

NEW YORK STATE DEPARTMENT OF STATE

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Town of Virgil

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JAN 20 2010

Local Law No. 1 of the year 2009.

DEPARTMENT OF STATE

A local law regulating the placement and operation of wind energy conversion
systems in the Town of Virgil

Be it enacted by the Town Board of the

Town of Virgil as follows:

Article I.

This Local Law may be cited as the "Wind Energy Facility Law of the Town of Virgil, New York."

Article II. Purpose

The Town Board of the Town of Virgil adopts this Local Law to promote the effective and efficient use of the Town's wind energy resource through wind energy conversion systems (WECS), and to regulate the placement of such systems so that public health, safety, and welfare will not be jeopardized.

It is the purpose of these amendments to provide adequate regulations to properly site WECS to mitigate potential negative impacts on the unique local resources, and to minimize impacts on surrounding properties and the residents of the Town of Virgil.

Article III. Authority

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

1. Article IX of the New York State Constitution, §2(c)(6) and (10).
2. New York Statute of Local Governments, §10 (1), (6), and (7).
3. New York Municipal Home Rule Law, §10 (1) (i) and (ii) and §10 (l)(a)(6), (11), (12), and (14).
4. The supersession authority of New York Municipal Home Rule Law, §10 (2)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this Local Law, to the extent such grant of power is different than under Town Law §267.
5. New York Town Law, Article 16 (Zoning).
6. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), 19)(Trespass), and (25)(Building lines).
7. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(General powers).

Article IV. Findings.

The Town Board of the Town of Virgil, finds and declares that

1. Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
2. The generation of electricity from properly sited wind turbines, including small systems, can be cost-effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
4. Wind Energy Facilities may represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.

5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction methods.
6. Wind Energy Facilities may present a risk to birds, bats and other creatures if not properly sited.
7. If not properly sited, Wind Energy Facilities may adversely affect the property values of adjoining property owners.
8. Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively impact the quiet enjoyment of properties in the vicinity.
9. Construction of Wind Energy Facilities can create traffic problems and damage local roads.
10. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

Article V. Enactment.

The Town Board of the Town of Virgil hereby amends its Zoning Law as follows:

A. Section 105 of the Zoning Law is hereby amended to add the following definitions:

BACKGROUND NOISE: ambient noise, in the absence of the noise under investigation, measured using time weighting “F” that is equaled or exceeded for **90% of the** measurement time interval. Expressed as $L_{A90,T}$, where T refers to the measurement time interval in minutes. Background noise is the “lull” in the ambient noise environment. Intermittent noise events such as from aircraft flying over, dogs barking, mobile farm machinery and the occasional vehicle traveling along a nearby road are all part of the ambient noise environment but would not be considered part of the background noise unless they were present for at least 90% of the time.

BASE NOISE LEVEL: means an $L_{Aeq,10}$ of 26 dB(A) unless otherwise stated.

dB(A): the noise level in decibels, obtained using the “A” weighted network.

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.

EXTRANEIOUS NOISE: noise from animals, excessive wind effects, insects, birds, aircraft or unusual traffic conditions or any other infrequently occurring component of the ambient noise.

IMPULSIVE NOISE: noise containing impulse components as part of its characteristics, comprising a single pressure peak, or sequence of such peaks, or a single burst with multiple pressure peaks, whose amplitude decays with time, or a sequence of such bursts.

LOW FREQUENCY NOISE: a noise with perceptible and definite content in the audible frequency range below 250 Hz.

NOISE - is defined as any loud, discordant or disagreeable sound or sounds. More commonly, in an environmental context, noise is defined simply as unwanted sound. Wind energy producing activities inherently produce sound levels or sound characteristics that have the potential to create noise. The sound generated by proposed facilities may become noise due to land use surrounding the facility. When lands adjoining a proposed facility contain residential, commercial, institutional or recreational uses that are proximal to the facility, noise is likely to be a matter of concern to residents or users of adjacent lands.

