

Local Law Filing

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(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County ST. LAWRENCE
City
Town of MORRISTOWN
Village

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED

DEC 06 2012

Local Law No. 4 of the year 2012

MISCELLANEOUS & STATE RECORDS

A local law

Wind Energy Law

(Insert Title)

Be it enacted by the Town Board of the

(Name of Legislative Body)

County
City
Town
Village

as follows:

If **additional** space is needed, attach pages the same size as this sheet, and number each.)
(1)

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

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

I hereby certify that the local law annexed hereto, designated as **local law No. 4 of 2012** of the **Town of Morristown** was duly passed by the **Town Board of the Town of Morristown**.
Name of Legislative Body on November 13, 2012, in accordance with the applicable provisions of law.

2.. (Passage by local legislative body with approval, no disapproval or re-passage after disapproval by the Elective Chief Executive Officer').

I hereby certify that the local law annexed hereto, designated as local law No. 19 of the (County)(City)(Town)(Village) of the (County)(City)(Town)(Village) was duly passed by Name of Legislative Body on 200, and was (approved)(not disapproved)(repassed after disapproval) by the Elective Chief Executive Officer and was deemed duly adopted on , 200 in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. 200 of the Town of Morristown was duly passed by the Town Board on , 200 and was approved by (Name of Legislative Body) the _____ on , 200 Such local law was

Elective Chief Executive Officer

submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on , 200 in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. 19 of the (County)(City)(Town)(Village) of the (County)(City)(Town)(Village) was duly passed by Name of Legislative Body on 200, and was (approved)(not disapproved)(repassed after disapproval) by the Elective Chief Executive Officer on , 200 Such local law was

permissive referendum and no valid petition requesting such referendum was filed as of 200, in accordance with the applicable provisions of law.

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

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

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

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

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

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

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

David Murray
Town Clerk, David Murray

(Seal)

Date: November 30, 2012

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

STATE OF NEW YORK
COUNTY OF ST. LAWRENCE

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


Signature: Andrew W. Silver, Esq.

TITLE: Town Attorney
Town of Morristown

Date: November 29, 2012

**WIND
ENERGY
LAW
LOCAL LAW
4 of 2012**

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Local Law No. ____ of 20____

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

Section 1: Local Law No. ____ of 20____, 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 Morristown, New York."

2. PURPOSE

The Town Board of the Town of Morristown 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 Morristown, enacts this Local Law under the authority granted by

- a) Article IX of the New York State Constitution, §2(c) (6) and (10).**
- b) New York Statute of Local Governments, §10 (1), (6), and (7).**
- c) New York Municipal Home Rule Law, §10 (1) (i) and (ii) and §10 (1) (a) (6), (11), (12), and (14).**

- d)** The supersession authority of New York Municipal Home Rule Law, §10 (2)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this Local Law, to the extent such grant of power is different than under Town Law §267. New York Town Law, Article 16 (Zoning).
- e)** 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), (1 5) (Promotion of public welfare), (15- a) (Excavated Lands), (1 6) (Unsafe buildings), (1 9) (Trespass), and (25) (Building lines).
- f)** New York Town Law §64(17-a) (protection of aesthetic interests), (23) (General powers).

4. FINDINGS

- a)** The Town Board of the Town of Morristown, finds and declares that:
- b)** Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
- c)** 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.
- d)** Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
- e)** Wind Energy Facilities may represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.
- f)** 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.
- g)** Wind Energy Facilities may present a risk to birds, bats and other creatures if not properly sited.
- h)** If not properly sited, Wind Energy Facilities could adversely affect the property values of adjoining property owners.
- i)** Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively impact the quiet enjoyment of properties in the vicinity.

j) Construction of Wind Energy Facilities can create traffic problems and damage local roads.

k) Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

5. PERMITS REQUIRED

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

b) No WECS shall be constructed, reconstructed, modified, or operated in the Town of Morristown, except in a Wind Overlay Zone, 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 Morristown, unless and until a Wind Overlay District has been created by act of the Town Board.

d) Applications for Special Use Permits for construction, reconstruction, modification or operation of a WECS in the Town of Morristown may be applied for, reviewed and approved, but no such Special Use Permit shall be issued until such time as all other permits required by federal, state and other local laws or ordinances have been issued and evidence of their issuance has been provided to the Town of Morristown.

