

Local Law No. 1 2 of 2009 2011

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

Section 1: Local Law No. 1 2 of 2009 2011, entitled 'WIND ENERGY FACILITIES;' is hereby adopted to read in its entirety as follows:

WIND ENERGY FACILITIES

Article I

General

§1. Title

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

Local Law No. ? of 2011, entitled "Wind Energy Facilities Law of 2011," is hereby adopted to read in its entirety as follows:

Local Law No. 1 of 2009, entitled "Wind Energy Facilities," is hereby amended and replaced in its entirety by this new Local Law No. ? of 2011, entitled "Wind Energy Facilities Law of the Town of Hammond, New York of 2011," which reads in its entirety as follows:

§2. Purpose

The Town Board of the Town of Hammond 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 the public health, safety, and welfare will not be jeopardized.

§3. Authority

The Town Board of the Town of Hammond, 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 (1) (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, and what variances may be granted to the extent such grant of power is different than under Town Law §267 and §274-b, and as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this Local Law differ from the authority granted to the Town by Article 16 of the Town Law.
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).
8. New York Real Property Tax Law §487.

§4. Findings and Determinations

The Town Board of the Town of Hammond makes the following findings and determinations:

1. Wind energy is a 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. Wind turbines are designed to generate electricity and designs vary widely from large industrial units to medium and small residential units. Wind turbines of all sizes may or may not be cost effective and may or may not produce energy for local use or transmission into larger energy grids. 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 protecting the health, safety, and welfare of neighboring property owners and the public.
4. Wind Energy Facilities 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. **It has been found that** Wind Energy Facilities **may** present a risk to birds, bats and other creatures. **The town of Hammond is uniquely situated between two important bodies of water, the St. Lawrence River in the Thousand Islands Region and Black Lake that contain critical migratory flyways.**
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, **including infrasound** that, if unregulated, can negatively affect the quiet enjoyment of properties in the vicinity **and the human health of residents.**
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.
11. The installation of Wind Energy Facilities may affect ground water supplies.
12. Distance of setbacks **have should** taken **n** into consideration the potential hazards of ice throws, blade breakage, and tower blow downs.
13. Wind Energy Facilities may have an effect on future sub-divisions.
14. Considering all of the above factors, the geographic characteristics of the Town of Hammond and the density of certain residential areas within the Town, the Town Board has determined that there **are may be** limited areas within the Town where Wind Energy Conversion systems can be safely constructed and operated and will be compatible with other nearby land uses. **The total area available for WECS is inversely proportional to the total height of the turbine. Due to the safety setbacks, 500-foot turbines have a smaller area available than a 100-foot turbine.** These areas shall be designated by the Town Board through enactment of this Local Law as the Town of Hammond Wind Overlay District, the boundaries of which shall be as defined in Section 6 of this Local Law.

15. Unless the Town Board acts by separate law to have the Town of Hammond opt out of the provisions of §487 of the New York Real Property Tax Law, it shall be the policy of the Town of Hammond that the owner and developer/operator of any property on which a Wind Energy Conversion System is constructed pursuant to this Local Law, shall enter into a payment-in-lieu-of-taxes agreement with the town, the school district, and the county which shall require annual payments to the town, the school district and the county in the amounts which would otherwise be payable to the town, the school district and the county but for the exemption which may be granted to the owner and/or the operator under §487 of the Real Property Tax Law.

15. **The town hereby reserves the right to opt out of the Tax Exemption provisions of Real Property Tax Law 487, pursuant to the authority granted by paragraph 8 of that law, or by any other provision of law.**

§5. Permits Required

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

B. No Wind Energy Conversion System (“WECS”) shall be constructed, reconstructed, modified, or operated in the Town of Hammond, except in the Wind Overlay District, pursuant to a Special Use Permit approved pursuant to this Local Law.

C. No Special Use Permit shall be issued for construction, reconstruction, modification or operation of a WECS in the Town of Hammond, 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 Hammond.

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

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

F. Exemptions. No permit or other approval shall be required under this Local Law for mechanical, non-electrical WECS utilized solely for on-site agricultural operations.

G. 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.

Transfer. Wind Energy Facility or Special Use Construction and Continued Operation Permits are issued exclusively to the applicant and are not transferrable. No 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 a positive declaration in support of the transfer of ownership by the Variance and Project Oversight Board (VPOB) and the approval of the Town Board.

Request for transfer approval must include:

- 1. Name, address, and telephone number of the transferee (buyer). If an agent represents the transferee (buyer), 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 and address of the property owner. If the property owner is not the transferee (buyer), 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 transfer of ownership and (ii) authorizes the submission of the application.**
- 3. Address, or other property identification, of each proposed WECS location, including Tax Map section, block and lot number, latitude and longitude coordinates.**
- 4. A description of the project, including the number and maximum rated power output capacity of each WECS.**
- 5. Detailed explanation of financial and legal agreements to execute the ownership transfer.**
- 6. Written acceptance by the transferee (buyer) including a detailed presentation assuring complete commitment to and adequate resources to execute each required program stipulated in this local law. No transfer shall eliminate the liability of an applicant or of any other party under this Local Law.**

§6. Definitions.

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

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

ANSI – refers to or means the **AMERICAN NATIONAL STANDARDS INSTITUTE.**

APPLICANT – The person or entity filing an application and seeking license under this local law.

BACKGROUND SOUND – Background Sounds are those heard during lulls in the Ambient Sound environment and represent the quietest 10% of the time, for example the quietest one minute.

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

dBc – C-Weighted Sound Pressure Level. Similar in concept to the A-Weighted sound Level (dBA) but C-weighting does not de-emphasize the frequencies below 1k Hz as A-weighting does. It is used for measurements that must include the contribution of low frequencies in a single number representing the entire frequency spectrum. Sound level meters have a C-weighting network for measuring C-weighted sound levels (dBc) meeting the characteristics and weighting specified in ANSI SI.43-1997 Specifications for Integrating Averaging Sound Level Meters for Type 1 instruments. In this document dBc means L unless specified other wise. The sound pressure level in decibels as measured on a sound level meter using the C-weighted filter network.

DECIBEL – A dimensionless unit describing the amplitude of sound and denoting the ratio between two quantities that are proportional to power, energy, or intensity. One of these quantities is equal to 20 times the logarithm to the base 10 of the ratio of the measured pressure to the reference pressure, which is 20 micropascals.

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.

NON-PARTICIPANT – Any and all Hammond landowners having no contractual relationship with a wind developer.

PARTICIPANT – Any and all Hammond landowners having a signed lease, easement, or good neighbor agreement with a wind developer.

QUALIFIED INDEPENDENT ACOUSTICAL CONSULTANT – A person with demonstrated competence in the specialty of community noise testing who is contracted by the Town for purposes of noise measurement or evaluation of noise analysis or noise complaints. An example is a person with full membership in the Institute of Noise Control Engineers (INCE) or other specialist who is qualified by education and experience in acoustics and regularly engaged in community noise testing. While such a consultant is preferably also a licensed professional engineer, such licensure does not by itself establish qualification for community noise testing or analysis without further qualification. The Qualified Independent Acoustical Consultant can have no financial relationship with the Wind Energy Facility developer or related entity.

RESIDENCE - means any dwelling suitable for habitation existing in the Town of Hammond 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.

RESIDENTIAL PROPERTY VALUE GUARANTEE AGREEMENT (RPVGA) – This agreement is mentioned in Section 14 and detailed in Appendix “C” describing the legal rights and options of any residential property owner within a two mile radius and any legal obligations of any approved developer.

ROTOR DIAMETER – The diameter of the largest swept area of a rotating turbine blade.

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.

SETBACKS – a distance measured from the centerline of the road right-of-way, property lines, village limits, edge of wetlands, or closest point of residence foundation to the base of the turbine or measurement tower.

SHADOW FLICKER – the visual effect of viewing the moving shadow of the Wind Energy Conversion System (WECS) rotor blades when they are in a position between the receptor (person viewing them) and the sun and/or the “strobe” lighting effect of this condition as perceived by the receptor whether directly or indirectly (as in a reflection off a light colored wall).

SITE - The minimum area necessary for a Wind Energy Facility to satisfy the required setbacks and any other standards in this local law. The Site may be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where a WECS location is proposed nearer to a property line or off-site residence than **required** **allowed** by the provisions of this Local Law, an easement shall be signed by the adjacent landowner or landowners and recorded in the real property records at the St.