PARTICIPANT – any landowner who has signed a contract with wind developers.

RESIDENCE - means any dwelling suitable for habitation existing in the Town of Virgil on the date an application is received. A residence may be part of a multi-dwelling or multipurpose building, and shall include buildings such as hunting camps, seasonal residences, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

SOUND PRESSURE LEVEL - means the level which is equaled or exceeded a stated percentage of time. An $L_{90} - 30$ dBA indicates that in any hour of the day, 30 dBA can be equaled or exceeded no more than 10% of the time, or for 6 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 procedure as specified by the Town Board.

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

SMALL WIND ENERGY CONVERSION SYSTEM - ("Small WECS") - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily generate on-site power or reduce on-site consumption of utility power.

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

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

WIND ENERGY FACILITY - Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

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

WIND OVERLAY ZONE – Those areas of the Town of Virgil which the Town Board has determined are appropriate for the development of wind energy conversion systems (WECS) and related infrastructure, electrical lines and substations, access roads and accessory structures.

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.

B. Section 501 of the Zoning Law of the Town of Virgil is hereby amended to add a new type of district – WE Wind Energy Overlay District.

C. A new Article XVI – Wind Energy Conversion Systems is hereby added to the Zoning Law as follows:

Article XVI: Wind Energy Conversion Systems

Section 1600 Permits Required

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

B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Virgil, except in a Wind Overlay Zone, pursuant to a Special Use Permit approved pursuant to this Local Law.

C. No Special Permit shall be issued for construction, reconstruction, modification or operation of a WECS in the Town of Virgil, unless and until a Wind Overlay District has been created by act of the Town Board.

D. No Special Permit shall be issued for construction, reconstruction, modification or operation of a WECS in the Town of Virgil, until all other permits as may be required (e.g., FAA, DEC, etc.) have been issued and evidence of same provided to the Town of Virgil.

E. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Virgil, except pursuant to a Special Use Permit issued pursuant to this Local Law.

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

G. Exemptions. No permit or other approval shall be required under this Local Law for WECS which are consistent with generally accepted principles of farming and which are located within a state recognized agricultural district.

H. Transfer. No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance by the transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability of an applicant or of any other party under this Local Law.

I. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when there will be (1) no increase in Total Height of the WECS; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.

2. Applicability

A. The requirements of this Section shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law.

B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that

1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Local Law prior to recommencing production of energy.

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

3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-six (26) months after said effective date, unless a Special Use Permit for said Wind Energy Facility is obtained.

C. Wind Energy Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same Site shall not preclude the installation of a Wind Energy Facility or a part of such facility on such Site. Wind Energy Facilities constructed and installed in accordance with this Local Law shall not be deemed expansions of a nonconforming use or structure.

Section 1601 Creation of Wind Overlay Zones

A. Wind Overlay Zones shall be created by the Town Board to delineate those areas in the Town of Virgil that are appropriate for the development of wind energy conversion systems (WECS) and related infrastructure, electrical lines, transmission lines and substations, access roads and accessory structures.

B. The Town Board shall refer development of Wind Overlay Districts to the Town Planning Board. The Town Planning Board shall hold public meetings after public notice at which the Planning Board shall consider the landscape and topography of the town, current land uses and future development patterns,

natural resources, unique or sensitive environments, the local existence of wildlife and plant species, viewsheds, zoning districts, residents' opinions, and other pertinent information.

C. After considering these and any other information presented at public hearing, the Town Planning Board shall determine those areas which are not considered appropriate for development of wind energy conversion systems (WECS) and related infrastructure, electrical lines, transmission lines and substations, access roads and accessory structures. Any other areas of the Town of Virgil may be designated by the Town Planning Board to be potential Wind Overlay Zones.