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

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

g) Exemptions. No permit or other approval shall be required under this Local Law for mechanical, non electrical WECS utilized solely for on-site agricultural operations. Transfer. No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% (thirty percent) 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.

h) No transfer of any interest in any WECS constructed, reconstructed, modified or operated in the Town of Morristown or in any associated Special Use Permit shall eliminate the liability of an applicant or of any other party under this Local Law.

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

7. DEFINITIONS.

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

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.

RESIDENCE - means any dwelling suitable for habitation existing in the Town of Morristown on the date an application is received. A residence may be part of a multi-dwelling or multipurpose building, and shall include but is not limited to 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.

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

SHADOW FLICKER – A repeating cycle of changing light intensity that occurs when the shadow cast by rotating turbine blades passes over an object.

SOUND PRESSURE LEVEL - Sound Pressure Level is a logarithmic measure of the effective sound pressure of a sound relative to a reference value. As defined in this Local Law, the reference value shall be the commonly used zero reference of 20 micro-pascals root mean square (RMS). All measurements of sound pressure level required by this Local Law shall be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-1-1), or other comparable procedures accepted within the industry. Except where explicitly provided otherwise, all measurements of sound pressure level required by this Local Law shall utilize the A weighting filter (dBA) commonly relied upon to mimic the human sensitivity to sound pressure levels at different frequencies. As used in this Local Law, L_{10} is the sound pressure level exceeded for no more than 10% of the time. A limitation to a maximum L_{10} of 50 dBA indicates that in any hour of the day the sound pressure level may equal or exceed 50 dBA no more than 10% of the time, or for no more than 6 minutes.

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

SMALL WIND ENERGY CONVERSION SYSTEM - ("Small WECS") - A wind energy

conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW, and not more than 150 (one hundred fifty) feet in height including blade, and which is intended to primarily generate on-site power or reduce on-site consumption of utility power.

SPECIAL USE PERMIT – As used in this Local Law, the term “Special Use Permit” has the same meaning as is defined in “LAND USE LAW AND REGULATIONS FOR THE TOWN OF MORRISTOWN, NEW YORK”.

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

WIND ENERGY CONVERSION SYSTEM ("WECS") - A machine that consists of a wind turbine, a tower, and associated control or conversion electronic that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").

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

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

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

8. APPLICABILITY

- a)** The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law.
- b)** Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that
 - i)** Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Local Law prior to recommencing production of energy.
 - ii)** No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.
 - iii)** Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-six (26) months after said effective date, unless a Special Use Permit for said Wind Energy Facility is obtained.

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

ARTICLE II

WIND ENERGY CONVERSION SYSTEMS

1. CREATION OF WIND OVERLAY ZONES

- a)** Wind Overlay Zones shall be created by the Town Board to delineate those areas in the Town of Morristown that are appropriate for the development of wind energy conversion systems (WECS) and related infrastructure.
- b)** The Town Board shall refer the potential development of Wind Overlay Zones to the Town Planning Board for an advisory recommendation. In considering the potential locations of any Wind Overlay Zones, the Town Planning Board shall consider the landscape and topography of the town, current land uses and future development patterns, natural resources, unique or sensitive environments, the local existence of wildlife and plant species, viewsheds, zoning districts, residents' opinions, and other pertinent information. The Town Planning Board shall hold a public hearing after public notice at which the Planning Board shall afford the public an opportunity to comment upon these considerations as they relate to the potential establishment of Wind Overlay Zones.
- c)** After holding a public hearing and considering the foregoing factors, the Town Planning Board shall determine those areas which, in its judgment, would be inappropriate for the development of wind energy conversion systems (WECS) and related infrastructure and which would be appropriate to designate as potential Wind Overlay Zones.
- d)** The Town Planning Board shall report its findings regarding the locations of potential Wind Overlay Zones and make recommendations regarding potential Wind Overlay Zones to the Town Board.
- e)** Before establishing any Wind Overlay Zone(s), the Town Board shall first designate the potential Wind Overlay Zone(s) and delineate the boundaries of the potential zone(s). The Town Board shall then hold a public hearing after public notice as required regarding the potential establishment of the identified Wind Overlay Zone(s).
- f)** Having considered the findings and recommendations of the Town Planning Board as well as comments offered at the public hearing, the Town Board shall then approve by a super majority and establish any such Wind Energy Overlay Zone(s) as it determines to be proper and in the best interests of the community.