Lawrence County Clerk's Office. The easement must, at a minimum, describe all lands that may be impacted if the WECS fell and must remain in effect as long as the WECS is in place. In no instance shall the easement provide for a setback between a WECS and a residence that is less than **one and one-half (five)** times the total height of the tower.

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 no less than 500 watts and not more than 100 kW/hour and which is intended to primarily generate on-site power or reduce on-site consumption of utility power.

SOUND PRESSURE LEVEL - means the level, **expressed in decibels**, which is equaled or exceeded a stated percentage of time. **Sound Pressure Level is spectrally weighted to correspond to a spectrum of interest. For example, the A-weighted decibel scale (dBA) represents those frequencies most readily audible to the human ear. The C-weighted decibel scale (dBC), approximates response of the human ear to low-frequency sounds. The G-weighted decibel scale (dBG) is designed for infrasound. Sound Measurements shall use sound meters that meet the American National Standard Institute Specifications for Integrating Averaging Sound Level Meters, S1.43-1997 for Type I instruments and be capable of accurate readings (corrections for interval noise and microphone response permitted) at 20 dBA or lower. An LIO - 45 dBA indicates that in any hour of the day 45 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. An LIO-33dBC indicates that in any hour of the day 33dBC 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 procedures accepted by the Town Planning Board.**

SPECIAL USE PERMIT - A construction and operating permit granted in accordance with the provisions of this local law.

TOTAL HEIGHT - The height of the tower **and the furthest vertical extension of the WECS, from the finished ground elevation to the furthest vertical extension of the turbine rotor plane.**

TOWER HEIGHT – The height of the tower from the finished ground elevation at the tower base to the center of the hub forming the attachment point for turbine blades.

VARIANCE AND PROJECT OVERSIGHT BOARD – Five-member board created by this local law to review and approve any variances and manage all town interests associated with any wind development project. Refer to Section 20 for a detailed explanation.

WIND ENERGY CONVERSION SYSTEM ("WECS") - A machine that converts the kinetic energy in the wind into electricity with a rated capacity in excess of 100kW/hour (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 DISTRICT – Those areas of the Town of Hammond that the Town Board has determined **are may or may not be** appropriate for the development of Wind Energy Conversion Systems (WECS) and related infrastructure, electrical lines and substations, access roads and accessory structures, **depending on adequate health, environmental, economic, and safety setbacks.** The boundaries of the Wind Overlay District shall be as shown on the map entitled Town of Hammond Wind Overlay District **and on file in the Town Clerk's Office, a copy of which is attached to this local law as Appendix "B" and is described as follows:**

1. Railroad bed from the St. Lawrence/Jefferson County line to the village limits of the Village of Hammond.
2. Black Lake Road from the village limits of the Village of Hammond to the town line between the Town of Hammond and the Town of Morristown.
3. South side of NYS Route 12 from the St. Lawrence/Jefferson County line to Hammond/Morristown town line.
4. St. Lawrence/Jefferson County line from the railroad bed to the south side of the NYS Route 12 right of way line.
5. Hammond/Morristown town line from Black Lake Road to the south side of the NYS Route 12 right of way line.

§7. Applicability

- A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed within the Town of Hammond 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 pre-existing Wind Energy Facility that does not generate 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. (B). 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 Measurement Tower is obtained pursuant to the provision of this Local Law.

C. Wind Energy Facilities may be either principal or accessory uses. Alternatively, 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.

Article II

Wind Energy Conversion Systems

§10. Wind Energy Conversion Systems Permitted.

Wind Energy Conversion Systems shall only be permitted within the boundaries of the Wind Overlay District and only after receipt of a Special Use Permit issued by the Town Planning Board pursuant to the provisions of this Local Law.

§11. Applications for Wind Energy Conversion Systems

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

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 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 and (ii) authorizing the submission of the application.
3. Address, or other property identification, of each proposed WECS location, including Tax Map section, block and lot number, latitude and longitude coordinates.
4. A description of the project, including the number and maximum rated power output capacity of each WECS.

5. 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 **one thousand two hundred fifty feet six times the total height of the proposed WECS. of tower height of the Site.**
 - (c) Location and ground elevation of each proposed WECS.
 - (d) Location of all above **and below** 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 35 feet within **a one thousand two hundred fifty foot radius six times the total height** 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) Boundaries of the Wind Overlay District to demonstrate that each proposed WECS is located within said overlay district.
 - (g)** To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower site equal to:
 - (i) **Six times the total height of the proposed WECS equal to one and a half times the tower height.**
 - (ii) **Five Hundred foot radius.**
 - (ii). Two times the total height of the proposed WECS**Information shall be provided concerning ownership and land uses within the above-mentioned radii.
 - (h) Location of the nearest residential structure on Site and off Site, and the distance from the proposed WECS.
 - (i) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
 - (j) The names and addresses of property owners within six times the total height of the proposed WECS are included for notification purposes regarding the siting of the project.**

6. 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.
7. Landscaping Plan: depicting vegetation **and forest cover** describing the area to be cleared of vegetation **and forest cover** and areas where vegetation and **forest cover** shall be added, identified by species and size of specimens at installation, and their locations. Guideline listed in Appendix A of this law shall also adhere for this work.
8. Lighting Plan: showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.
9. **Decommissioning Plan: The Applicant shall provide a decommissioning plan which shall include: a) the estimated decommissioning cost in current dollars; (b) how said estimate was determined; and (c) the method that will be used to keep the decommissioning costs current. The Town Board will make arrangements to ensure the fund amount is adjusted annually based on a suitable index such as the “RS Means Heavy Construction Cost Data” index unless the wind developer supplies convincing evidence that market conditions have changed. Reference Section 21 for detailed description of decommissioning procedure.**

Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; (5) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all 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. Compliance with the New York State Department of Agriculture and Markets Guidelines for Agricultural Mitigation for Wind Power Projects in effects of the effective date of decommissioning shall be required

10. **Complaint Resolution Plan:** The application includes a complaint resolution process to address complaints and from nearby residents. The applicant shall **within 24 hours and** make every reasonable effort to resolve any complaint **in a diligent and timely manner, not greater than 7 days.** within 45 days. Lacking resolution, an arbitrator shall be appointed by the Town Board and the results of

the Arbitration shall be binding on both parties. Complaint resolution shall be filed by registered mail. In the event Arbitration is required to resolve any complaint, the applicant shall be responsible for the arbitrator's fees and any administrative expenses associated with the arbitration. **Reference Section 15 for a description of an extensive complaint resolution process that addresses situations that may result from wind development in Hammond.**

11. 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 **of the project and beginning and ending hours of daily 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.
12. Completed Part 1 of the Full EAF.
13. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the WECS.
14. 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.
15. 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. If the lead agency issues a Negative Declaration of environmental significance following its review of the EAF, an amended application shall be submitted which shall include, at a minimum, the following information:
 - (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. **No shadow flicker will be permitted on non-participants property without an easement or on any roads.** 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 the proposed WECS as installed, which shall 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/Emergency Response Plan: A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed WECS to address coordination with local emergency/fire protection providers during any construction or operation phase emergency, hazard or other event.
- (d). Noise Analysis: A noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall be performed according to the International Standard For Acoustic Noise Measurement Techniques For Wind Generators (IEC 61400-11), or other procedure accepted by the Town Planning Board, and shall include both a dBA analysis and dBC analysis.
- (e). Property Value Analysis: Property value analysis shall be prepared by a licensed appraiser **approved by the Variance and Project Oversight Board (VPOB)** in accordance with industry standards, regarding the potential impact of values of properties **in the Town of Hammond, neighboring WECS Sites.**
- (f). Electromagnetic Interference: An assessment of potential electromagnetic interference with microwave, radio, television, satellite systems, personal communication systems and other wireless communication, weather and other radar shall be prepared.
- (g). 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. Local roads shall include all state highways, county highways, town highways, and village streets and highways, which will be or may be used by the applicant.

