequate assurances, including a payment and performance bond, to the Town that any such roads will be

maintained, repaired and replaced, as necessary and the Town Highway Superintendent has reviewed and approved any proposed route(s).

- N. Prior to the issuance of a special use permit, the Town Planning Board must be satisfied that the Town Board has, within the confines of the law, negotiated and put in place a Payment In Lieu of Taxes and/or a Host Community Agreement with any applicant. Refer to Section XVI-11, Tax Exemption.

#### **XVI-4**            General Standards.

- A. The minimum distance between the ground and any part of the WECS rotor or blade system shall be a minimum of 30 feet.
- B. No climbing pegs or tower ladders shall be located closer than twenty (20) feet above the ground.
- C. Television, radio, or other communications antennas may be affixed to or made part of any WECF only when approved as a condition of the Special Use Permit or Site Plan by the Town Planning Board.
  - 1. Antennas added after construction of the WECF shall require an approved amendment by the Planning Board to the Special Use Permit or Site Plan Approval.
  - 2. Antennas shall be removed within 90 days of termination of any operating agreement.
- D. No advertising signs are allowed on any part of the WECF or WMT, including fencing and support structures.
- E. No WECS or WMT shall have external lighting unless required by the Federal Aviation Administration ("FAA"). All such required lighting must restrict glare visible from the ground to the maximum possible extent and shall not be lit other than to comply with FAA requirements.
- F. The visual impact of any WECF or WMT must be reduced to the maximum extent practical.
- G. The WECF or WMT shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, and trails). To the greatest extent practical a WECF or Met Tower shall:
  - 1. Minimize projection above the top of ridgelines.
  - 2. If visible from public viewing areas, shall use natural landforms and existing vegetation for screening.
  - 3. Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.
- H. When reviewing site placement of a proposed WECF or WMT, the following as well as all pertinent issues shall be considered:
  - 1. Sitting in such a way as to not restrict solar access on the property of a Non-Participating Property Owner;
  - 2. Threats to public health and safety;
  - 3. Vibrations;
  - 4. The development and use of land, Residences or Structures owned by any Non-Participating Property Owner and its successors;
  - 5. Improvement of value of land, residence or structures of Non-Participating Property Owners; and
  - 6. Other factors deemed appropriate by the Planning Board.
- I. No WECF shall be located along the major existing axis of an existing FCC-licensed microwave communications link where its operation is likely to interfere with the link's operation. If it is determined that a WECF is interfering with a microwave path, the operator shall take the necessary corrective action to eliminate the interference, including removal or relocation of the WECF. Failure to remedy such interference with existing microwave links within sixty (60) days of learning of the problem shall be grounds for revocation of the Special Use Permit for the WECF that is the cause of the interference.

- J. Solid waste, hazardous waste, construction debris and other byproducts of construction or decommissioning shall be promptly removed from any Site and managed in accordance with applicable law. The Site shall be restored as nearly as practicable to the condition it was in prior to construction.
- K. Each WECF shall be compliant with current applicable IEE standards.
- L. All WECF and WMT shall be designed, constructed and operated according to applicable standards. All WECF and WMT shall be maintained and operated in good condition in accordance with the manufacturer's recommendations, applicable law and this Article.
- M. Any WECF shall strictly comply with all applicable State and Federal wetlands laws and regulations.
- N. WECF's 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. The use of previously developed areas will be given priority wherever possible.
- O. During construction, topsoil shall be stockpiled. After construction is complete, the site shall be restored by grading the soil, replacing the topsoil, and restoring compatible vegetation or ground cover to the site as approved by the Planning Board.
- P. Storm-water runoff and erosion shall be managed in a manner consistent with or better than applicable State and Federal laws and regulations.
- Q. Construction of WECF or WMT shall be limited to Monday to Friday between the hours of 7 a.m. to 7 p.m. and 7 a.m. to 6 p.m. Saturday, to the maximum extent feasible. In the event the Developer determines it is essential that these construction period limitations must be exceeded, the Developer shall notify the Town Code Enforcement Officer of such determination by telephone prior to any such extension beyond such limitations. No construction shall occur on holidays (Observed Memorial Day, July 4th, Labor Day, Thanksgiving, and Christmas), unless written permission on a case by case basis and for good cause is granted by the Planning Board.
- R. When blasting is deemed necessary, a blasting plan shall be submitted to the Planning Board for review. No blasting shall occur without approval of the blasting plan by the Planning Board.
- S. All blasting operations will comply with the approved blasting plan and shall adhere to applicable Federal, New York State, and Town statutes and regulations governing the use of explosives.
- T. WECSs shall be located and constructed in a manner that minimizes significant negative impacts on animal species in the vicinity, particularly bird and bat species, especially those that may be listed by the U.S. Fish & Wildlife Service as threatened or endangered.