D. The Town Planning Board shall report its findings and make recommendations to the Town Board.

E. The Town Board shall hold a public hearing after public notice as required, and shall consider the recommendations of the Town Planning Board and all other comments, reviews and statements pertaining thereto. After considering these and any other information presented at public hearing, the Town Board shall determine which areas of the Town of Virgil shall be determined to be Wind Overlay Zones.

F. If approved, the Town Board will direct the Town Clerk to modify the Official Map to reflect the creation of the Wind Overlay Zones.

G. Once a Wind Overlay Zone has been created, new WECSs or accessory structures or facilities may be added in that zone by grant of a Special Use Permit by the Town Planning Board pursuant to the requirements of this Article.

H. Construction, reconstruction, modification or operation of Small Wind Energy Conversion Systems (Small WECS) or Wind Measurement Towers, as defined in this Local Law shall not be limited to Wind Overlay Zones, as long as these other projects comply with all other regulations contained herein.

2. Applications for Wind Energy Conversion Systems

An application for Special Use Permit for individual WECS shall include the following:

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 and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner

(i) confirming that the property owner is familiar with the proposed applications, including actual ambient and predicted noise levels, and

(ii) authorizing the submission of the application.

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

D. A description of the project, including the number and maximum rated power output capacity of each WECS.

E. For each WECS proposed, a plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following.

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

(b) Location, approximate dimensions and types of existing structures and uses on site, public roads, and adjoining properties within fifteen hundred (1500) feet of the Site.

(c) Location and ground elevation of each proposed WECS.

(d) Location of all above ground utility lines on the site, and all related transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.

(e) Location and size of structures above within 2 ½ times the height of the tower of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.

(f) The zoning designation of the subject and adjacent properties as set forth in Town Zoning Law.

(g) Boundaries of the Wind Overlay Zone, to demonstrate that each proposed WECS is located within said overlay zones.

(h) To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower location equal to:

(i) Perimeter equal to two and a half times the tower height.

(ii) Five Hundred foot perimeter.

(i) Location of the nearest residential structure on the site and the distance from the proposed WECS.

(j) Location of the nearest off-site, non-participating property line, and the distance from the proposed WECS.

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

(l) Elevation 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.

F. Landscaping Plan depicting vegetation describing the area to be cleared of vegetation and areas where vegetation shall be added identified by species and size of specimens at installation, and their locations.

G. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure. However, if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.

H. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include:

- (a) the anticipated life of the WECS;
- (b) the estimated decommissioning costs in current dollars;
- (c) how said estimate was determined;
- (d) the method of ensuring that funds will be available for decommissioning and restoration;
- (e) the method, such by annual re-estimate by a licensed engineer, approved by the Town Board, that the decommissioning cost will be kept current; and,
- (f) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all roads, structures and debris to a depth of 3 feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.

I. Complaint Resolution: The application will include a complaint resolution process to address complaints from any resident or property owner. The process shall as a condition precedent to arbitration use an independent mediator to attempt to resolve the complaint, and include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint through mediation. The process will be subject to the rules of the American Arbitration Association. In the event the matter is not resolved in mediation, it shall be subject to binding arbitration under the rules of the American Arbitration Association. All fees and charges for the Arbitration shall be paid by the applicant unless there is a finding by the Arbitrators for absolute no-fault on the part of the applicant. In the event of a ruling in favor of the complaining party, the arbitrators' award may include attorneys' fees and other costs.

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

- (a) A construction schedule describing commencement and completion dates and hours of construction; and
- (b) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.

K. Completed Part 1 of the Full EAF.

L. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the WECS.

M. For each proposed WECS, include make, model, picture and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.

N. In accordance with the requirements of SEQRA, the Town Board may issue a positive declaration of environmental significance.

O. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:

(a). Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.