- (h). Transportation Plan: A transportation plan describing routes to be used in delivery of project components, equipment and building materials, and those to be used to provide access to the Site during and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, and measures to restore damaged/disturbed access routes following construction. Roads shall include all state highways, county highways, town highways, and village streets and highways, which will be or may be used by the applicant.
- (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 a WECS. An assessment of potential immediate and long-term impacts to local flora and fauna, micro and macro habitats, and ground and surface water related, but not limited to, excavation, blasting, clear-cutting and grading during the Site preparation phase. **A geotechnical report shall include: soils engineering and engineering geologic characteristics of the Site based on Site sampling and testing, a bedrock profile within one (1) mile of the Site, information on depth of well, average flow rate, and with permission by owner, test of water quality for all wells within two (2) miles of the Site, grading criteria for ground preparation, cuts and fills, soil compaction, and a slope stability analysis.**
- (j). Cultural, Historical, and Archeological Resources Plan: **An analysis of impacts on cultural, historical and archeological resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification, or operation of WECS. This assessment shall be conducted in coordination with the New York State Office of Parks, Recreation and Historic Preservation.**
- (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. **Any analysis or study shall follow the most current guidelines published by the DEC (when adopted) for aviation studies. An assessment of the impact of the proposed development on the local flora and fauna will include migratory and resident avian species, bat species and the local wildlife population. 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 at a minimum consist of pre-construction data of three years, including radar observations and literature survey for threatened and endangered species that provide**

relevant information on critical flyways, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to address any impacts, as well as plans for three-year post-installation studies. The analysis shall include observations from multiple site-specific areas meeting DEC guidelines.

- (l). Operation and Maintenance Plan: An operation and maintenance plan providing for regular periodic Wind Energy Facility schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
 - (m). **Blade Throw Report**: A report from an independent New York State professional engineer that calculates the maximum distance that ice from the turbine blades and pieces of turbine blade could be thrown. (The basis of the calculation and all assumptions must be disclosed.) The incidence of reported ice and blade throws and the conditions at the time of the ice and blade throw must be included.
 - (n). **Stray Voltage Report**: An assessment, pre-and post-installation, of possible stray voltage problems on the Site and neighboring properties within one (1) mile of the project boundary to show what properties need upgraded wiring and grounding.
16. The applicant shall, prior to the receipt of a Special Use Permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner. **Applicant should also provide proof of complying with Public Service Commission power purchase requirements.**
17. A statement, signed under penalties of perjury that the information contained in the application is true and accurate.
18. The applicant shall provide evidence to the Planning Board that it has entered into or caused to be entered into a payment-in-lieu-of-taxes agreement as may be required by §4 (15) of this law.
18. **The applicant shall provide proof of continuous liability insurance in the amount of \$5,000,000 per occurrence. total policy minimum of \$20,000,000 per year. This shall be submitted to the Town of Hammond indicating coverage for potential damages or injury to landowners.**
19. **Disclosure of Financial Interests. For any financial interest held by a Municipal Officer or his or her relative in any wind development company or its assets within ten years prior to the date of an application for a permit under this local law, the Wind Company shall disclose in a separate section of**

the application the Municipal Officer or his or her relative, the addresses of all persons included in the disclosure, and the nature and scope of the financial interest of each such person. The disclosure shall include all such instances of financial interest of which the Wind Company has knowledge, or through the exercise of reasonable diligence should know, and the format of the submission shall be subject to the approval of the town board.

- 20. Requires an accurate one-year survey of wind speed data obtained from an independently installed wind measurement tower and certified by NYSERDA to determine if it meets the minimum wind speed criteria in NYS for efficient wind power production.**
- 21. The Town shall require the applicant to fund an escrow agreement to cover the amount by which the Town's cost to review the applicant's applications exceed the application fees paid by the applicant. Refer to Section 34; paragraph B, for further description.**
- 22. Copies of all applications and proposed plans should be made available to the public within seven days of receipt by the Town Planning Board and placed in the Town Library and Town Clerk's office as well as on the Town of Hammond website.**

§ 12 Application Review Process

- A. Applicants may request a pre-application meeting with the Town Planning Board, and/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 photo copies of the application **and a complete digital version shall be available** 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 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 WECS proposed is increased.

- E. Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Town Clerk shall transmit the application to the Planning Board.
- F. Applicant shall conduct multiple information sessions that are hosted by the Town Planning Board. Notice shall be given by first class mail to all property owners in the Town of Hammond and published in the Town's official newspaper. During these sessions, participants will be afforded the opportunity to have all questions answered.**
- F. G.** The Planning Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to **all** property owners **in the Town of Hammond** **within 1,250 feet of each proposed WECS** and published in the Town's official newspaper, no less than ten nor more than twenty days before the 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. In the event a variance is requested by the applicant pursuant to the procedure contained at §17 **§13** the notice shall specify the variance requested and that the Planning Board will consider the variance pursuant to §17 **§13** as part of its review of the application.
- G. H.** The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances. Notice for SEQR public hearings must meet the specification set out in 6 N.Y.C.R.R. §617.12 (c).
- H. I.** Notice of the project shall also be given, when applicable, to (1) the St. Lawrence County Planning Board, if required by General Municipal Law §239-1 and 239-m, and (2) to adjoining Towns where the project site is located within **500 six times total height of the proposed WECS feet** of the adjoining Town boundary.
- I. J.** 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 or communities, in which case the records of review by said agencies or communities shall be part of the record of the Planning Board's proceedings. The applicant shall be responsible for the Town's legal and engineer's fees in connection with the SEQRA and other reviews under this Local Law. The Planning Board shall require an escrow agreement with the applicant to cover the engineering and legal review of the applications and any environmental impact statements before commencing its review. The escrow agreement shall provide a minimum balance that the applicant must maintain in escrow with the Town from which the Town may pay its professionals' fees for review.

- J. K.** After a thorough and detailed evaluation of the application in which the Planning Board completes the required “hard look” of all materials and public input and 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 **what is in the best interest of all of the residents of Hammond and** the standards in this Article.
- L.** Issuance of Special Use Permits. Upon completion of the review process, the Town 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. M.** If approved, the Town Planning Board will issue, to the applicant only, a Special Use Permit for each WECS for the purpose of construction and continued operation based on satisfaction of all conditions for said Permit. This authorizes the Code Enforcement Officer to issue a building permit for each WECS, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Local Law.
- C. N.** The decision of the Town Planning Board shall be filed within five business days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- D. O.** If any approved WECS is not substantially commenced within **two one** years of issuance of the permit, the special use permit shall expire.

§14. §13. Waiver of Criteria

Pursuant to §274-b (5) of the New York Town Law, the Planning Board shall have the authority to waive the strict application of any of the above criteria when specifically requested by the applicant **and will apply to the application process only. Any waiver for criteria for standards for WECS requires a variance request.** The Planning Board determines that such request is reasonable under the circumstances and that strict application is not required under the circumstances in order to protect the public health, safety and general welfare. **The Planning Board shall keep with the spirit and intent of this local law in their determinations and shall specify, in its findings, the reasoning behind such determinations.**

§14. Residential Property Value Guarantee Agreement (RPVGA)

The Residential Property Value Guarantee Agreement (RPVGA) has been developed to address the issue of property value protection for all landowners within a two-mile radius of the WECS project. This agreement is attached to this local law in its entirety as Appendix “C”.

§15. Complaint Resolution Process

- A. The offended party shall first bring their complaint to the Variance and Project Oversight Board (VPOB). If the (VPOB) finds it to be valid, they will notify the WECS licensee of the complaint. The licensee shall have the opportunity to mitigate the complaint. The time frame of mitigation and any fines assessed will be dependent on the nature of the complaint and how it is specified in this local law. The complaints may include, but will not be limited to: excessive noise, flicker or shadow effect, change in water quantity or quality, loss of or diminished telephone, TV, radio reception, interference with a medical device, changes in value to the residence, new presence of radon gas. Should it be necessary for the complaint to be verified by an expert, the Town shall select and employ a non-biased firm to do testing, collect data or whatever else may be deemed necessary to determine the validity of the complaint. The funds for payment of these services will come from the established escrow account.**

- B. Should the WECS licensee be unable to mitigate the complaint in the time frame established for each complaint per the local law, fines to the Town and payments to the resident will be made by the licensee at the direction of the (VPOB). All fines will be paid to the Town of Hammond in all cases except those concerning well-water impacts. Fines levied in those cases will go to the landowner. The Town does have the option of setting an additional fine to the applicant as well.**

The Compliant Resolution Process will apply, but not be limited to, the following categories:

- 1. Shadow Flicker Complaint Resolution Process:**
If a written complaint along with a video is received by the (VPOB) from a non-leaser identifying said turbine(s) (number) in the wind development project with a complaint of impact disturbance caused by shadow flicker the developer is to be notified within 72 hours by the (VPOB). The developer must then mitigate the complaint within 48 hours, if not sooner. This can be accomplished by the shutting down of said offending turbine(s) during peak flicker hours. If the developer does not comply within said time limits, the Town Board will impose a fine as established in Section 36 (E) of this local law, starting from first day of complaint. If not mitigated in seven days from date developer is notified, or at Towns discretion, permit to operate said turbines in question will be withdrawn.