- g) If approved, the Town Board will direct the Town Clerk to modify the Official Map to reflect the creation of the Wind Overlay Zones according to the boundaries established by the Town Board.
- h) Once a Wind Overlay Zone has been created, new WECSs or its accessory structures or facilities may only be developed within that zone by grant of a Special Use Permit pursuant to the requirements of this Article.

2. Construction, reconstruction, modification or operation of Wind Measurement Towers, as defined in this Local Law, shall comply with all regulations contained herein.

3. APPLICATIONS FOR WIND ENERGY CONVERSION SYSTEMS

An application for Special Use Permit for WECS that are not Small WECS shall include the following (for applications related to Small WECS see Article IV)

- a) Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
- b) Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
- c) Address, or other property identification, of each proposed tower location, including Tax Map section, block and lot number, latitude and longitude coordinates.
- d) A description of the project, including the number and maximum rated power output capacity of each WECS.
- e) For each WECS proposed, a plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
 - i) Property lines and physical dimensions of the Site;
 - ii) Location, approximate dimensions and types of all existing structures and uses within public roads within one-thousand two-hundred (1,200) feet of the Site.

- iii) Location and ground elevation of each proposed WECS.
- iv) Location of all above ground utility lines on the Site, and all related transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
- v) Location and size of structures above 35 (thirty-five) feet within a five-hundred-foot radius 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.
- vi) The zoning designation of the subject and adjacent properties as set forth in Town Zoning Law.
- vii) Boundaries of the Wind Overlay Zone, to demonstrate that each proposed WECS is located within said overlay zones
- viii) To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower location equal to:
 - (1) Perimeter equal to one and a half times the tower height.
 - (2) One thousand two hundred foot perimeter.
- ix) Information shall be provided concerning ownership and land uses within the above-mentioned perimeters. An affidavit or similar evidence of agreement between the property owner and the Facility Owner or Operator demonstrating that the Facility Owner or Operator has the permission of the property owner to apply for necessary permits for construction and operation of the Wind Energy Facility.
- x) All proposed facilities, including access roads, electrical lines, substations, construction staging areas, storage or maintenance units, and fencing.
- xi) 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. Dimensional representation of the structural components of the tower construction including the base and footings. One drawing may be submitted for each WECS of the same type and total height.
- f) Landscaping Plan depicting vegetation describing the area to be cleared of vegetation and areas where vegetation shall be added, identified by species and size of specimens at installation, and their locations.
- g) Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, 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.

h) Decommissioning Plan: The applicant shall submit a proposed decommissioning plan, which shall include:

- i) the anticipated life of the WECS; The Wind Energy Facility or individual Wind Turbines will presume to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.
- ii) the estimated decommissioning costs in current dollars without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment.;
- iii) how said estimate was determined;
- iv) the method of ensuring that funds will be available for decommissioning and restoration;
- v) the method, such as an estimate updated periodically by a licensed engineer, that the decommissioning cost will be kept current without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment. Said estimates shall be submitted to the Town of Morristown after the first year of operation and every third year thereafter;

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

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

k) Completed Part 1 of the Full EAF.

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

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

n) The following studies shall be submitted with the application:

- i) **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 shall characterize the anticipated the duration, frequency and anticipated dates of occurrence of shadow flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be

taken to eliminate or mitigate the problems.

- ii) Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed that is consistent with current New York State Department of Environmental Conservation policy and guideline documents related to Assessing and Mitigating Visual Impacts. The study shall include, but not be limited to, 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
- iii) Fire Protection: The applicant shall provide a copy of the project summary and project site plan to local emergency services including local paid and volunteer fire departments. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Zone.
- iv) 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 within 2,000 feet of each proposed turbine. The noise analysis shall include low frequency noise and shall be consistent with current New York State Department of Environmental Conservation policy and guideline documents related to Assessing and Mitigating Noise Impacts.
- v) Property Value Analysis: Property value analysis shall be prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties adjacent to WECS Sites.
- vi) Electromagnetic Interference: An assessment of potential electromagnetic interference with weather and other radar systems as well as with microwave, radio, television, personal communication and other wireless communication shall be prepared.
- vii) 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.
- viii) Ground Water Impacts: An analysis of impacts on local ground water resources, including dependent public or private water supplies, shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of WECS
- ix) Cultural Resources: An analysis of impacts on cultural resources including above ground (historical) and below ground (archeological), shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of WECS,