(b). Visual Impact: Applications shall include a visual impact study of each proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

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

(d). Noise Analysis: A unique characteristic of wind farms is that the noise level from each wind turbine generator (WECS) increases as the wind speed at the site increases. As an offset, the background noise may increase under these conditions and can mask the WECS noise. Comparison with a base noise level alone will therefore not be sufficient to indicate the potential impact of a wind farm: a farm could comply with a base level at lower wind speeds but exceed it when the wind speed rises, or the opposite, depending upon site specific conditions. To prevent adverse impacts from the increased noise of WECS under all wind conditions, the varying noise level must also be compared to the corresponding background noise at the relevant receiver.

(e). A noise analysis by an independent acoustical consultant, acceptable to the Town of Virgil, documenting the noise levels associated with the proposed WECS is required. The study shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Town Board may modify this requirement). This study will be subject to a peer review by an acoustical consultant selected by the Town of Virgil, reporting to the Town of Virgil and paid for by the applicant.

(f). Property Value Analysis: A property value analysis shall be prepared by a licensed appraiser approved by the Town in accordance with industry standards, regarding the potential impact of values of properties that neighbor WECS Sites, and will include a fair market appraisal of each non-participating property and/or residence within a one (1) mile radius of the WECS.

(g). Electromagnetic Interference: An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.

(h). Transportation Impacts: An analysis of impacts on local transportation shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of WECS.

Transportation impacts to be considered shall include, at a minimum, potential damage to local road surfaces, road beds and associated structures; potential traffic tie-ups by haulers of WECS materials; impacts on school bus routes; impacts of visitors to the WECS facilities.

(i). Ground Water Impacts: An analysis of impacts on local ground water resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of WECS.

(j). Cultural Resources: An analysis of impacts on cultural resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of WECS.

(k). Wildlife Impacts: An analysis of impacts on local wildlife shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of WECS. Wildlife impacts to be considered shall include, at a minimum, anticipated impacts on flying creatures (birds, bats, insects), as well as wild creatures existing at ground level.

P. The applicant shall, prior to the receipt of a building permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner.

Q. A statement, signed under penalties of perjury, which the information contained in the application, is true and accurate.

3. Application Review Process

A. Applicants may request a pre-application meeting with the Planning Board, or with any consultants retained by the Planning Board for application review. Meetings with the Board shall be conducted in accordance with the Open Meetings Law.

B. Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application. Any variance application must be submitted to the Town of Virgil Zoning Board of Appeals.

C. Town staff or Town-designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the

application. Unless the Planning Board waives any application requirement, no application shall be considered until deemed complete.

D. If the application is deemed incomplete, the Planning Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.

E. Upon determination by the Planning Board that an application is complete, the Town Clerk shall prepare notice of a public hearing.

F. The Planning Board shall hold at least one public hearing on the application. Notice shall be given by registered or certified mail with a return receipt requested, to property owners within one mile of each proposed WECS 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 Planning Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.

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

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

I. SEQRA review. Applications for WECS are deemed Type I projects under SEQRA. The Planning Board may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Planning Board's proceedings. The Planning Board may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.

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

4. Standards for WECS

The following standards shall apply to all WECS, unless specifically waived by the Planning Board as part of a permit.

A. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent possible and to the maximum extent allowed by law, including all transmission lines transiting the Town of Virgil from wind farms originating in other jurisdictions.

B. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Zoning Law. Applications may be jointly submitted for WECS and telecommunications facilities.

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

D. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site plan.

E. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs within a Wind Overlay Zone shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Zone, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

F. The use of guy wires is disfavored. A WECS using guy wires for tower support shall incorporate appropriate measures to protect the guy wires from damage which could cause tower failure.

G. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the interference.

H. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.

I. WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided. The use of previously developed areas will be given priority wherever possible. All top-soil disturbed during construction, reconstruction or modification of WECS shall be stockpiled and returned to the site upon completion of the activity which disturbed the soil.

J. WECSs shall be located in a manner that minimizes negative impacts on animal species in the vicinity, particularly bird and bat species, including those that may be listed by the U.S. Fish & Wildlife Service as threatened or endangered.

K. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations.