- 2. Setbacks Complaint Resolution Process:**
If a written complaint is received by the (VPOB) from a non-leaser in the wind development project identifying that a setback requirement was non-compliant and found to be valid, meaning said setback does not meet requirement in the local law/ordinance the developer must comply immediately to correct the non-compliant problem. If the developer fails to comply, the Town will either fine the developer as established in Section 36 (E) of this local law per day of violation and/or revoke the permit to operate.

- 3. Noise/Sleep Interference Complaint Resolution Process:**
If a written complaint with a recorded time noise log of turbine(s) is made to the (VPOB) from a non-leaser in the Town of Hammond with a charge of a noise disturbance the Town will notify the developer within five days after verification of said complaint. The Town may retain an independent acoustic investigation paid for with the funds in the escrow account, for verification. Copy of acoustic investigation will be given to person making complaint, the Town and the developer. If the developer is found to be non-compliant with the Town's local law noise ordinance, the developer will be made to shut down the turbine(s) during normal sleep hours, times to be set by Town Board in the local law.
- 4. Electromagnetic/Stray Voltage Complaint Resolution Process:**
If a written complaint is received by the (VPOB) from a resident due to an electromagnetic inference or stray voltage, the town will notify the developer within 48 hours of the complaint. The Town will hire a stray voltage investigation or electromagnetic interference investigation by a certified electrical engineer, at the costs of the developer, to validate said complaint. Should the complaint be valid, the developer will have one week (7 days) to rectify complaint. Should developer fail to satisfy complaint in this time frame, the fine would be as established in Section 36 (E) of this local law, starting the first day of the complaint, per turbine found in violation.
- 5. Protection of Aquifers, Ground Water and Wells:**
If a complaint (either written or phoned in) is received by the (VPOB) from a resident for disturbance of an aquifer, ground water or well water, the Town will notify the developer the same day. Water is a most basic need. The developer will have 24 hours to verify the complaint is due to development impact. If the developer is the fault of the complaint, the developer must make potable water available to resident(s) immediately along with a course of action to resolve the complaint. If the developer determines the complaint is not related to the development, the Town may choose to hire a qualified engineer at the expense of the developer, to verify validity of the complaint. If the complaint is verified that the well is toxic then the developer and/or town is to notify the Department of Conservation (NYS DEC) immediately of such occurrence/accident. If such accident is under the jurisdiction of the NYS DEC policies then the NYS DEC will follow their protocol for correcting this occurrence. If the occurrence is not of a toxic contaminated spill then the developer will have five days after receiving findings that they are at fault of this disturbance to rectify the complaint. If the developer fails to comply, the Town Board will impose a fine as established in Section 36 (E) of this local law, starting from first day of complaint. These fines will be paid to the landowner that filed complaint.

§13. 16. Standards for WECS

The following standards shall apply to all large WECS.

- A. All power transmission lines from the tower to any building or other structure shall be located underground **without variance approval.** to the maximum extent practicable.
- B. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Site Plan Review and Subdivision Law. Applications may be jointly submitted for WECS under this Law and telecommunications facilities under the Site Plan and Subdivision Law.
- 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. **Motion-sensitive on-demand lighting is required.** 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 WECS 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 WECS shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Wind Overlay District, 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 **permitted in connection with small WECS and wind measurement towers only.** 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 Special Use Permit for the specific WECS causing the interference. Refer to Section 15 for detailed protocol. **Fines for non-compliance will be set by the Town Board and assessed accordingly. Refer to Section 36 (E) for further detail regarding the complaint resolution process.**

- 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. **when feasible.** The use of previously developed areas will be given priority wherever possible. All top soil disturbed during construction, reconstruction or modification of WECS **shall will** be stockpiled and returned to the site upon completion of the activity, which disturbed the soil. Compliance with the New York State Department of Agriculture and Markets Guidelines for Agricultural Mitigation for Wind Power Projects is required. The guidelines in effect as adoption of this Local Law are attached hereto as Appendix “A”.
- J. WECSs shall be located in a manner that minimizes significant 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. WECSs 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. Compliance with the New York State Department of Agriculture and Markets Guidelines for Agricultural Mitigation for Wind Power Projects is required.
- M. The New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind power projects in effect as of the date of the application shall be adhered to, both inside and outside of agricultural districts. These guidelines in effect as of the effective date of this local law are reproduced at Appendix A for reference.
- N. The maximum Total Height of any WECS shall be 500 feet.
- O. Construction of the WECS shall be limited to the hours of 7 AM to 7 PM Monday through Friday, unless prior written **recommendation of the Variance and Project Oversight Board (VPOB) and written** approval of the Town **Planning** Board is received to allow deviation from such hours.
- P. 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 Special use Permit for the specific WECS causing the problems. **Fines for non-compliance will be set by the Town Board and assessed accordingly. Refer to Section 36 (E) for further details regarding the complaint resolution process.**
- Q. WECSs shall be located in a manner that minimizes significant negative impacts on the historical and cultural aspects of the community (i.e. high concentration**

of historic stone houses and buildings). This shall be done in coordination with the New York State Office of Parks, Recreation and Historic Preservation. In addition, the review of NY's Department of State guidelines for Scenic Areas of Statewide Significance should be respected.

- R. Health and Safety Setbacks:** Each WECS shall be setback from Site boundaries, measured from the center of the WECS:
1. The greater of one and one-half times the total tower height or 500 **six times the total height of the proposed WECS** feet from the nearest site boundary property line.
 2. The greater of one and one-half times the total tower height or 500 **six times the total height of the proposed WECS** feet from the nearest public road.
 3. The greater of one and one-half times the total tower height or 500 feet from the nearest edge of the Wind Overlay District **six times the total height of the proposed WECS from the Village of Hammond boundaries.**
 4. **One and a half miles from Route 12 for turbines 350 feet or greater in total height. One mile from Route 12 for turbines less than 350 feet in total height.** The greater of two and one-half times the total tower height or 1500 feet from the nearest off-site residence existing at the time of application.
 5. **Six times the total height of the proposed WECS** One and a half times the Total Height of the WECS from any non-WECS structure or any aboveground utilities.
 6. **Two times the total height of the proposed WECS from state and federal wetlands.**

§15. 17. 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 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 based on 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 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. The owner and/or operator of a WECS that has received approval under this Law and for which a permit has been issued shall file with the **Town Code Enforcement Variance and Project Oversight Board (VPOB)** on an annual basis an Operation and Maintenance Compliance report detailing the operation and maintenance activities over the previous year and certifying full compliance with the Operation and Maintenance Plan. The annual report shall include a noise analysis by an independent acoustical consultant performed according to the International Standard For Acoustic Noise Measurement Techniques For Wind Generators (IEC 61400-11) or such other procedure as accepted by the **(VPOB) Town Planning Board** during the permit review process which certifies to the Town that the noise level of the WECS is in full compliance with the provisions of this law and the permit as issued. **Refer to Section 35, Project Management and Oversight, for appropriate compliance specifications and protocol.**

§16. 18. 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. **This shall be done in coordination with the Town Highway Superintendent. Refer to Section 35, Project Management and Oversight, for appropriate compliance specifications and protocol.**
- B. The applicant is responsible for remediation of damaged roads upon completion of the installation **and/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. **This shall be done in coordination with the state, county and town highway departments.**
- 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 placing the WECS in operation, **and for the life of the project**, the applicant shall repair or reconstruct all state highways, county highways, town highways and village streets and highways **damaged used** by the applicant to the standards set forth by the St. Lawrence County Highway Department regardless of the condition of such highways, roads and streets prior to the commencement of construction by the applicant.

§17. 19. Noise Standards and Setbacks for Wind Energy Conversion Systems

- A. The statistical sound pressure level (L_{10}) generated by a WECS shall not exceed 45 dBA and/or 33dBC when measured at the nearest inhabited off-site dwelling, school, hospital, church or public building existing at the time of application. If the ambient sound pressure level exceeds 45 dBA and/or 33dBC, the standard to be applied to the application shall be the ambient dBA plus 5 dBA and/or ambient dBC plus 5 dBC. Certification by an independent acoustical analyst shall be provided by the application to the Town before and after construction demonstrating compliance with this requirement. Such analysis shall be performed in accordance with the International Standard For Acoustic Noise Measurement Techniques For Wind Generators (IEC 61400-11), or other procedures accepted by the Town Planning Board. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- C. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted 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 and dBC, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be measured 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. Any noise level falling between two whole decibels shall be the lower of the two.
- A. **The equivalent level (LEQ) generated by a Wind Energy Conversion System (WECS) shall not exceed the limits listed in Table 1 when measured at the nearest off-site dwelling existing at the time of application, or for which a building permit has been issued, or for parcels zoned residential. If the A-weighted background sound pressure level, without the WECS, is within 5 dB of some or all of the limits in Table 1 or exceeds some or all of the limits in Table 1, then the A-weighted criterion to be applied to the WECS application for those affected limits shall be the A-weighted background level +5 dB. The remaining limits that are more than 5 dB above the A-weighted background shall remain as given in Table 1.**

Note: For example, during daytime, if the background is less than or equal to 40 dB, then the limit is 45 dB. However, if the background is greater than 40 dB, say 44 dB, then the applicable WECS limit is the background level plus 5 dB which calculates to 49 dB for this example.