- x) 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, etc.), as well as wild creatures existing at ground level. The analysis shall be consistent with current New York State Department of Environmental Conservation policy and guideline documents related to Conducting Avian Studies for Wind Energy Projects.
- xi) Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Town of Morristown to ensure compliance with these regulations.
- q) The applicant shall, prior to the receipt of a building permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner.
- r) A drainage plan and an erosion plan must be developed and submitted for approval by the Town Code Enforcement Officer and the Town Planning Board.
- s) Application shall contain a written plan for storage usage and disposal of all hazardous materials, lubricants, cleaning supplies, etc. in accordance with DEC regulations and the written plan shall be approved by DEC.
- t) A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.
- u) Prior to issuance of a building permit, the applicant shall provide the Town of Morristown with proof in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance of a level to be determined by the Town Board in consultation with the Town's insurer to cover damage or injury which might result from the failure to a tower or towers or any other part(s) of the generation and transmission facility.

4. APPLICATION REVIEW PROCESS

- a) Applicants may request a pre-application meeting with the Town Planning Board, or with any consultants retained by the Planning Board for application review. Meetings with the Planning Board shall be conducted in accordance with the Open Meetings Law
- b) Six copies of the application shall be submitted to the Code Enforcement Officer. Additional copies of the application shall be submitted to the Town Clerk and Morristown Public Library for public review. An electronic copy of the application shall also be available on the applicant's website and sent 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) Code Enforcement Officer shall, within 30 (thirty) 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 WECSs proposed is increased.
- e) Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Code Enforcement Officer shall transmit the application to the Planning Board.
- f) The Planning Board shall hold at least two public hearings on the application. Notice shall be given by first class mail to property owners within 1,200 (one-thousand two-hundred) feet of each proposed WECS and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Planning Board to hear additional comments, no further publication or mailing shall be required. The Town Clerk 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. Notice for SEQRA public hearings must be in conformance with the requirements of SEQR Regulations promulgated by the New York State Department of Environmental Conservation.
- 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. With the exception of Small WECS, the proposed construction and operation of WECS in the Town of Morristown are classified as Type I projects under SEQRA. The Planning Board shall coordinate its SEQRA review with other agencies. 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.

4. STANDARDS FOR WECS

Unless specifically waived in the Special Use Permit, the following standards shall apply to all WECS that are not Small WECS:

- a) All power transmission lines from the tower to any building or other structure shall be located underground 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 Land Use Law. Applications may be jointly submitted for WECS and telecommunications facilities.

- c) No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- d) Lighting of tower. No tower shall be lit except to comply with Federal Aviation Administration requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site plan.
- e) All applicants shall use measures to reduce the visual impact of WECSs to the greatest extent possible. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs within a Wind Overlay Zone shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Zone, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
- f) The use of guy wires is disfavored. A WECS using guy wires for tower support shall incorporate appropriate measures to protect the guy wires from damage which could cause tower failure.
- g) No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the interference.
- h) All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner fully compliant with all applicable laws, 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 be stockpiled and returned to the site upon completion of the activity which disturbed the soil.
- j) WECSs shall be located in a manner that minimizes 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) Wind energy conversion facilities shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
- l) Storm-water run-off and erosion control shall be managed in a manner consistent with all

applicable state and Federal laws and regulations.

- m) The most current New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind power projects shall be adhered to, both inside and outside of agricultural districts (see Appendix A).
- n) The maximum total height of any WECS shall be 500 (five hundred) feet including length of blade.
- o) Construction of the WECS shall be limited to the hours of 7 AM to 7 PM Monday through Friday, unless the prior written approval of the Town Planning Board is received to allow deviation from such hours.
- p) The Facility Owner or Operator shall post and maintain Decommissioning Fund Bond in an amount equal to Net Decommissioning Costs; provided, that at no point shall Decommissioning Fund Bond be less than 100% (one hundred percent) of Decommissioning Costs. The Decommissioning Funds shall be posted and continuously and uninterruptedly maintained with a bonding company chosen by the Facility Owner or Operator and participating landowner posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within NYS and is approved by the Town of Morristown. Should the decommissioning bond lapse, the WECs permit will be suspended and the facility not permitted to operate until the bond is reinstated.