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

M. The maximum Total Height of any WECS shall be 500 feet.

N. Construction of the WECS shall be limited to the hours of 7 AM to 7 PM Monday through Friday, unless the prior written approval of the Town Planning Board is received to allow deviation from such hours.

O. If it is determined that a WECS is causing stray voltage issues, the operator shall take the necessary corrective action to eliminate these problems including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the problems.

5. Required Safety Measures

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

B. If the participating or non-participating, off-site contiguous property owner submits a written request that fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.

C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hour, 7 day a week coverage. The Town Planning Board may require additional signs based on safety needs.

D. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.

E. The minimum distance between the ground and any part of the rotor or blade system shall be thirty-five (35) feet.

F. WECSs shall-be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.

G. Copies of all reports concerning operating and safety inspections for each WECS shall be filed with the Town Clerk.

6. Traffic Routes

A. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for

WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Permit conditions may limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.

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

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

D. Prior to issuance of any permits, the applicant must submit signed agreements with the Town and County for use of their roads.

7. Noise Standards for Wind Energy Conversion Systems

A. The statistical sound pressure level (L_{90}) generated by a WECS shall in no case, at any time, regardless of wind speed or conditions, exceed ambient plus 5 dBA when measured at the nearest property line of the off-site dwelling, school, hospital, church or public building existing at the time of application. Independent certification shall be provided before and after construction demonstrating compliance with this requirement. For noise levels generated or caused by a wind energy facility:

1. The increase in ambient statistical noise levels is based on an assumed background L_{90} ambient noise level of 26 dBA or the actual ambient background level from 2200 hrs until 0700 hrs the following day. The applicant shall conduct measurements to determine the actual ambient L_{90} background level.

2. The “actual ambient background level” is the measured noise level at the appropriate measurement point as specified in this local law in accordance with paragraph D of this section. Background noise measurements shall be obtained at the appropriate measurement point, synchronized with wind speed measurements of hub height conditions at the nearest wind turbine location. “Actual ambient background level” does not include noise generated or caused by the wind energy facility.

3. The noise levels from a wind energy facility may increase the ambient statistical noise levels L_{90} by more than 5 dBA, only if the person who owns the noise sensitive property executes a legally effective easement or real covenant that benefits the property on which the wind energy facility is located. The easement or covenant must authorize the wind energy facility to increase the ambient statistical noise levels, L_{90} on the sensitive property by more than 5 dBA at the appropriate measurement point. In no case, at any time, regardless of wind speed or conditions, may the sound level exceed ambient 50 dBA when measured at the nearest participant dwelling.

4. For purposes of determining whether a proposed wind energy facility would satisfy the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are predicted assuming that all of the proposed wind facility's turbines are operating between cut-in speed and the wind speed corresponding to the maximum sound power level established by IEC 61400-11 (version 2002-12). These predictions must be compared to the highest of either the assumed ambient noise (base noise level of 26 dBA), or to the actual ambient background L_{90} noise level, if measured. The facility complies with the noise ambient background standard if this comparison demonstrates to the satisfaction of the Town's acoustical consultant of §11 A. (16) (e) of this Law and the satisfaction of the Town Board that the increase in noise is not more than 5 dBA over the entire range of wind speeds.

5. For purposes of determining whether an operating wind energy facility complies with the ambient noise standard where a landowner has not waived the standard, noise levels at the appropriate measurement point are measured when all of the facility's wind turbines are operating over the entire range of wind speeds between cut-in speed and the wind speed corresponding to the maximum sound power level, and no turbine that could contribute to the noise level is disabled. The facility complies with the noise ambient background standard if the increase in noise over either the assumed ambient noise level of 26 dBA, or to the actual ambient background L_{90} noise level, if measured, is not more than 5 dBA over this entire range of wind speeds.

6. For purposes of determining whether a proposed wind energy facility would satisfy this standards, noise levels at the appropriate measurement point are predicted by using the turbine's maximum sound power level following procedures established by IEC 61400-11 (version 2002-12), and assuming that all of the proposed wind facility's turbines are operating at the maximum sound power level.