- B. In all cases, the corresponding C-weighted limit shall be the operable A-weighted limit (from Table 1 or based on the A-weighted background, as appropriate) plus 18 dB. The application shall include certification by an independent acoustical engineer as to the predicted A- and C-weighted WECS sound levels at potentially impacted residential sites. The firm with which the engineer is associated shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental noise, and the independent acoustical engineer shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA. The background shall be measured and predicted in accordance with clause C below.

Table 1. WECS noise limits at residential receivers

	Daytime 7 AM to 7 PM	Evening 10 PM to 10 PM	Nighttime 10 PM to 7 AM
A-weighted level (dB)	45	40	35
C-weighted level (dB)	63	58	53

- C. A-weighted background community noise levels shall be based on measured hourly L90 levels gathered continuously for at least 2 weeks. The day shall be divided into three time periods: (1) daytime, the hours from 7 AM to 7 PM, (2) evening, the hours from 7 PM to 10 PM, and (3) nighttime, the hours from 10 PM to 7 AM. If insect noise possibly can dominate some of the hourly L90 measurements,¹ then Ai weighting (see Schomer *et al.*, 2010²) shall be used in lieu of the Standard A-weighting, or measurements shall not be made when insect noise possibly can dominate some of the hourly L90 measurements. The background shall be reported by time period, and computed as follows. The minimum hourly L90 shall be tabulated by time period and by day, and the arithmetic average by time period over all the days of measurement shall be computed. These three averages of daily minima shall be reported as that site's daytime, evening, and nighttime A-weighted background, respectively.

¹ In relatively quiet areas insect noise, especially during summer months, can easily dominate the A-weighted ambient sound level. This domination occurs partly because the primary frequencies or tones of many, if not most, insect noises are in the range of frequencies where the A-weighting is a maximum, whereas, most mechanical and WECS noises primarily occur at the lower frequencies where the A-weighting significantly attenuates the sound. Also, insect noise and bird song do not mask WECS noise at all because of the large differences in frequencies or tones between them.

² Schomer, Paul D. *et al.*, "Proposed 'Ai'-Weighting; a weighting to remove insect noise from A-weighted field measurements," InterNoise 2010, Lisbon Portugal, 13-16 June 2010.

C.1 Parcels 3 acres or smaller

The A- weighted background measurements shall be made along the line from the nearest proposed WECS to the dwelling in question. If the parcel of land has no dwelling, then the line shall terminate within 25 ft of the center of the parcel. The actual position of the microphone shall be within the property in question and should be within 25 feet to either side of the line, no closer than 50 feet from the property boundary, and no closer than 25 feet from the house or any other structures. If positioning within this “measurement box” is not possible because of unique site conditions such as the position being underwater or the property being too small, then the unique conditions shall be fully documented and an alternate position selected and justified.

C.2 Parcels larger than 3 acres

The A- weighted background measurements shall be made along the line from the nearest proposed WECS to the dwelling in question. If the parcel of land has no dwelling then the line shall terminate within 50 ft of the center of the parcel. The actual position of the microphone shall be within the property in question, shall be within 50 to 500 feet of the dwelling or within 0 to 500 feet of the parcel center, as applicable, should be within 50 feet to either side of the line, shall be no closer than 50 ft from the house or any other structure, and shall be no closer than 50 feet from the property boundary. If positioning within this “measurement box” is not possible because of unique site conditions such as the position being underwater or the property being too small, then the unique conditions shall be fully documented and an alternate position selected and justified. The microphone shall be no closer than 50 ft from the house or any other structures.

C.3 Measurement requirements

The microphone shall be situated between 4 and 4.5 ft above the ground. Measurements shall be conducted within the general provisions of ANSI S1.13-2005, and using a meter that meets at least the Type 2 requirements of ANSI S1.4 and S1.4A-1985 (R2006). The meter noise floor shall be 20 (dBA) or lower. The report shall include each hourly measured A-weighted L90 level, the tabulated daily minima by time period, and the three time period averages. The report also shall include a sketch of the site showing distances to the structure(s), to the property line, etc., and several photographs showing the structure(s), the property, and the acoustical instrumentation. All instrumentation shall be listed by manufacturer, model, and serial number. This instrumentation listing also shall include the A-weighted noise floor and the one-third octave band noise floors, if utilized, for each meter used.

C.4 Background prediction and measurement

Background measurements shall be conducted throughout the area using sufficient sites to generally characterize the background in various areas of the community such as along busy roads, in town, near the river, and in the countryside. The town, using the services of the town engineer, shall contract for the background measurements and determination of background levels for general areas of the

township such that every parcel is assigned a background level for daytime, evening, and nighttime. The contractor shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental noise, and the consultant's project leader shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA. The WECS applicant shall pay for the contract to measure and determine background levels. This payment shall include the cost of the contract, the cost of letting the contract, and the cost of supervising the contractor. The number of measurement sites and study plan shall be developed jointly between the town and the contractor with input from the public and from the applicant.

NOTE: It is anticipated that background measurements will be performed at on the order of 9 to 12 locations.

D. The starting point for predicting WECS A- and C-weighted levels at potentially impacted residential parcels shall be the manufacturer-supplied octave band sound power levels as measured by the manufacturer in accordance with International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11). At a minimum, the octave band data shall include the 10 octave bands with nominal center frequencies ranging from 16 Hz to 8000 Hz (see ANSI S1.6-1984), and the sound power levels for these bands shall be tabulated in the report. Any data not available from the manufacturer shall be estimated from field measurements on like wind turbines already in use. Any such field measurements shall be described fully and documented in the report. Predictions for certain times of the day such as nighttime may use manufacturer certified lower sound power levels that correspond to a reduced wind turbine output power setting, if the application warrants and affirms that this reduced power setting always will be used during the time of the day in question (e.g., nighttime).

E. 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.

NOTE: Minimum distances or setbacks are a very inexact means to limit WECS noise. It is far more appropriate to deal with each application on its own merits, taking into account the ground surface in the area, the number and placement of the wind turbines, and the sound power produced by the particular model of the WECS.

F. Any noise level falling between two whole decibels shall be rounded to the nearest whole decibel.

G. Enforcement shall be by measurement. The town, using the services of the town engineer, shall be responsible for and shall contract for any enforcement measurements. The contractor shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental noise, and the consultant's project leader shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA.

The duration of any WECS measurement shall be 30 minutes. During the 30-minute period, the equivalent level (LEQ) generated by the WECS shall be measured. The measurement location shall be at any residential property as given in Clause A, and at any point on this residential property at which the background community noise may be measured per Clause C. Measurements shall be entirely within the appropriate time period, e.g., during nighttime for nighttime enforcement, and the WECS shall operate continuously during the 30-minute measurement.

The microphone shall be situated between 4 and 4.5 ft above the ground. Measurements shall be conducted within the general provisions of ANSI S1.13-2005, and using a meter that meets at least the Type 2 requirements of ANSI S1.4 and S1.4A-1985 (R2006). The instrument noise for shall be at least 10 dB below the lowest level measured.

A calibrator shall be used as recommended by the manufacturer of the sound level meter. The fundamental level of the calibrator and the sensitivity of the sound level meter shall be verified annually by a laboratory using procedures traceable to the National Institute of Standards and Technology.

A wind screen shall be used as recommended by the sound level meter manufacturer.

An anemometer shall be used and shall have a range of at least 5 to 15 miles per hour (2.2 to 6.7 meters per second) and an accuracy of at least ± 2 miles per hour (± 0.9 meters per second).

A compass shall be used to measure wind direction to at least an 8-point resolution: N, NE, E, SE, S, SW, W, NW.