 - i) If the Facility Owner or Operator fails to complete decommissioning within twelve (12) months, the landowner shall have six (6) months to complete decommissioning.
 - ii) If neither the Facility Owner or Operator, nor the landowner complete decommissioning within the periods prescribed in Paragraph 9(g), then the Town of Morristown may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the Town of Morristown shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Town of Morristown may take such action as necessary to implement the decommissioning plan.
 - iii) The escrow agent shall release the Decommissioning funds when the Facility Owner or Operator has demonstrated and the municipality concurs that decommissioning has been satisfactorily completed, or upon written approval of the municipality in order to implement the decommissioning plan.
 - iv) The manner in which the WECS will be decommissioned and the Site restored shall include reclamation of all roads, removal of structures and debris to a depth of disturbance or minimum of 5 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 in writing and shall include removal of Wind Turbines, buildings, cabling, electrical components and any other associated facilities as directed by the Town of Morristown.

5. REQUIRED SAFETY MEASURES

- a)** Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- b)** 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 days a week coverage. The Town Planning Board may require additional signs based on safety needs.
- c)** 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.
- d)** The minimum distance between the ground and any part of the rotor or blade system shall be thirty-five (35) feet.
- e)** WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
- f)** The Owner or Operator of the Wind Facility must submit, on an annual basis, a summary of the operation and maintenance of each WECS to the Code Enforcement Officer. Copies of all reports concerning operating and safety inspections for each WECS shall be filed with the Code Enforcement Officer.

6. TRAFFIC ROUTES

- a)** Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Permit conditions may limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.
- b)** The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads. The bond shall be maintained throughout the construction of the project, movement of heavy or oversized equipment on Town roads for maintenance or decommissioning.
- 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.

7. NOISE STANDARDS AND SETBACKS FOR WIND ENERGY CONVERSION

SYSTEMS

- a) The statistical sound pressure level generated by a WECS shall not exceed forty-five (45) L₁₀ A-weighted decibels ("dBA") measured at the site property line. Independent certification shall be required before and after construction demonstrating compliance with this requirement. If the ambient noise level measured at the site property line exceeds the standard, the standard shall be equal to the ambient noise level.
- b) The sound pressure level generated by a WECS shall not increase ambient sound levels by more than 6 dBA at any sensitive noise receptors, including residences, hospitals, libraries, schools, and places of worship, located within 2,000 feet of the site property line. Independent certification shall be required before and after construction demonstrating compliance with this requirement.
- c) In the event the sound pressure level due to WECS operation contains a steady pure tone, such as a whine, screech, or hum, the standards for the sound pressure level set forth in subparagraph a) 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 four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred twenty-five (125) Hz.
- d) 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.
- e) Any noise level falling between two whole decibels shall be the lower of the two.
- f) Each WECS shall be setback, measured from the center of the WECS, a minimum of:

 - i. One and a half times the Total Height of the WECS including length of blade from the nearest site boundary property line.
 - ii. One and a half times the Total Height of the WECS including length of blade from the nearest public road.
 - iii. One and a half times the Total Height of the WECS including length of blade from the nearest boundary of the Wind Overlay District
 - iv. 1,200 feet from off-site residences existing at the time of application, measured from the exterior of such residence.
 - v. One and a half times the Total Height of the WECS including length of blade from any non-WECS structure or any above-ground utilities.

8. ISSUANCE OF SPECIAL USE PERMITS

- a)** 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. If approved, the Town Planning Board will issue a Special Use Permit for each WECS upon satisfaction of all conditions for said Permit, and direct the Building Inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Local Law.
- b)** The decision of the Town Planning Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- c)** If any approved WECS is not substantially commenced within one year of issuance of the permit, the special use permit shall expire.