7. For purposes of determining whether an operating wind energy facility satisfies the standards, noise generated by the energy facility is measured at the appropriate measurement point when the facility's wind turbines are operating at the full range of wind speeds corresponding to the full range of varying sound power levels and no turbine that could contribute to the noise level is disabled.

B. In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third ($1/3$) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third ($1/3$) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.

C. In the event the ambient noise level is proven, prior to permitting to exceed the applicable standard given above (26 dBA), the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is defined as the L_{90} sound pressure level. Ambient noise levels shall be measured at the non-participating, off-site property lines as determined by the acoustic measurement plan approved by the Planning Board. In addition, the ambient acoustic measurements shall be established at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient

noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

D. This section describes the steps to be taken to assess whether the wind farm noise reaching receivers at relevant locations will comply with the criteria of these guidelines.

(1.) Background noise is measured at relevant receiver locations over continuous 10-minute intervals and particularly over the range of wind speeds at which the WECS operate.

(2.) The data must adequately represent conditions at the site and cover approximately 2000 intervals. Wind speed is measured at 30 feet above the ground and in intervals that correlate with the background noise measurements.

(3.) The wind speed data, together with the manufacturer's noise data for the WECS and using a suitable model, is then used to predict noise levels at each integer wind speed from cut-in to rated power, at relevant receiver locations.

(4.) The correlated wind speed and background noise data are plotted against each other to give a standard graph for background noise at each relevant receiver. This graph is then used in conjunction with the predicted noise levels to assess whether the wind farm will meet the criteria of these guidelines.

(5.) Background noise measurement position: All measurements should be made outdoors. The microphone should be positioned 4 to 5 feet above the ground and at least 16 feet from any reflecting surface (other than the ground).

(6.) In general the protocol to be followed will be that of the Environmental Noise Guidelines: Wind Farms, Environment Protection Authority, Adelaide SA.

E. Any noise level falling between two whole decibels shall be the lower of the two.

F. Staged development:

(1.) The procedure and criteria presented in this Law consider a wind farm may be developed over a number of separate stages, or by different developers within different areas of the Town. A previous stage of the wind farm that is installed and operating may raise the background noise level at the relevant receivers by up to 5 dBA. Any subsequent stage in the development of the wind farm site should meet the criteria using the background noise levels as they existed prior to the wind farm. Therefore, the noise generated by existing WECS from a previous stage should not be considered as part of the background noise in determining criteria for subsequent stages.

(2.) Separate wind farm developments in close proximity to each other may impact on the same relevant receiver. Therefore, as for staged development, any additional wind farm that may impact on the same relevant receiver as an existing wind farm, should meet the criteria using the background noise levels as they existed before the original wind farm site development. The noise generated by existing WECS

from another wind farm should not be considered as part of the background noise in determining criteria for subsequent development.

8. Setback Standards for Wind Energy Conversion Systems.

Each WECS shall be setback from Site boundaries not less than, measured from the center of the WECS, yet more stringent set-backs may be determined, and those setbacks governed by the limits established in other sections of this law:

(A.) 2 and ½ times the total height from the nearest public road.

(B.) 2 and ½ times the total height from the nearest edge of the Wind Overlay District

(C.) 2 and ½ times the total height from any residence or non WECS structure existing at the time of application on the lot on which the facility is located, measured from the exterior of such residence/structure and for non-participating properties, 2 and ½ times from the property line.

(D.) Tower height plus 10% from any non-WECS above-ground utilities located within the project boundary.

(E.) 500 feet from state-identified wetlands or bodies of water. This distance may be adjusted to be greater at the discretion of the reviewing body, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds, bats or other creatures.

(F.) All WECS shall be setback a minimum of 2,500 feet from the

(i) schools and churches

(ii) public land where people gather (public access sites)

(G.) All setbacks from property lines and residences resulting from the noise limitations set forth in this law shall be in addition to any less restrictive setback defined above.