**XVI-5**            Utility Scale WECS.

- A. Permit Application Requirements.** An application for a Special Use Permit for a WECF shall include the following:
- 1. Applicant Information - the name, address, phone number and email address (if available) of the Applicant. If the Applicant is represented by an agent, the application shall include the name, address and phone number of such agent and the name of the contact person, as well as that person's phone number and email address, together with a letter authorizing said agent to act for the Applicant.
  - 2. Property Owner. The application shall include a copy of a written agreement or recorded memorandum thereof between the Applicant and each such Participating Property Owner, granting the Applicant such rights in the aggregate as may be necessary to fully construct the proposed WECF. Each such written agreement shall identify the Site by tax parcel number.
  - 3. The names, property addresses, mailing address and tax map numbers of all owners of land within 500 feet of the boundary of the property upon which the property is proposed



- shall be provided to the Planning Board for review and record retention.
4. A comprehensive description of the project, including details and dimensions of all proposed equipment, accessory structures, access roads and driveways.
  5. A GIS map to scale showing the location of all proposed WECF and all components thereof, the Property Lines and all Residences, roads and Structures within 3000 feet of the proposed WECF.
  6. Information on the numbering and addressing system that will be used to refer and locate the structures of the WECF. This system shall be approved by the County Emergency Management Department prior to submission of an application in order to avoid changes and modifications during the review process.
  7. Manufacturer's product information including make, model, pictures and drawings, and equipment specifications including noise decibels data. Electrical characteristics of equipment, maximum rated capacity, utilities required, braking and safety features, and operating manuals, Material Safety Data Sheets for the type and quantity of construction and operation materials including, but not limited to, all lubricants, and coolants.
  8. A scaled site plan which shall include all of the information listed below. The Planning Board may require additional information, if necessary to complete its review. The plan shall be drawn in sufficient detail to clearly describe the following:
    - a. Title block showing the drawing title, date of preparation, name and address of applicant, name and address of the person or firm preparing the drawing.
    - b. Property lines and physical dimensions of the Site.
    - c. Existing watercourses and bodies of water, including any state and federal wetlands.
    - d. Existing residential and non-residential structures and driveways located on-site.
    - e. Location of the proposed tower, equipment, foundations, guy points, substations, accessory structures, fences, staging areas, access roads, electrical lines, and any other ancillary facilities.
    - f. Location of all existing and proposed overhead and underground utility lines on the Site or within a radius of 1.5 times the Total Height of the WECS.
    - g. Shall present construction plan detailing access routes, on site disturbance of landscape, trees, soils and restoration thereof at completion of facility erection period.
    - h. Overall project site plan shall be overlaid on existing topography with no greater than ten-foot intervals, and site grading plans for individual WECF components shall be submitted showing existing and proposed topography at no more than five-foot intervals.
    - i. Location, type, and dimensions of permanent and temporary (construction) storm water and erosion control measures.
    - j. Provide a copy of a Stormwater Pollution Prevention Plan (SWPPP), if required to satisfy New York State Department of Environmental Conservation permitting requirements.
    - k. The zoning designation of the subject and adjacent properties as set forth on the official Town Zoning Map.
  9. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.
  10. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code by the Town Engineer.

11. Lighting Plan showing any proposed site lighting, including that which may be required by the FAA.
12. Written evidence that the electric utility to which the WECF will be interconnected has been informed of the applicant's intent to install an interconnected WECF, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.
13. Tower design and foundation information sufficient to demonstrate compliance with structural loading requirements such as wind, seismic, and icing. The information shall be stamped or certified by a Professional Engineer licensed in the State of New York. The information shall include the contact information for the engineer for future reference.
14. Calculations and documentation shall be provided by and stamped by a New York State Licensed Professional regarding potential ice-throw and blade-throw distances, damage and impacts. The basis of calculations and all assumptions shall be disclosed. The information shall include the contact information for the engineer for future reference. The applicant shall also provide recommended ice and blade throw setback information from the turbine manufacturer.
15. Shadow Flicker: Where an occupied structure (receptor) is located within 10 rotor diameters of a WECS, the applicant shall include in the application an analysis and report on potential shadow flicker by a Professional Engineer licensed in the State of New York. The report shall identify receptors where shadow flicker may be caused by the WECS's, and the expected times and durations of the flicker at these receptors. The report shall describe measures that shall be taken to eliminate or mitigate the problems, including reduction of WECS operations during shadow flicker periods.
16. Noise Analysis: The applicant shall provide with the application a noise analysis and report certified by a professional engineer licensed in the State of New York documenting the potential noise levels associated with the proposed WECS. The engineer shall be a qualified independent acoustical consultant and a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental noise. The report shall document noise levels at the Site property lines, and occupied structures (receptors) not on the Site within 2,500 feet of the turbine. The noise analysis shall provide pre-existing ambient noise levels, combined ambient and turbine sound levels, and include low frequency noise. Refer to Section C – Standards for requirements.
17. Visual Impact: Applications shall include visual impact documentation of the proposed WECS as installed. This documentation shall include scaled color photographic simulations demonstrating the visual appearance of the WECS from strategic vantage points (for example, adjacent occupied buildings). Unless additional simulations are requested by the Planning Board, a minimum of four vantage points (one from each quadrant of a circle around the WECS) shall be provided. Color photographs of the proposed Site from each location accurately depicting the existing conditions shall also be included for comparison. The documentation 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.
18. Telecommunications: The applicant shall include information in the application demonstrating due diligence to investigate that the WECS will not interfere with cellular telephone, television, radio, microwave, satellite, and other forms of telecommunication in the area. The information may include WECS manufacturer material specifications that demonstrate the WECS construction materials will not interference with specific types of telecommunication. The Applicant shall provide information documenting any directional telecommunication signal antennas on adjacent parcels, their distance, and receiving or transmitting direction. If the Planning Board deems that a potential conflict