Measurements shall be A-weighted, or, alternatively, in one-third-octave bands. For A-weighted measurements, the uncertainty (tolerance) of measurements shall be 1 dB for a type 1 meter and 2 dB for a type 2 meter. For one-third-octave-band measurements, the meter shall meet the type 1 requirements of ANSI S12.4 and S12.4a-1985 (R2006), and the uncertainty of measurements shall be 5 dB in each and every one-third-octave band.

For all measurements, the surface wind speed, measured at a 1.5-m height, shall be less than 5 m/s.

All measurements shall be corrected for the background on the basis of mean square pressures. For one-third-octave-band measurements, each one-third-octave band shall be individually corrected for the background in that band. That is, both

the WECS (which always includes the background) and the background alone shall be measured in each one-third-octave band. For either A-weighted data or one-third-octave band data, the background shall be measured during a *like period* when the WECS is not operating, and Table II shall be used to correct for the background, by band in the case of one-third-octave-band data. A *like period* includes the same or like location, like surface wind speed and direction, like time of day and day-of-the-week (e.g., Monday-Thursday night, Friday or Saturday night, or Sunday night), etc.

After correction, when using data measured in one-third-octave bands, all remaining bands, excluding bands set equal to zero, shall be converted to A-weighted bands and then shall be summed on a mean square pressure basis to establish the WECS background-corrected A-weighted sound level.

Table II. Correction in dB that shall be subtracted from the WECS sound level measurement (which always includes the background sound level) because of the background sound so that the result is just the sound level of the WECS alone (See Note 1 below).

Δ , difference (dB)	< 3	3 - 4	5 - 6	7 - 10	>10
K, correction (dB)	Notes 2, 3	3	2	1	0

Notes:

1. This table provides a simple correction to measurements of WECS sound in the presence of the background. For example, the sound of a WECS (along with the background sound which is always present) is measured as 40 dB(A), and the background sound level alone (without the WECS) is measured as 34 dB(A). Then Δ , the difference in decibels is 6 dB (first row, third column), and the corresponding correction shall be 2 dB (second row, third column). That is, 2 dB shall be *subtracted* from the measured 40 dB(A) level, and it is adjusted to and reported as 38 dB(A). The same procedure is followed in each band for one-third-octave-band data.
2. When using directly measured A-weighted levels, if the difference between the WECS sound level (plus background sound level) and the background sound level alone is less than 3 dB, then it shall not constitute a violation of this chapter.
3. When using measured one-third-octave-band data, if the difference between the WECS sound pressure level (plus background sound pressure level) and the background sound pressure level alone, each in the same one-third-octave band, is less than 3 dB, then the WECS level for that one-third-octave band shall be set to zero.

The report shall include a sketch of the site showing distances to the structure(s), to the property line, etc., and several photographs showing the structure(s), the property, and the acoustical instrumentation. All instrumentation shall be listed by manufacturer, model, and serial number. This instrumentation listing also shall include the A-weighted noise floor and the one-third-octave band noise floors, if utilized, for each sound level meter used.

Commentary: The WECS community noise level criteria are based on numerous national and international criteria and standards. With the exception of airports and highways, all cognizant authorities in the United States recommended a basic day night-sound level (DNL) of 55 dB, which implies a daytime equivalent level (LEQ) of 55 dB and a nighttime LEQ of 45 dB. Similar recommendations are made by such international authorities as the World Health Organization (WHO) and the World Bank. However, both the relevant national standard, ANSI S.12.9 Part 4 and the relevant international standard, ISO 1996 Part 1, contain recommended adjustments to these criteria based on the nature of the community and the newness of the noise source. Each of these standards contains a 10 dB adjustment for very quiet, typically rural communities for which peace and quiet is an expected value and amenity, and each contains a 5 dB adjustment for a new noise source for which the community has no experience. This latter adjustment is obviously “temporary” because after some number of years, the sound is no longer new, so the full 5 dB adjustment may not be justified. Also, the DNL, with the values cited, assumes continuous or near-continuous sound. If the WECS noise was only present half the time, this would imply a 3 dB increase to the criteria. Thus, the 5 dB adjustment for a "new" source is counterbalanced by the transient nature of the adjustment and the adjustment to the criteria for the duty cycle of the WECS. The resulting suggested criterion is a slight variant of DNL equal to 45 dB, which is the general limit of 55 dB minus 10 dB for the quiet rural nature of the area.

The minor variant is that this recommendation is for the use of DENL, the day-evening-night sound level. DENL is used in California and all of Europe, and it divides the day into three time periods: (1) day, 7 AM to 7 PM, (2) evening, 7 PM to 10 PM, and (3) night, 10 PM to 7 AM. In contrast, DNL divides the day into two time periods: (1) day, 7 AM to 10 PM, and (2) night, 10 PM to 7 AM; there is no separate evening limit.³ DENL is chosen because of the large use of outdoors during the warmer-weather months in the Hammond area. This 45 dB DENL criterion is broken out as 45 dB during daytime, 40 dB during evening, and 35 dB during nighttime.

§18. 20. Variance and Project Oversight Board (VPOB)

The **Planning Variance and Project Oversight Board (VPOB)** is hereby granted the power to vary or modify the strict application of the requirements contained in this Law. **as they relate to area or dimensions upon the application of the criteria hereafter listed.** In no event shall the **Planning Variance and Project Oversight Board (VPOB)** has the authority to issue a use variance to permit the location of WECS in an area outside of the Wind Overlay District as established under this Law. **The (VPOB) shall keep with the spirit and intent of this local law in their determinations and shall specify, in its findings, the reasoning behind such determinations.**

³ The time periods for DENL given herein are those used in California; each European country uses its own variation to these time periods, e.g., evening as 7 pm to 11 pm or 8 pm to 10 pm, etc.

- A. Upon specific request from the applicant, the **Planning Board (VPOB)** shall have the power to grant an **area** variance after taking into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the **Planning Board (VPOB)** shall consider:
1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the **area** variance.
 2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an **area** variance.
 3. Whether the requested **area** variance is substantial.
 4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
 5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the **Planning Board (VPOB)**, but shall not necessarily preclude the granting of the **area** variance

B. Variance and Project Oversight Board Specifications:

1) Creation of Variance and Project Oversight Board (VPOB)

- a) **Created at the at the time of receipt of application**
- b) **Consisting of five members appointed by the Town Board to five year terms, which will be, staggered one through five years to start with one vacancy appointed each year**
- c) **Board members must be non-participants. Any member becoming a participant would require immediate resignation from the board. The Town Board would fill the resulting vacancy within 60 days.**
- d) **Town Board members cannot be appointed to the (VPOB)**
- e) **Members must meet all applicable ethics/conflict of interest requirements**

2) Duties of the Variance and Project Oversight Board (VPOB)

- a) **Variances**
- b) **Administration of Fees**
- c) **Solicit, evaluate, retain, administer, manage, and terminate all professional, advisory and/or consultant of any nature required to evaluate, supervise, process, analyze, advocate for or provide any other service deemed necessary to support any and all aspects of a WECS project in Hammond. The Town Board must approve all contracts that exceed six months in term and/or exceed \$1000 in value.**
- d) **Supervise all town responsibilities as stipulated in this law including, but not limited to, code enforcement, agreement implementation, safety precautions and any other operations or administration of the WECS project. Specific examples of areas of concern include ongoing evaluation of environmental impact, ongoing**

evaluation of geological impact, project construction, roads and traffic, and sound compliance.

e) Responsible for oversight of Residential Property Value Guarantee Agreement (RPVGA)

f) Represent the town's involvement in any complaint resolution.

g) Administer decommissioning program.

h) Evaluate and recommend to the Town Board any insurance requirements and risk mitigation actions.

i) Evaluate project ownership changes in order to make recommendations to the Town Board.

j) Maintain ongoing assessment and make appropriate recommendations to the Town Board on the WECS project's impact on the town to include, but not be limited to, health related issues, changes in the existing condition of the aquifer, and any other broad impact issues.

k) Provide any and all other support to the Town Board or the Planning Board as requested regarding the WECS project.

l) Develop and present an annual report to the Town Board on the status of the WECS project.

The Planning Board, in granting an area variance, shall grant the minimum variance that it shall be necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

C. The Planning Board shall, in granting an area variance, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

C. All variances shall be considered as part of the overall permit review conducted by the Planning Board in connection with the application.

§20. 21. Abatement Decommissioning

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 Planning 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 Planning Board's ability to order a remedial action plan after public hearing.

B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Planning 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, which reports may be redacted as necessary to protect proprietary information.

C. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town 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.