9. Issuance of Special Use Permits

A. Upon completion of the review process, the Planning 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 Planning Board will issue a Special Use Permit for each WECS 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 conditions of this Local Law.

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

D. If any approved WECS is not substantially commenced within two years of issuance of the permit, the special use permit shall expire.

10. Abatement

A. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Town Board it shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.

B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSEERDA or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested, necessary to prove the WECS is functioning.

C. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town for the removal of non-functional towers and appurtenant facilities in an amount to be determined by the Town for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York-licensed financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning funding requirements shall be met prior to commencement of construction. The amount of the bond shall be reviewed annually by the Town Board.

11. Limitations on Approvals; Easements on Town Property

A. Nothing in this Local Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Local Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

B. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

12. Permit Revocation

A. Testing fund. A Special Use Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to concerns by residents or property owners. The initial fund shall be in the amount of \$25,000. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Local Law and shall also include an evaluation of any complaints received by the Town. The

applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

C. Notwithstanding any other abatement provision under this Local Law, and consistent with §18(A) and §20(B), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Wind Energy Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

Section 1602 Wind Measurement Towers

1. Wind Site Assessment

The Town Board acknowledges that prior to construction of a WECS, an assessment is typically needed to determine local wind speeds and the feasibility of using particular sites. Installation of Wind Measurement Towers, also known as anemometer ("Met") towers, shall be permitted as Special Uses, but shall not be limited to those areas delineated as Wind Overlay Districts.

A. As a condition of the permit for the Met tower, all data collected shall be turned over to the Town on demand, at any time, when so requested by the Town Board.

B. In addition, continuous sound recordings shall be collected in accordance with §16, paragraph D, and shall be turned over to the Town on a monthly basis.

2. Applications for Wind Measurement Towers

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

1. 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.

2. 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.

3. Address of each proposed tower Site, including Tax Map section, block and lot number.

4. Site plan.

5. Decommissioning Plan, including a security bond or cash for removal.

3. Standards for Wind Measurement Towers

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

B. Special Use Permits for Wind Measurement Towers may be issued for a period of up to twenty-six (26) months. Permits may be renewed if the Facility is in compliance with the conditions of the Special Use Permit.

C. Anchor points for any guy wires for a Wind Measurement 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 sheathed in bright orange or yellow covering from three to eight feet above the ground.

4. Application Review Process for Wind Measurement Towers

A. Applicants may request a pre-application meeting with the Town Planning Board, or with any consultants retained by the Planning Board for application review. Meetings with the Planning Board shall be conducted in accordance with the Open Meetings Law.

B. Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application.

C. Town staff or Town-designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Planning Board waives any application requirement, no application shall be considered until deemed complete.

D. If the application is deemed incomplete, the Planning 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 Wind Measurement Towers proposed is increased.

E. The Planning Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within one mile of each proposed Wind Measurement Tower 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 Planning 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 Planning Board, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.

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

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

H. SEQRA review. Applications for Wind Measurement Towers are deemed Unlisted projects under SEQRA. The Planning Board may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Planning Board's proceedings. The Planning Board may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.

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

Section 1603 Small Wind Energy Conversion Systems

1. Purpose and Intent

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

2. Permitted Areas

Small Wind Energy Conversion Systems (Small WECS) may be permitted in any zoning district on a site of at least 1 acre, upon issuance of a Special Use Permit by the planning board. A Small WECS shall be set back from all property lines and residences a distance equal to at least 1.5 times its height.

Any adjoining property owner within a radius of 4 times the height of the proposed small WECS will be required to grant approval for construction and operation of the turbine.