- may exist, additional study and documentation may be required of the Applicant at the Applicant's expense.
19. A geotechnical report must be prepared that includes: soils engineering and geologic characteristics of the site using sampling and testing; a bedrock profile within one mile of the site boundary; information on groundwater; depth and average flow rates of wells within one mile of the site; grading criteria for ground preparation, cuts and fills, soil compaction, and a slope stability analysis.
  20. Wildlife, archaeological, historical, and cultural resources:
    - a. An analysis of impacts on local wildlife shall be prepared, describing impacts anticipated during construction, reconstruction, modification or operation of WES. Wildlife impacts to be considered shall include, at a minimum, anticipated impacts on flying creatures (birds, bats, and insects), ground inhabiting creatures, and flora. The scope of such assessment shall be developed in consultation with the New York State Department of Environmental Conservation and the United States Fish and Wildlife Service and must include at least two years of preconstruction data. Literature surveys for threatened and endangered species that provide relevant information on critical flyway locations and potential impacts of proposed facilities on bird and bat species shall be performed. An impact avoidance or mitigation plan that meets the approval of the NYS DEC must be submitted, including a description of post-installation studies to determine plan effectiveness.
    - b. An assessment must be conducted to determine potential immediate and long-term impacts to local flora and fauna, micro and macro habitats, and ground and surface water related to excavation, blasting, clear-cutting and grading during the site preparation phase.
    - c. An assessment of archaeological, historical, and cultural resources that may be impacted by the project shall be conducted in coordination with the New York State Office of Parks, Recreation and Historic Preservation and make use of the Town's Comprehensive Land Use Plan to identify local resources and stated priorities.
  21. The applicant shall submit a decommissioning plan, which shall include:
    - a. The anticipated life of the WECF;
    - b. The estimated decommissioning costs in current dollars;
    - c. How said estimate was determined;
    - d. The decommissioning costs shall not be offset by salvage values;
    - e. Any Decommissioning Bond required per Section E, and the method of ensuring that funds will be available for decommissioning and restoration; and,
    - f. The manner in which the WECF will be decommissioned and the Site restored, which shall include any necessary widening of roads, removal of all structures and debris, removal of all access roads, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation).
    - g. The Plan shall include written authorization from the permit holder and the owners of all parcels within the project, which authorization shall be a lien upon and shall "run with the land," for the Town to access the Parcels and implement the decommissioning and site restoration plan, in the event the permit holder fails to implement the plan.
    - h. The Plan shall provide for the decommissioning of the site upon the expiration or revocation of the WECF permit, or upon the abandonment of the WECF. Refer to Section E.
  22. A statement, signed under penalty of perjury, that the information contained in the

- application is true and accurate.
23. Compliance with the State Environmental Quality Review Act shall be required. A completed EAF containing, among other things, a determination that the application constitutes a Type 1 action under SEQRA, and said application will remain incomplete if it determined that an EIS is required until such EIS is prepared and submitted.
  24. Evidence that the proposed Turbine Height does not exceed the height recommended by the manufacturer of the WECS.
  25. A line drawing of the electrical components of the WECF in sufficient detail to allow for a determination that the manner of installation conforms to any applicable electric code.
  26. The applicant shall provide a copy of the project summary and project site plan to local emergency services including local paid and volunteer fire departments. A fire protection and emergency response plan must be created in consultation with the fire department(s) having jurisdiction over the proposed site.
  27. General Liability insurance in the amount of \$5,000,000 per occurrence together with excess liability insurance in the amount of \$10,000,000. The insurance may be evidenced using a combination of primary and excess coverages. A Certificate of Insurance naming the Town as a Certificate Holder shall be submitted to the Town, such Certificate entitling the Certificate Holder to a minimum of 30-days notice of any change to said insurance including cancelation.
  28. Proposed Highway Routes for use in construction and detailed information regarding necessary roadway modifications for delivery of equipment and materials, including, but not limited to, culvert and bridge shoring or replacement, intersection widening, and wire or signal raising. This information shall also include all applicable authorizations to the highway routes from applicable Federal, State, and local agencies.
  29. Such additional information as the Planning Board may reasonably require.