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 as per paragraph C below. 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 Board's ability to order a remedial action plan.**

B. **Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA or by lack of income generation. The applicant shall make available to a designee (i.e. town engineer, project manager, etc.) appointed by the Town Board, all reports from the purchaser of energy from individual WECS, if requested to prove the WECS is functioning. This designee may also request periodic documentation reporting the power output generated by the WECS.**

C. **Decommissioning and Site Restoration Plan and Requirements**

An application for a WECS permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.

1. **The plan shall provide for the removal from the Project Parcels, and lawful disposal or disposition of, all Wind Turbines and other structures, hazardous materials, electrical facilities, and all foundations to a depth of not less than 48 inches below grade. The plan shall provide for the removal of all access roads that the owner of the Project Parcels wants removed. The plan shall provide for the restoration of the Project Parcels to farmland of similar condition to that which existed before construction of the WECS.**

2. **The plan shall provide for the decommissioning of the site upon the expiration or revocation of the WECS permit, or upon the abandonment of**

the WECS. The WECS shall be deemed abandoned if its operation is ceased for 12 consecutive months.

- 3. The Plan shall include: a) the estimated decommissioning cost in current dollars; (b) how said estimate was determined; (c) the method of ensuring that funds will be available for decommissioning and restoration; and (d) the method that will be used to keep the decommissioning costs current. The Town Board will make arrangements to ensure the fund amount is adjusted annually based on a suitable index such as the “RS Means Heavy Construction Cost Data” index unless the wind developer supplies convincing evidence that market conditions have changed.**
- 4. The plan shall include provisions for financial security to secure completion of decommissioning (removal of non-functional towers and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund payable to the Town of Hammond, in a form approved by the Town Attorney, and in an amount to be determined by the Town Board for the period of the life of the facility. This fund shall be no less than 125% of the cost of full decommissioning (including salvage value) and restoration in the form of cash on deposit with the Town or cash held in escrow in a New York licensed-financial institution, pursuant to an agreement acceptable to the Town. All decommissioning funding requirements shall be met prior to commencement of construction.**
- 5. The plan shall include written authorization from the WECS Permittee and all owners of all Project Parcels for the Town to access the Project Parcels and implement the decommissioning and site restoration plan, in the event the WECS Permittee fails to implement the plan. The written authorization shall be in a form approved by the Town.**
- 6. Use of Decommissioning Fund**
 - a) Any non-functional or inoperative utility scale WECS, or any utility scale WECS for which the special use permit has been revoked, shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration within 90 days of the date on which the facility becomes non-functional or inoperative, as defined above, or of the revocation of the special use permit.**
 - b) If removal of the WECS is required and the applicant, permittee, or successors fails to remove the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the permittee, by accepting the permit, authorizes the Town Board to contract for such removal and restoration and to pay for the removal and restoration from the posted decommissioning and site restoration fund.**
 - c) If the fund is not sufficient, the Town shall charge the permit holder for the costs over and above the amount of the fund.**

§21. 22. 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.
- C. Notwithstanding anything to the contrary contained in this Local Law or any other local law, ordinance, rule or regulation of the Town of Hammond, Building Permits shall not be issued for new construction on the same parcel as a permitted WECS when the proposed construction is located at a distance **six times total height of proposed WECS from less than one and one-half times the total height** of any WECS tower on the parcel unless the party requesting the permit has signed and recorded in the County Clerk's Office an easement in favor of the WECS and the Town of Hammond acknowledging and permitting such proximity. In addition, no property or lot upon which a WECS has been permitted shall be further subdivided in a manner that would result in a reduction of the setbacks required by this Local Law and/or as set forth in the permit, unless the party requesting the subdivision has signed and recorded an easement in the County Clerk's Office in favor of the Town of Hammond and the WECS owner acknowledging and consenting to such reduced setbacks.

§22. 23. 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 shall be included in the annual Operation Maintenance and Compliance report required under Section 14(G) of this Law, and may be required more frequently upon request of the Code Enforcement Officer in response to complaints by neighbors. 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 include an evaluation of any complaints received by the Town. **A non-compliant WECS shall be shut down immediately if it exceeds any of the limits in Section 19 of this local law.** The applicant shall have 90 days after written notice from the Code Enforcement Officer, to cure any deficiency. An extension of the 90-day period may be considered by the Code Enforcement Officer, 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, **it shall be shut down immediately.** The owner, or operator shall remedy the situation within 90 days after written notice from the Code Enforcement Officer. The applicant shall have 90 days after written notice from the Code Enforcement Officer, to cure any deficiency. An extension of the 90-day period may be considered by the Code Enforcement Officer, but the total period may not exceed 180 days.
- C. Notwithstanding any other abatement provision under this Local Law, and consistent with §18 **20**(A) and §21 **22**(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 **Variance and Project Oversight Town** Board (**VPOB**) shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

Article III

Wind Measurement Towers

§23. 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 be limited to those areas delineated as Wind Overlay Districts.

§24. 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.

§25. 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 complies 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 aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be sheathed in bright orange or yellow covering from original grade at the ground level to eight feet above the ground.
- D. The New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind farm projects shall be adhered to both inside and outside of agricultural districts.

§26. 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. **Copies will also be available electronically within five days of submission.** 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. Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Town Clerk shall transmit the application to the Planning Board **and a copy to the Town Board.**
- F. 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 1,250 feet 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.
- 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 St. Lawrence 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 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.
- 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 Article.

Article IV
Small Wind Energy Conversion Systems

§27. Purpose and Intent

The purpose of this Article 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 generate power for individual sustainability or 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.

§28. Permitted Areas.

Small Wind Energy Conversion Systems (Small WECS) may be permitted anywhere within the Town of Hammond on a Site of at least 1 acre, upon issuance of a Special Use Permit. A Small WECS shall be set back from all property lines a distance equal to at least 1.5 times its height.

§29. Applications and Application Review Process.

A. Applications for Small WECS special use permits shall include the following:

1. 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.
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 application 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 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.
5. Ownership and land use information within a 1,250-foot radius of the location proposed for each tower.
6. Evidence that the proposed tower height does not exceed the height recommended by the manufacture or distributor of the system.

7. 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.
8. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
9. 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.
10. 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.

§30. Application Review Process

1. 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.
2. 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.
3. 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.
4. 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.
5. Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Town Clerk shall transmit the application to the Planning Board.

6. 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 1,250 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.
7. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances.
8. Notice of the project shall also be given, when applicable, to (1) the St. Lawrence County Planning Board, if required by General Municipal Law §239-1 and 239-m, and (2) to adjoining Towns under Town Law §264.
9. 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.
10. 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 Article.

§31. Development Standards for Small WECS.

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

- A. A 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. A. Small WECSs may be used primarily to generate on-Site power or to reduce the on-Site consumption of electricity.
- C. B. Notice of an application for installation of a small wind energy system shall provide to property owners within 1000 feet of the property line on which the system is to be located.

- D. **C.** Tower height of not more than 140 feet shall be allowed on parcels **between one and up to** five acres. For property sizes of five acres or more, there is no limitation on tower height, except as imposed by the FAA regulation, provided that the application includes evidence that the proposed height does not exceed the height recommended by the manufacturer or distributor of the system.
- E. **D.** Setbacks for **the free-standing** system tower shall be no closer to the property line than 1.5 times the height of the system and no part of the system, including guy-wire anchors, may extend closer than 10 feet **from of** the property boundary. Additionally, the outer and innermost guy-wires must be marked and clearly visible to a height from the ground level to eight feet above the guy-wire anchors.
- F. **E.** The system's towers 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 and visible disruption.
- G. **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.
- H. **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.
- I. Decibel levels for the system shall not exceed 45 dBA and/or 33 dBC measured at the property line of the closest neighboring inhabited off-site dwelling, school, hospital, church or public building existing at the time of application, except during short-term events such as utility outages and severe wind storms.
- I. H. Decibel levels for the system shall not exceed the limits in Table 1 of section §19 when measured at the nearest point of any residential property.⁴ For purposes of this clause, residential property shall include property that contains one or more existing residences and/or a building permit has been issued for a residence on said property, and/or said property is zoned for residential use.**
- J. **I.** 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 damage or cease operation of the system.
- K. **J.** 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.

- L. **K.** The system shall comply with all applicable Federal Aviation Administration requirements, including Part 77 of Title 14 of the Code of Federal Aviation Administration Regulations regarding installation close to airports.
- M. **L.** 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 manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
- N. **M.** All small wind energy system tower structures shall be designed and constructed to comply with pertinent provisions of the Uniform Building Code and National Electric Code.
- O. **N.** All small wind energy system 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.
- P. **O.** Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
 - 1. Tower-climbing apparatus located no closer than 12 feet from the ground.
 - 2. A locked anti-climb device installed on the tower.