9. ABATEMENT

- a)** If any WECS is not functioning for a minimum of thirty (30) twenty-four (24) hour periods within a calendar year, the applicant agrees that, without any further action by the Town Planning Board, it shall remove said system at its own expense after obtaining a demolition permit from the Code Enforcement Officer, unless the WEC owner has contacted the Code Enforcement Officer in writing of temporary discontinuance of service for planned or emergency maintenance and receives approval from the Town Planning Board for temporary discontinuance. 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 The applicant, or successors, shall continuously maintain a 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. The decommission costs shall be reviewed at minimum once every two years. All costs of the financial security shall be borne by the applicant. All decommissioning funding requirements shall be met prior to commencement of construction. The Facility Owner or Operator shall post and maintain Decommissioning Funds in an amount equal to Net Decommissioning Costs; provided, that at no point shall Decommissioning Funds be less than 100% (one hundred percent) of Decommissioning Costs. The Decommissioning Funds shall be posted and maintained with a bonding company institution chosen by the Facility Owner or Operator and participating landowner posting the financial security, provided that the bonding company is authorized to

conduct such business within NYS and is approved by the Town of Morristown.

10. 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.

11. TOWN PROPERTY

- a)** 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, provided such agreements are not otherwise prohibited by state or local law.

12. PERMIT REVOCATION

- a) Testing fund.** A Special Use Permit shall contain a requirement that the applicant fund and complete periodic annual noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to 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 also include an evaluation of any complaints received by the Town. The applicant shall have 90 (ninety) days after written notice from the Town Board, to cure any deficiency. An extension of the 90 (ninety) day period may be considered by the Town Board, but the total period may not exceed 180 (one hundred eighty) days.

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

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

remove the WECS.

ARTICLE III

WIND MEASUREMENT TOWERS

1. WIND SITE ASSESSMENT

The Town Board acknowledges that prior to construction of a WECS, an assessment is typically needed to determine local wind speeds and the feasibility of using particular sites. Installation of Wind Measurement Towers, also known as anemometer ("Met") towers, shall be permitted as Special Uses.

2. APPLICATIONS FOR WIND MEASUREMENT TOWERS

a) An application for a Wind Measurement Tower shall include:

- i) Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
- ii) Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
- iii) Address of each proposed tower Site, including Tax Map section, block and lot number.
- iv) Site plan.
- v) Decommissioning Plan, including a security bond or cash for removal.

3. STANDARDS FOR WIND MEASUREMENT TOWERS

- a)** The distance between a Wind Measurement Tower and the property line shall be at least 1.5 times the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- b)** Special Use Permits for Wind Measurement Towers may be issued for a period of up to twenty-six (26) months. Permits may be renewed if the Facility is in compliance with the conditions of the Special Use Permit.
- c)** Anchor points for any guy wires for a Wind Measurement Tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be sheathed in bright orange or yellow covering from three to eight feet above the ground.

d) The most current 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.

4. APPLICATION REVIEW PROCESS

- a) Applicants may request a pre-application meeting with the Town Planning Board, or with any consultants retained by the Planning Board for application review. Meetings with the Planning Board shall be conducted in accordance with the Open Meetings Law.
- b) Six copies of the application shall be submitted to the Code Enforcement Officer. 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 (thirty) 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 Code Enforcement Officer shall transmit the application to the Planning 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 500 (five hundred) 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 Town Clerk 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 construction and operation of Wind Measurement Towers within the Town of Morristown are classified as Unlisted projects under SEQRA. The Planning Board may coordinate its SEQRA review with other agencies. 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

1. 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 reduce on-site consumption of utility power. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

2. PERMITTED AREAS

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

3. APPLICATIONS

Applications for Small WECS special use permits shall include:

- a)** Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
- b)** Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
- c)** Address of each proposed tower Site, including Tax Map section, block and lot number.
- d)** Site plan of each tower site, including but not limited to showing the location of the tower in relation to other structures and property lot lines, topography of the site, location of trees and other landscape elements.
- e)** Ownership and land use information within a 500 (five hundred) foot radius of the location proposed for each tower.
- f)** Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system, to include engineered specifications. Dimensional representation from the manufacturer of the structural components of the tower construction including the base and footings.
- g)** A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.

- h) Documents demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
- i) Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan to connect the system to the electricity grid, and so states so in the application.
- j) A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

4. APPLICATION REVIEW PROCESS

- a) Applicants may request a pre-application meeting with the Town Planning Board, or with any consultants retained by the Planning Board for application review. Meetings with the Planning Board shall be conducted in accordance with the Open Meetings Law.
- b) Six copies of the application shall be submitted to the Code Enforcement Officer. 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 (thirty) 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 Small WECSs proposed is increased.
- e) Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Code Enforcement Officer shall transmit the application to the Planning Board.
- f) The Planning Board shall hold at least one public hearing on the application. Notice shall be given by first class mail, paid by applicant, to property owners within 500 (five hundred) 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 Town Clerk 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 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.
- 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.