#### **B. Permit Application Process.**

1. At any regularly-scheduled meeting of the Planning Board, the Applicant may request a pre-application meeting with the Planning Board or with any consultants retained by the Town for application review. The substance and outcome of any such pre-application meeting shall be disclosed at the next meeting of the Planning Board and recorded in the minutes of such meeting.
2. The application for permit shall be addressed to the Town Code Enforcement Officer, who will then refer it to the Town Planning Board for review.
3. The Applicant shall enter into an escrow agreement with the Town to fund expenses incurred by the Town in connection with the review of the application, as set forth in Section XVI-9.B. of this Article.
4. The Applicant shall submit seven (7) copies of the application to the Planning Board, and provide any additional copies that the Planning Board may request during review for involved parties.
5. The Planning Board shall, within 60 days of receipt of the application, determine if it is complete. No application will be considered until the Planning Board has made a written determination that the application is complete and all of the Applicant's financial obligations to the Town in connection with the application have been met. If the Planning Board deems the application to be incomplete or insufficient, the Planning Board shall provide the Applicant with a written statement requesting the missing information. No additional fee will be required unless Applicant changes the number, size or location of any WECF for which it seeks a Special Use Permit.
6. Within sixty two (62) days of its receipt of a determination of a complete application for a Special Use Permit, the Planning Board shall hold at least one public hearing on such

- application. Notice shall be published in the Official Town's Newspaper and on the Town's website, not less than 10 days prior to such hearing. If any amendment to the application affecting the size, number or location of any WECF or any component of the proposed WECF shall be submitted to the Planning Board after such public hearing, the Planning Board shall hold a public hearing on the revised application and the Applicant shall comply with the foregoing notice requirements with respect to any and all additional public hearings. The public hearing may be combined with public hearings on any environmental impact statement submitted in connection with SEQRA.
7. The Planning Board shall review and take into consideration all comments received from the public and seek any advisable clarification from the Applicant.
  8. All applications for a Special Use Permit pursuant to this Article shall be deemed to be Type 1 actions requiring coordinated review under SEQRA. No generic environmental impact statement submitted in connection with any proposed WECF shall be accepted and no public hearing held pursuant to SEQRA shall be scheduled until a complete site-specific environmental impact statement has been submitted to and accepted for review by the Planning Board. The Applicant shall comply with the provisions of SEQRA, including provisions requiring that the Applicant disclose the full scope and number of the planned WECF without segmentation with the intention of reducing the perceived magnitude of the proposed WECF.
  9. A full statement of the proposed action for any WECF shall be delivered to the County Planning Department if required by New York State General Municipal Law Sections 239-1 n and m.
  10. Upon receipt of the recommendation of the County Planning Department, if required, the holding of all requisite public hearings, the funding of the escrow agreement described in above, and the completion of the SEQRA process, the Planning Board shall, within thirty (30) days, approve, approve with conditions, or deny the application and submit its decision to the Town Board for either its veto or its ratification. The Town Board shall provide a written explanation of any reasons for its veto.

**C. Standards.** WECF shall comply with the following standards:

1. The maximum Total Height shall be 500 feet.
2. All project collection grid wires and wires for the purpose of transporting generated electricity to a substation shall be underground and shall be located at a minimum depth of four (4) feet and identified with appropriate markers. No transmission line or cable shall be located within 150 feet of any Residence or Structure.
3. No lettering, company insignia, advertising, or graphics shall be on any part of the WECS tower, hub, or blades.
4. All WECS shall use tubular towers, shall be finished with a single, non-reflective matte finish, and shall be visually identical.
5. The use of guy wires is prohibited on Utility Scale WECS.
6. It is recognized that the vast majority of residents who might be affected by the construction and operation of a WECF obtain their water from private wells. Prior to construction, the Applicant shall have the water supply of any Property Owners whose Property Lines are within one (1) mile of any WECF (unless such Property Owner has signed a waiver of this requirement) tested by an independent reputable company approved by the Planning Board at the expense of the Applicant and the written results of such tests shall be disclosed to the Planning Board and each such Property Owner. Should the water quality of any such Property Owner be adversely affected by construction (blasting or digging) or operation of a WECF, the Applicant shall, at the Applicant's expense, restore the water quality to the condition that it was in when initially tested by