§32. Variances for Small WECS.

The Planning Board is hereby granted the power to vary or modify the strict application of the requirements contained in this Article as they relate to area or dimensions upon the application of the criteria hereafter listed.

- A. Upon specific request from the applicant, the Planning Board shall have the power to grant an area variance after taking into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Planning Board shall consider:
 - 1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the area variance.
 - 2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.
 - 3. Whether the requested area variance is substantial.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
 5. Whether the alleged difficulty was self-created, which consideration be relevant to the decision of the Planning Board, but shall not necessarily preclude the granting of the area variance.
- B. The Planning Board, in granting an area variance, shall grant the minimum variance that it shall be necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
 - C. The Planning Board shall, in granting an area variance, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
 - D. All variances shall be considered as part of the overall permit review conducted by the Planning Board in connection with the application.

§33. 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 all conditions that may be attached to the granting of any permit shall constitute grounds for the revocation of the permit by the Town of Hammond. **If not removed within 90-days from revocation, the town shall have the right to remove the small WECS at the owners expense.**
- B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

**Article V
Miscellaneous**

§34. Fees

- A. Non-refundable Application Fees **for WECS, Wind Measurement Towers, and Small WECS shall be as follows:** established by the Town Board and reviewed on an annual basis.
 1. WECS Special Use Permit: \$1,000.00 per megawatt of rated maximum capacity
 2. Wind Measurement Towers: \$500.00 per tower.

3. Small WECS: \$150.00 per Small WECS
4. Wind Measurement Tower Special Use Permit renewals: \$50.00 per Wind Measurement Tower per year.

- B. **Building Permits. Reimbursement of Expenses Related to WECS Project:** The Town Board of the Town of Hammond has determined that the review of building and electrical permits for WECS requires specific expertise for those facilities. Accordingly, for such facilities (WECS), an administrative fee of \$500.00 per permit request 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 applicant will agree to an escrow agreement account of **\$75,000.00 \$100,000.00 to pay for any expenses related to this project. The Variance and Project Oversight Board (VPOB) will manage this account.** the costs of the review of the plans, certifications or conduct inspections as agreed by the parties, document handling, and storage. If the escrow account balance falls below \$10,000.00, the applicant will agree to immediately remit the amount of \$25,000.00 to be placed in the escrow account.
- C. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.
- D. The Town Board may amend these fees, by resolution, after a properly noticed public hearing.

§35. Field Representative and Site Manager. Project Management and Oversight

- A. Upon approval by the Planning Board of a WECS Special Use Permit application, and as a condition to the issuance of a WECS Special Use Permit, the applicant shall designate a field representative and site manager who will be responsible for overseeing compliance with the conditions of the Permit. Such representative and site manager shall be in place for as long as the WECS is in place **and will interact directly with the Variance and Project Oversight Board (VPOB), the project monitor hired by the town and the designated engineering firm representative. This person will have the authority to make management and technical decisions as situations demand.** The applicant shall provide and update, at all times, the names, addresses, daytime telephone numbers and emergency telephone numbers of field representative and site manager to the **(VPOB) Town Code Enforcement Officer.** The applicant shall also provide **to the Code Enforcement Officer** contact information for all entities providing operation, maintenance and monitoring services.

- B. The **Code Enforcement Officer may (VPOB)** will make the telephone numbers of the field representative or site manager available to local residents and officials upon request.
- C. **As a condition to the issuance of a WECS Special Use Permit, the services of an independent engineering firm and an independent full-time on-site monitor shall be retained by the Town of Hammond during the construction phase of the WECS project. The applicant shall assume all costs associated with the hiring and managing of these two positions who will report directly to the (VPOB).**
- D. **The engineering firm shall have prior experience in commercial wind development, construction, and operation. Documentation and references will be required.**
- E. **The engineering firm will oversee all aspects of construction and will be included in all design, construction, and planning meetings and shall be provided with all technical information, specification and drawings. A representative of the engineering firm shall be on-site at all times during the construction phase.**
- F. **The engineering firm duties shall include code enforcement and project specification compliance and they will be responsible for confirming that all project specifications are implemented. The firm's representative and the independent monitor will have the authority to issue a "stop work order" for issues including but not limited to: (a) safety, (b) developer compliance issues, and (c) insufficient project documentation.**
- F. **The applicant shall file daily, weekly and monthly construction plans and will follow the planned work schedule as much as possible. When daily, weekly, or monthly schedules are not completed as planned, updated schedules shall be developed and given to the (VPOB) monitor and the engineering firm representative.**
- G. **Any design changes during construction must be pre-approved by the engineering firm and the (VPOB). The applicant shall provide the (VPOB) and the engineering firm representative with "As Built" Drawings within (1) one week of completion of each portion of the construction phase or as requested by the (VPOB) monitor or engineering firm representative.**
- H. **All up-grades or changes to the WECS project, as permitted, shall be reviewed and approved by the engineering firm and the (VPOB) monitor prior to the implementation of such upgrades or changes.**
- I. **A maintenance plan shall be developed by the applicant and approved by the engineering firm representative and the (VPOB) monitor prior to turbine start-up. The plan will include, but not be limited to:**
- a. **List of all item requiring regular maintenance.**
 - b. **Duration of accumulated time between scheduled maintenance.**
 - c. **Work to be completed during the maintenance operation.**
 - d. **Person responsible for the maintenance.**
 - e. **Process applicant uses to ensure maintenance is carried out appropriately.**

- J. All performance data routinely monitored during turbine operation shall be made available to the engineering firm representative and the (VPOB) monitor. Data shall include but not limited to:**
 - a. Vibration levels.**
 - b. Noise levels.**
 - c. Rotational Speeds**
 - d. Kilowatt hours of production.**
- K. Performance of an individual turbine or group of turbines shall be reported to the (VPOB) and/or Town Board, upon request, within 24 hours.**
- L. All maintenance reports shall be filed with the (VPOB) weekly.**
- M. All information provided to the Town shall be made part of the public record.**
- N. In the event of an accident, the town engineering firm, the (VPOB) monitor and the (VPOB) shall have the authority to shut down all of the affected turbines. Turbines will not be placed back in service until a thorough investigation has taken place, a cause has been determined and steps have been taken to ensure the problem will not reoccur.**

§36. Enforcement; Penalties and remedies for violations.

- A. The Town Board shall appoint such Town staff or outside consultants as it may from time to time determine are necessary to enforce this Local Law.
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy conversion facility or wind monitoring tower in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$1000.00. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$1,000.00 per day, for each violation; and each week said violation continues shall be deemed a separate violation.
- C. Special Proceeding: The designated enforcement officer may, with the consent of the Town Board, institute an action or proceeding available at law to prevent, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a Wind Energy Facility, Small Wind Energy Facility, or Wind Measurement Tower in the Town. This shall be in addition to other remedies and penalties herein provided or available at law.
- D. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

- E. Complaint Resolution Fines specific to WECS: (does not apply to small WECS)**
Fines for violations will be levied and reviewed on an annual basis by the Town Board and will include, but not be limited to, the following categories. The Variance and Project Oversight Board (VPOB) will deal with any violation outside the parameters of these categories on an individual basis.
- a. **Shadow Flicker Complaint:** If the developer does not comply within said time limits, the Town Board will impose a fine of no less than \$? per day, starting from first day of complaint, and no more than \$? per day, starting from first day of complaint.
 - b. **Setback Violation Complaint:** If the developer does not comply with setback violation within said time limits, the Town Board will impose a fine of no less than \$? per day, starting from first day of violation and/or revoke the permit to operate.
 - c. **Noise/Sleep Interference Complaint:** If developer is found to be non-compliant with the Town's local law noise ordinance, the developer will be made to shut down the turbine(s) during normal sleep hours, hours to be set by Town Board in the local law.
 - d. **Electromagnetic-Stray Voltage Complaint:** If the developer does not comply within said time limits, the Town Board will impose a fine of no less than \$? per day, starting from first day of complaint, and no more than \$? per day, starting from first day of complaint.
 - e. **Protection of Aquifers, Ground Water and Wells:** If developer fails to comply, the fine will be not less than \$? per day, starting from day of complaint and not more than \$? per day starting from the first day of complaint. These fines will be paid to the landowner that filed complaint.

§37: Severability

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

§38: Effective Date

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