5. DEVELOPMENT STANDARDS

All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this 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)** Small WECSs shall be used primarily to generate on-Site power or to reduce the on-Site consumption of electricity.
- c)** The maximum tower height shall be 150'.

 - i)** The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
- d)** Setbacks from all property lines shall be maintained, at a minimum, at one and a half times the total height of the tower including blades.
- e)** The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
- f)** The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible a small wind energy system shall use natural landforms and vegetation for screening.
- g)** 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) 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) The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- 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.
- k) At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
- l) Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access.

 - i) Tower-climbing apparatus located no closer than 12 feet from the ground.
 - ii) A locked anti-climb device installed on the tower.
- m) Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be sheathed in bright orange or yellow covering from three to eight feet above the ground.
- n) Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.
- o) To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 (thirty) feet above the highest structure or tree within a 250 (two hundred fifty) foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
- p) All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.
- q) All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

- r) The most current New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind power projects shall be adhered to both inside and outside of agricultural districts.
- r) Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the tower, including blades. A Small WECS shall not be located closer than one and one-half times the tower height, including blades or 300 (three hundred) feet, whichever is greater, from the nearest offsite dwelling at the time of construction.
 - i) Noise. Except during short-term events including utility outages and severe windstorms, a Small WECS shall be designed, installed, and operated so that noise generated complies with the following:
 - ii) The statistical sound pressure level generated by a WECS shall not exceed forty-five (45) L_{10} A-weighted decibels ("dBA") measured at the site property line. Independent certification shall be required before and after construction demonstrating compliance with this requirement. If the ambient noise level measured at the site property line exceeds the standard, the standard shall be equal to the ambient noise level.
 - iii) The sound pressure level generated by a WECS shall not increase ambient sound levels by more than 6 dBA at any sensitive noise receptors, including residences, hospitals, libraries, schools, and places of worship, located within 2,000 feet of the site property line. Independent certification shall be required before and after construction demonstrating compliance with this requirement.
 - iv) In the event the sound pressure level due to WECS operation contains a steady pure tone, such as a whine, screech, or hum, the standards for the sound pressure level set forth in subparagraph a) 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 four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred twenty-five (125) Hz.
 - iv) 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.
 - v) Any noise level falling between two whole decibels shall be the lower of the two.

6. ABANDONMENT OF USE

- a) Small WECS which does not operate for a minimum for thirty (30) twenty-four (24) hour periods within a calendar year, shall be dismantled and removed from the property at the expense of the property owner unless the owner has contacted the Code Enforcement

Officer in writing of temporary discontinuance of service for planned maintenance or vacation and receives approval for temporary discontinuance. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town of Morristown and shall be deemed a violation per Article V, Section 3c, of this local law.

- b)** All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

ARTICLE V

MISCELLANEOUS

1. FEES

- a)** Non-refundable Application Fees schedule shall be established by resolution of the Town Board for the following:
 - i)** WECS Special Use Permit
 - ii)** Wind Measurement Towers
 - iii)** Small WECS
 - iv)** Wind Measurement Tower Special Use Permit yearly renewals
- b)** Building Permits. The Town of Morristown believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, for such facilities an administrative fee shall be established by resolution of the Town Board. Such 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 Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties, document handling and storage.
- 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.

2. TAX EXEMPTION

The Town of Morristown hereby exercises its 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.

3. ENFORCEMENT; PENALTIES AND REMEDIES FOR VIOLATIONS

- a)** The Town Board shall appoint the Code Enforcement Officer or outside consultants as it sees fit to enforce this Local Law.

b) Appearance Tickets. The Code Enforcement Officer and each Inspector are authorized to issue appearance tickets for any violation of this Local Law.

c) Violations. 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 less than \$100 (one hundred dollars) and not more than \$5000 (five thousand dollars) or to imprisonment for a period of not more than 14 (fourteen) days, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each day such violation shall continue. The Town may institute a civil proceeding to collect civil penalties. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of this Town, including but not limited to a tax levy against said property in violation.

d) Injunctive Relief. An action or proceeding may be instituted in the name of this Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this local law, or any term or condition of any Building Permit, Certificate of Compliance, Temporary Certificate of Compliance, Stop Work Order, Operating Permit, Compliance Order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this local law, or any Stop Work Order, Compliance Order or other order obtained under the Uniform Code, the Energy Code or this local law, an action or proceeding may be commenced in the name of this Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Supervisor of this Town.