- whatever means necessary, including the drilling of a new well. Denial of access for testing by the Property Owner shall constitute a waiver of this requirement by that Property Owner.
7. Each WECF shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blades so that it does not exceed the design limits of the rotor.
  8. Each WECF shall be equipped with both manual and automatic braking systems.
  9. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of rotating machinery, electrical shock or high voltage. A sign shall be posted on the parcel road frontage, and 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 telephone number for emergency shutdown of the WECS with 24 hour, 7 day a week coverage. The Town Planning Board may require additional signs based on safety needs. The means of posting this information shall comply with applicable provisions of town law regarding signs.
  10. Any WECF shall be designed and constructed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.
  11. Construction and delivery vehicles for any WECF shall use traffic routes approved by the Planning Board as a part of the application review process. As a condition to the issuance of a Special Use Permit, the Town and the Applicant shall enter into a road use agreement specifying approved routes; times and frequency of use; obligations for remediation, maintenance and repair of roads on approved routes and such other items as, in the discretion of the Planning Board, are designed to ensure the safety and well being of the populace.
  12. The road use agreement shall require the Applicant to post a public improvement bond prior to the issuance of any building permit in an amount, as determined by the Town Board, sufficient to cover the cost of performance of the obligations set forth in the road use agreement. Applicant shall submit its estimate of costs for its remediation, repair, maintenance and restoration obligations to the Town Highway Superintendent, which estimate shall become the basis for negotiation of such agreement and the amount of the bond.
  13. Sound Measurement Standards
    - a. Ambient noise levels shall be expressed in terms of a whole number sound pressure level in dBA measured at the property line.
    - b. 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 20 mph at the ambient noise measurement location.
    - c. Turbine noise measurements and reporting shall conform to IEC 61400-11. Ambient noise measurements shall conform to ANSI/ASA S12.18- Outdoor Measurement of Sound Pressure Level, ANSI/ASA S1.13-Measurement of Sound Pressure Levels in Air, and applicable industry standards.
    - d. Measurements shall be reflective of seasonal changes in atmospheric and vegetation conditions. A minimum of one set of tests shall be performed during each of the four (4) calendar seasons of the year. Measurements shall also be taken at each of the following three (3) time periods: Day 8 AM - 2 pm; Evening 7 PM - 11 PM; and Night 12 Midnight – 4 AM.
    - e. Each measurement shall be replicated during the same time period over three (3)

different days within the same season for a total of nine (9) measurements per location per season. For pre-existing ambient sound measurements, the lowest single measurement over all time periods and seasons shall be used as the ambient sound level for each location. For the purposes of any post-construction operational sound level testing, the lowest average of the three measurements per time period for over all seasons shall be used and compared against the setback requirement.

**D. Setbacks.** Each WECS shall be setback, as measured from the center of the WECS, a minimum distance of:

1. Setback to a non-participating property line shall be 1700 feet.
2. Setbacks from state- or federal-identified wetlands shall conform to applicable regulations.
3. Setback shall be 1.5 times the total height or the turbine/blade manufacturer recommended distance, whichever is greater from the nearest public road.
4. Setback shall be 1.5 times the total height or the turbine/blade manufacturer recommended distance, whichever is greater from any existing underground or above ground public utility line, such as electric, gas, petroleum, water, and sewer. Project utilities such as collection grid, service, water, and sewer, are excluded from this setback requirement.
5. Setback shall be 1.5 times the total height or the turbine/blade manufacturer recommended distance, whichever is greater, from any occupied structure for collapse and ice throw.
6. Setback shall be 2500 ft. from any school, place of worship, hospital, or public building including those on the Site, or Areas of Mass Gathering.
7. Shadow flicker exposure shall be limited to a maximum of 30 hours per year at non-participating, occupied buildings.
8. The statistical operational sound pressure level generated by a WECS shall not result in a cumulative (ambient sound plus proposed turbine noise) increase of more than 5 dBA over pre-existing ambient sound levels measured at the property line. And cumulative noise shall not in any case exceed 55 dBA measured at non-participating property lines.
9. In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth above shall be reduced by 5 dBA. A pure tone is defined to exist if the one-third octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two contiguous one third octave bands by five dBA for center frequencies of 500 Hz and above, by eight dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.
10. Low frequency sound generated by the WECF shall not exceed 20 dBA at a non-participating property line.

**E. Abatement.**

1. **Liability Insurance.** The Applicant, at the Applicant's expense, shall obtain and keep in force for the duration of the project, including any decommissioning period, commercial general liability insurance, with limits to be agreed upon by the Town and the Applicant, insuring the Town, its officers, elected and appointed officials and Property Owners against all liability for injury to or death of a person or persons or damage to property arising out of the construction, operation, modification or decommissioning of any WECF. The Applicant shall deliver copies of such policies or certificates evidencing such coverage and the payment of the annual premium therefore to the Town as a condition to