3. Applications

Applications for Small WECS special use permits shall include:

- A. Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
- 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 Site, including Tax Map section, block and lot number.
- D. Site plan of each tower site, including but not limited to showing the location of the tower in relation to other structures and lot lines, topography of the site, location of trees and other landscape elements.
- E. Ownership and land use information within a 500-foot radius of the location proposed for each tower.
- F. Evidence that the proposed tower height does not exceed the height recommended by the manufacture or distributor of the system.
- G. 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.
- H. Sufficient information demonstrating that the system will be used primarily to reduce off-site consumption of electricity.
- I. 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 to connect the system to the electricity grid, and so states so in the application.
- J. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

4. Application Review Process

- A. Applicants may request a pre-application meeting with the Town Planning Board, or with any consultants retained by the Planning Board for application review. Meetings with the Planning Board shall be conducted in accordance with the Open Meetings Law.

B. Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application.

C. Town staff or Town-designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Planning Board waives any application requirement, no application shall be considered until deemed complete.

D. If the application is deemed incomplete, the Planning 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 Small WECSs proposed is increased.

E. The Planning Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 1,000 feet of each proposed Small WECS 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 Planning 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 Planning Board, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.

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

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

H. SEQRA review. Applications for Small WECS are deemed Unlisted projects under SEQRA. The Planning Board may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Planning Board's proceedings. The Planning Board may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.

I. Upon receipt of the report of the recommendation of the County Planning Board, the holding of the public hearing, and the completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this local law.

5. Development Standards

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

A. A Small WECS 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. Small WECSs may be used primarily to generate on-site power or to reduce the off-site supply of electricity.

C. Tower height may be allowed to vary, dependent on the technology employed. However, setbacks from all property lines shall be maintained, at a minimum, at one and a half times the total height of the tower.

1. 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.

D. 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.

E. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible a small wind energy system shall use natural landforms and vegetation for screening.

F. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.

G. 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 Town if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

H. 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.

I. The system shall be operated such that no damage is caused by stray voltage. If it has been demonstrated that a system is causing stray voltage, the system operator shall promptly mitigate the damage or cease operation of the system.

J. 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. 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.

K. Owners shall be constructed to provide one of the following means of access control, or other appropriate method of access:

1. Tower-climbing apparatus located no closer than 12 feet from the ground.

2. A locked anti-climb device installed on the tower.

L. 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 sheathed in bright orange or yellow covering from three to eight feet above the ground.

M. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.

N. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.

O. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.

P. 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.

Q. The New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind power projects shall be adhered to both inside and outside of agricultural districts.

6. Standards

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

1. Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.

2. Noise. Except during short-term events including utility outages and severe windstorms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed ambient plus 5 decibels (dBA), as measured at the closest neighboring property line.

7. Abandonment of Use

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

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

Section 1604 Miscellaneous

1. Building Permits. The Town of Virgil believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, for such facilities an administrative fee shall be charged for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties, document handling and storage.

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

3. In addition to the amendments being made to the Zoning Law of the Town of Virgil, the Town Board of the Town of Virgil also hereby exercises its right to opt out of the tax exempting provisions of the Real Property Tax Law Section 487, pursuant to the authority granted by Section 487 subdivision 8.

Article VI. Severability. If any part of this local law shall be found to be void, voidable, or unenforceable for any reason whatsoever, it shall not affect the validity or enforceability of any remaining section or provision of this local law.

Article VII. Effective Date. This local law shall take effect immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 20 09 of the ~~(County)(City)~~(Town)(Village) of Virgil was duly passed by the Virgil Town Board on December 19, 20 09, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ and was deemed duly adopted (Elective Chief Executive Officer*) on _____ 20 _____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20 _____ (Elective Chief Executive Officer*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on _____ 20 _____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20 _____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20 _____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20 _____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

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 in paragraph _____, above.

Bonnie F. Hand

Clerk of the county/legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date:

January 7, 2010

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK

COUNTY OF CORTLAND

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.

Patrick M. Snyder

Signature

Attorney for the Town

Title

County

City of

Virgil

Town

Village

Date:

January 10, 2010