4. Remedies Not Exclusive. No remedy or fine specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or fine specified in this section shall be in addition to, and not in substitution for or limitation of the other remedies or fines specified in this section of this local law, in any other section of this local law, or in any other applicable law. Any remedy or fine specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other section of this local law, or in any other applicable law.

5. THE “LAND USE LAW AND REGULATIONS FOR THE TOWN OF MORRISTOWN, NEW YORK” ARE AMENDED BY ADDING THE FOLLOWING TO “DEFINITIONS”:

a) WIND ENERGY FACILITY - Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, as each is defined in Local Law No. of 20 , including all related infrastructure, electrical lines and substations, access roads and accessory structures. Public Utility uses otherwise allowed under this Law do not include Wind Energy Facilities.

6. SEVERABILITY

a) 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 thereof other than the part so decided to be unconstitutional or invalid.

7. EFFECTIVE DATE

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

APPENDIX A

Guidelines for Agricultural Mitigation for Windpower Projects Revised 1-04-08

The following guidelines shall apply to construction areas for wind power construction projects impacting agricultural land. The project sponsor shall coordinate with the New York State Department of Agriculture and Markets (Ag. and Markets) to develop an appropriate schedule for inspections to assure that the goals of these guidelines are being met. The project sponsor shall hire an Environmental Monitor to oversee the construction and restoration in agricultural fields.

Siting Goals

Minimize impacts to normal farming operations by locating structures along field edges and in nonagricultural areas where possible.

Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields (hedgerows and field boundaries) and in nonagricultural areas where possible.

Locate access roads, which cross agricultural fields, along ridge tops and following field contours, where possible, to eliminate the need for cut and fill and reduce the risk of creating drainage problems.

The permanent width of access roads in agricultural fields should be no more than 16 feet to minimize the loss of agricultural land.

All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

Construction Requirements

The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.

Culverts and waterbars shall be installed to maintain natural drainage patterns.

All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and laydown areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.

Topsoil from work areas (tower sites, parking areas, "open-cut" electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. Topsoil stockpile areas shall be clearly designated in the field and on the on-site "working set" of construction drawings.

Electric interconnect cables and transmission lines installed above ground can create long term interference with agricultural land use. As a result, interconnect cables shall be buried in agricultural fields wherever practicable. Interconnect cables and transmission lines installed above ground should be located outside field boundaries wherever possible. When above ground cables and transmission lines must cross farmland, the project sponsor shall minimize agricultural impacts by using taller structures that provide longer spanning distances and shall locate poles on field edges to the greatest extent practicable. The line location and pole placements shall be reviewed with the Department and the Environmental Monitor prior to final design.

In cropland, hayland and improved pasture a minimum depth of forty-eight inches of cover will be required for all buried electric cables. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of thirty-six inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to forty-eight inches, the electric cables shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time will the depth of cover be less than twenty-four inches below the soil surface.

All excess subsoil and rock shall be removed from the site. On site disposal of such material may be allowed if approved by the landowner and the Environmental Monitor, with appropriate consideration given to any possible agricultural or environmental impacts.*

In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.

All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.*

Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.*

(*Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)

Restoration Requirements

Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks 4 inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks 4 inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1, unless approved on a site-specific basis by the landowner in consultation with Ag. and Markets. All parties involved should be cognizant that areas restored after October 1st may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1st, necessary provision should be made to restore any eroded areas in the springtime, to establish proper growth.

All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.

All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.

Following restoration, all construction debris will be removed from the site.

Two Year Monitoring and Remediation

The Project Sponsor will provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.

General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified by the Environmental Monitor through on site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and the Department of Agriculture and Markets.

Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the Project Sponsor.

When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the Project Sponsor as well as other appropriate parties, will help to

determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at or shortly after the completion of construction, the signing of a release form prior to the end of the remediation period will not obviate the Project Sponsor's responsibility to fully redress all project impacts.

Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

Revised 1-04-08

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