- the issuance of any building permit and shall cause any insurance company to agree to notify the Town at least Thirty (30) days prior to cancellation or a material change of such insurance. All policies shall be written on an "occurrence" basis, rather than a "claims made" basis and shall be subject to commercially reasonable deductible amounts, not to exceed \$25,000 per occurrence. Said policies shall further contain a provision stating that no act or omission of the Applicant will affect or limit the obligation of the insurer to pay on behalf of the Town the amount of the loss sustained by, or claim made against the Town. Such policies shall be in form and issued by companies reasonably satisfactory to the Town.
2. Decommissioning Fund. The Applicant shall provide financial security to ensure completion of decommissioning (removal of non-functional towers and appurtenant facilities) and site restoration. Removal, remediation and restoration shall include the removal of all above-ground equipment, all foundations, restoration of soil conditions and vegetation consistent and compatible with surrounding vegetation. The applicant, or successors, shall continuously maintain a fund payable to the Town, in cash or other acceptable security as part of the decommissioning agreement for the period of the life of the facility. The funds must be capable of being made available in a timely fashion. This fund shall be no less than 125% of the cost of full decommissioning, as provided by the Applicant and approved by the Town Planning Board. No credit for salvage value shall be included. All decommissioning funding requirements shall be met prior to commencement of construction. The value of security shall be reviewed and/or updated based on current dollar cost estimates provided by the applicant every three (3) years.
  3. Inspection. The Applicant, at the Applicant's expense, shall cause each WECS to be inspected at least once every three (3) years for structural and operation integrity by a Licensed Professional Engineer acceptable to the Planning Board. A copy of the inspection report shall be delivered to the Planning Board and the Applicant shall promptly undertake and implement any and all recommendations set forth in the inspection report.
  4. Failure to Operate/Abandonment. WECF shall be maintained in operational condition at all times, subject to reasonable scheduled maintenance requirements and repair outages. Operational condition includes Applicant's obligation to be in compliance with the requirements set forth in Section XV-5. C. 13 of this Article regarding acceptable Noise levels. If any component of a WECF remains non-functional or inoperative for a period of twelve (12) consecutive months, such WECF component shall be decommissioned, unless granted an extension by the Planning Board. From time to time, Applicant shall provide acceptable evidence of operation to the Planning Board promptly upon receipt of written request therefore.
  5. Non-function or lack of operation may be proven by reports from the Public Service Commission, New York Independent System Operator, NYSERDA, or local utility company(s). The applicant shall make available to the Town Planning Board all reports to and from these entities, if requested, necessary to prove the WECS is functioning, which reports may be redacted or subject to a reasonable non-disclosure agreement as necessary to protect proprietary information.
  6. Decommissioning. Any WECF component required to be decommissioned hereunder or for which a permit issued pursuant to this Article has been revoked, shall be removed from the Site and the Site restored in compliance with the standards set forth in this Article within one hundred eighty (180) days of the date on which the WECF is required to be decommissioned pursuant a plan submitted to and approved by the Planning Board. If the Applicant fails to remove the WECF and restore the Site as aforesaid, the Applicant, by its acceptance of any permit issued pursuant to this Article, authorizes the



Town Board to contract for such removal and restoration and to pay for it out of the decommissioning fund described above. If the fund is insufficient, the Applicant shall be liable for all costs in excess thereof.

**XVI-6** Private WECS.

**A. Permit Application Requirements/Process.**

1. The Applicant shall submit seven (7) copies of the application to the Planning Board.
2. The Planning Board shall, within 60 days of receipt of the application, determine if it is complete. No application will be considered until the Planning Board has made a written determination that the application is complete. If the Planning Board deems the application to be incomplete or insufficient, the missing information shall be provided before any further consideration by the Board. No additional fee will be required unless the applicant changes the number, size or location of any Private WECF.
3. Within sixty-two (62) days of its receipt of a complete application for site plan approval, the Planning Board shall hold at least one public hearing on such application. Notice of the hearing shall be mailed by the Applicant as instructed by the Planning Board to any Property Owner whose Property Line is within 500 feet of the proposed WECF and shall publish notice in the official Town newspaper and on the Town's website, and on any other publication deemed appropriate by the Board, not less than ten (10) days prior to such hearing. If any amendment to the application affecting the size, number or location of any WECF is submitted to the Planning Board after such public hearing, the Planning Board shall hold a public hearing on the revised application and the foregoing notice requirements shall be complied with in respect to any and all additional public hearings.
4. The Planning Board shall review and take into consideration all comments received from the public, seek any advisable clarification from the Applicant and either approve, approve with conditions or deny the application within thirty (30) days of the date of the final public hearing.
5. An application for a Private WECF shall include:
  - a. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  - b. Name, address, telephone number of the property owner. 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.
  - c. Address of each proposed WECF location, including Tax Map section, block and lot number.
  - d. Proposed Site Plan and Map.
  - e. Manufacturer's drawings and specifications of the proposed system.
  - f. Engineering drawings of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the New York State Uniform Fire Prevention and Building Code.
  - g. The applicant must provide a written statement demonstrating that the system shall be used primarily to reduce consumption of electricity at that location.
  - h. 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

states so in the application, to connect the system to the electricity grid.

- i. A visual analysis of the Private WECS as installed, which may include a 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.
- j. A completed EAF.
- k. A list of all properties and the owners of such properties located within 500 feet of every proposed facility by name and address.
- l. Such additional information as the Planning Board may reasonably request.
- m. Decommissioning Plan, including a security bond for removal.

## **B. Standards.**

1. A system shall be located on a lot a minimum of two acres in size; however, this requirement can be met by multiple owners submitting a joint application.
2. Only one small WECS per site shall be allowed unless otherwise approved by the Planning Board. If there are multiple applicants, their joint lots shall be treated as one site for purposes of this Article.
3. Maximum Height of no more than 200 feet.
4. The Applicant shall provide evidence of operation of the WECS to the Planning Board on an annual basis.
5. Private WECS shall be used primarily to reduce the on-site consumption of electricity.
6. 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.
7. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery.
8. 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 anchor points for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow warning covering from three to eight feet above the ground.
9. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the preexisting natural condition after completion of installation.
10. All Private WECS shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with current industry standards shall be certified by the manufacturer.

## **C. Setbacks.**

1. Private WECS shall not be located closer to a property line than one and a half times the Total Height.
2. Shadow flicker exposure shall be limited to a maximum of 25 hours per year at non-participating occupied buildings.
3. Noise. A Private WECS shall be designed, installed, and operated so that noise generated solely by the system (not in addition to the ambient sound level) shall not exceed the 30 decibels (dBA), as measured at the site property line.
4. Low frequency sound generated by the WECF shall not exceed 20 dBA at a non-participating property line.

**D. Abatement.**

1. A small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town.

**XVI-7** Wind Measurement Towers (Met Tower).

**A. Permit Application Requirements/Process. There shall be no separate Permit Application required for any Met Tower which has been included in the Application for Special Use Permit for the WECS with which it is associated.**

1. The Applicant shall submit seven (7) copies of the application to the Planning Board.
2. The Planning Board shall, within 60 days of receipt of the application, determine if it is complete. No application will be considered until the Planning Board has made a written determination that the application is complete. If the Planning Board deems the application to be incomplete or insufficient, the missing information shall be provided before any further consideration by the Board. No additional fee will be required unless the applicant changes the number, size or location of any WMT for which it seeks a SUP Permit.
3. Within sixty-two (62) days of its receipt of a complete application for a SUP Permit, the Planning Board shall hold at least one public hearing on such application. Notice of the hearing shall be mailed by the Planning Board to any Property Owner whose Property Line is within 500 feet of the proposed WMT and shall publish notice in the official Town newspaper and on the Town's website, and on any other publication deemed appropriate by the Board, not less than ten (10) days prior to such hearing. If any amendment to the application affecting the size, number or location of any WMT shall be submitted to the Planning Board after such public hearing, the Planning Board shall hold a public hearing on the revised application and the foregoing notice requirements shall be complied with in respect to any and all additional public hearings.
4. The Planning Board shall review and take into consideration all comments received from the public, seek any advisable clarification from the Applicant and either approve, approve with conditions or deny the application within sixty-two (62) days of the date of the public hearing.
5. An application for a Wind Measurement Tower shall include:
  - a. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  - b. Name, address, telephone number of the property owner. 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.
  - c. Address of each proposed tower location, including Tax Map section, block and lot number.
  - d. Proposed Site Plan and Map.
  - e. Drawings and specifications for the proposed WMT.
  - f. A completed EAF.
  - g. Such additional information as the Planning Board may reasonably request.
  - h. Decommissioning Plan, including a security bond for removal.

**B. Standards.**

1. Maximum Height – 270 feet
2. The Applicant shall provide evidence of operation of the WMT to the Planning Board on semi-annual basis.
3. The maximum time a WMT may be operated is five (5) years from its commencement of operations after which time the WMT shall be removed in accordance with paragraph XVI-7. D. 1 of this Article.

**C. Setbacks.**

1. The distance between a Wind Measurement Tower and the property line shall be at least 1.5 times the Total Height of the tower.
2. Sites can include more than one piece of property and the requirement shall apply to the combined properties.
3. Exceptions for neighboring property are also allowed with the consent of those property owners.

**D. Abatement.**

1. Removal. Any WMT that remains non-functional or inoperative for a period of twelve (12) consecutive months shall be deemed to have been abandoned and may be dismantled and removed from the Site by order of the Code Enforcement Officer at the expense of the Applicant.
2. Revocation. The failure of any Applicant or Participating Property Owner to abide by and comply with applicable provisions of this Article and with any conditions that may pertain to the issuance of any building permit shall constitute grounds for the revocation of the WMT Permit.

**XVI-8** Host and Road Use Agreements. Nothing in this Article shall limit the ability of the Town to enter into Host Community and Road Use agreements with any applicant to compensate the town for expenses or impacts on the community.

**XVI-9** Fees.

- A. Fees for applications under this Law shall be initially as follows. All Fees established herein shall be subject to change by the Town Board by Resolution:
  1. Utility Scale WECF SUP Permit: \$100 per megawatt of rated maximum capacity.
  2. Wind Measurement Towers SUP Permit: \$200 per tower (\$50 for a renewal).
  3. Private WECS Site Plan Review: \$150 per WECS.
- B. Retention of Expert Assistance and Reimbursement by Applicant.
  1. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including but not limited to site inspections, the construction and modification of the site, once permitted, and any requests for recertification.
  2. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of the application.
    - a. The initial deposit for Utility Scale WECF shall be \$25,000.00 and shall be placed with the Town preceding the pre-application meeting. For Private WECF and MWTs, the Town Planning Board shall determine if consultation is necessary and establish the required value of the escrow fund.
    - b. The Town shall maintain a separate escrow account for all such funds. The Town's

consultants/experts shall invoice the Town for their services in reviewing the application including the modification of the site, once permitted.

- c. If at any time during the process a Utility Scale WECF escrow account has a balance less than \$2,500.00, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$10,000.00. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application.
  - d. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.
3. The total amount of the funds needed as set forth in this subsection may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

**XVI-10** Building Permits.

- A. The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable Transmission Owner.
- B. The applicant will provide copies of all necessary State and County DOT permits prior to receiving a building permit.

**XVI-11** Tax Exemption. The Town acknowledges Exemption from Taxation provisions of Real Property Tax Law §487. No Application under the provisions of this Article shall be complete until a Payment in lieu of Taxes (PILOT) Agreement satisfactory to the Town has been entered into between the Applicant and the Town, such PILOT Agreement having a period of applicability of fifteen (15) years, as provided in NY Real Property Tax Law § 487 sub. 9.

**XVI-12** Severability. Should any word, section, clause, paragraph, sentence, part or provision of this Article be declared invalid by a Court of competent jurisdiction, such determination shall not affect the validity of any other part hereof.

**XVI-13** Enforcement and Complaint Resolution Procedures.

- A. Violations. In the event of a violation of any provision of this Article the Applicant shall cure such violation within thirty (30) days (“cure period”) after notice of such violation is issued by the Town Code Enforcement Officer. If within such cure period the Applicant shall submit to the Town Board a Plan of Corrective Action to bring the facility into compliance, the Town Board shall review and consider said Plan of Corrective Action and may permit the facility to continue operations, subject to limitations established during such review, so long as the provisions of such accepted Plan of Corrective Action are adhered to. In the event of a failure to cure any violation as herein provided, such WECF operations may be shut down until Applicant demonstrates to the satisfaction of the Town Board that the WECF is in full compliance. A shut down of operations of a WECF in violation of this Article may include revocation of all permits having theretofore been issued. Applicant's obligation to make PILOT payments or any other payments required hereunder or under any contract with any Participating Property Owner shall continue to be paid during any period of non-operation, whether voluntary or non-voluntary. The Town Board or any agent of the Town Board shall have the power to enforce this Article. In addition to the foregoing, any person

who constructs or operates a WECF in violation of this Article or any conditions of any permit issued pursuant to this Article or any other local law relating to the construction and operation of any WECF shall be guilty of an offense and subject to a fine and possible imprisonment. The Town may institute a civil proceeding to collect civil penalties in the amount equal to \$2500 per day for each violation. The Town may further exercise any remedy available at law or in equity to enforce the provisions of this Article and any conditions attached to the issuance of any permit hereunder.

- B. In the event that electronic communication, television, or radio signal reception is affected by the WECF, the operator of the WECF shall be responsible to correct the reception or provide for an alternate media acceptable to the Town Planning Board (ex. Satellite or Cable television service in the event of deteriorated broadcast television signal due to the WECF).
- C. Construction-Related, Noise, Shadow Flicker, and Other Complaints.
  - 1. Complaints about a WECF or WMT shall be submitted in writing to the Town Code Enforcement Officer. The Code Enforcement Officer shall refer the complainant and the complainant(s) to the Town Planning Board for evaluation.
  - 2. The Town Planning Board shall have the discretion to deem complaints frivolous, duplicative or otherwise unwarranted and hold that investigation is not therefore required.
  - 3. If the Town Planning Board determines that the complaint is justified it may direct the Code Enforcement Officer to investigate. The Officer may require the Applicant to conduct monitoring and testing meeting the standards and requirements set forth in this law. The scope of the monitoring and testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit, and shall also include a written evaluation of the complaint(s) received by the Town Code Enforcement Officer.
  - 4. Such monitoring and testing shall be at the sole cost and expense of the applicant. The work shall be performed by a qualified independent third party approved by the Town Code Enforcement Officer.
  - 5. If the limits established in this law are exceeded, then the Applicant, at its sole cost and expense, shall take immediate steps to mitigate the problem. The applicant shall have 30 days after written notice from the Code Enforcement Officer to cure any deficiency verified by testing. An extension of the 30 day period may be considered by the Code Enforcement Officer, but the total period may not exceed 60 days.
  - 6. The Town may issue an order to cease operation in the event of the Applicant's failure or inability to mitigate the problem and cause the WECF to be operated within the limits established in this Section.
  - 7. Notwithstanding the aforementioned, regardless of the number and location of any complaints received, the Town shall have the authority to perform monitoring and testing at the Town's own expense if it deems so appropriate, with the approval of the Town Board. If the Town Board shall find the WECF to be in violation of this law, it may charge back to the owner the costs of any expenses incurred by the Town.

#### Section 5. Effective Date:

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State.

**CERTIFICATION OF LOCAL LAW**

(Certification of Town Clerk)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2015 of the Town of Dix, in the County of Schuyler, New York, was duly passed by the Town Board on May 28, 2015 in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated immediately above.

\_\_\_\_\_  
James A. McMahon  
Town Clerk  
Town of Dix

Date: \_\_\_\_\_, 2015

(Seal)

(Certification to be executed by Town Attorney or other authorized Attorney)

STATE OF NEW YORK

COUNTY OF SCHUYLER

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
David F. English  
Attorney for the Town  
Town of Dix

Date: June 2, 2015