VILLAGE OF SHARON SPRINGS

WIND ENERGY FACILITIES LAW

<u>VILLAGE BOARD</u>
Omer Cousineau, Mayor
Joan Jozifek, Deputy Mayor
Claude Jackson, Trustee
Margie Neary, Trustee
Doug Plummer, Trustee

<u>FINAL APPROVED 03/17/2011</u>
<u>Ammended 05/19/2011</u>

VILLAGE OF SHARON SPRINGS WIND ENERGY FACILITIES LAW
AMENDED 05/19/2011

§ 1. Title
§ 2. Purpose
§ 3. Authority
§ 4. Applicability
§ 5. Permits
§ 6. Waivers
§ 7. Enforcement and Penalties
§ 8. Severability
§ 9. Effective Date
§ 10. Definitions
§ 11. Application Requirements
§ 12. Application Review Process
§ 13. Wind Energy Facility Development Standards
§ 14. Required Site Safety Measures
§ 15. Traffic Routes and Road Maintenance
§ 16. Setbacks & Noise
§ 17. Noise and Setback Easements
§ 18. Issuance of Wind Energy Facility Permits
§ 19. Abatement
§ 20. Limitations on Approvals
§ 21. Permit Revocation
§ 22. Wind Measurement Towers
§ 23. Small Wind Turbines
§ 24. Fees
§ 25. Tax Exemption

Be it hereby enacted by the Village Board of the Village of Sharon Springs, Schoharie County, New York, as follows:

§ 1. Title

This local law may be cited as the "Village of Sharon Springs Wind Energy Facility Law."

§ 2. Purpose

The purpose of the law is to provide for the construction and operation of Wind Energy Facilities in Village of Sharon Springs, subject to reasonable conditions that will protect the public health, safety and welfare.

§ 3. Authority

The Village Board of the Village of Sharon Springs enacts this local law under the authority granted by Section 10 of the New York State Municipal Home Rule Law and the New York State Town Law.

§ 4. Applicability

The requirements of this law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this law, including modification

of existing Wind Energy Facilities and wind measurement towers erected for the purpose of testing the feasibility of wind energy generation.

§ 5. Permits

A. Permit Requirement. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Village of Sharon Springs except by first obtaining a Wind Energy Facility Permit as provided under this law.

B. Exemptions. No permit or other approval shall be required under this law for mechanical, non-electrical wind turbine utilized solely for agricultural operations. Replacement in-kind or modification of a Wind Energy Facility may occur without Planning Board approval when: (1) there shall be no increase in total height; (2) no change in the location of the wind turbine; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the wind turbine.

C. Transfer. Neither transfer of any Wind Energy Facility or Wind Energy Facility Permit, nor sale of the entity owning such facility shall eliminate the liability of an applicant or of any other party under this law.

§ 6. Waivers

The Joint Planning Board may, after a public hearing (which may be combined with other public hearings on wind energy facilities, so long as the waiver request is detailed in the public notice), grant a waiver from the strict application of the provisions of this law to improve the quality of any Wind Energy Facility and better protect the health, safety and welfare of the Village. Area requirements (setbacks) and/or noise requirements shall not be waived by the Joint Planning Board except as described in § 17 of this law. The Joint Planning Board shall consider the impact of the waiver on the neighborhood, including the potential benefits or detriment to nearby properties, the benefits or detriments to the applicant, feasible alternatives and the scope of the request. The Joint Planning Board may attach such conditions as it deems appropriate to waiver approvals to ensure public health, safety and welfare.

§ 7. Enforcement and Penalties

A. The Village of Sharon Springs Village Board shall designate a Code Enforcement Officer to enforce the provisions of this law and may employ such professional expertise as may be necessary to support these enforcement efforts and assist the Joint Planning Board with application reviews. Such professional fees shall be the responsibility of the applicant to pay (see § 24).

B. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this law or in noncompliance

with the terms and conditions of any permit issued pursuant to this law, or any order of the Code Enforcement Officer, and any person who shall assist in so doing, shall be guilty of a violation of this law and subject to a fine of not more than $1,000.00. The Village may institute a civil proceeding to collect civil penalties in the amount of $1,000.00 for each violation and each week said violation continues shall be deemed a separate violation.

C. The Village may, in the case of any violation or threatened violation of any of the provisions of this law, including permit terms and conditions, 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. This shall be in addition to other remedies and penalties herein provided,

§ 8. Severability

Should any provision of this law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

§ 9. Effective Date

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

§ 10. Definitions

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

ACCESSORY FACILITIES OR EQUIPMENT – Any structure other than a wind turbine, related to the use and purpose of deriving energy from such towers, located on the Wind Energy Facility Site.

AGRICULTURE – The Village of Sharon Springs definition for the purposes of this law complies with the official New York State Agriculture and Markets legal definition relating to agriculture. This definition can be found at the following website
http://public.leginfo.state.ny.us/LAW. The informational guide created by Agriculture and Markets titled "Guidelines for Review of Local Laws Affecting Small Wind Energy Facilities" is available for review from the Village of Sharon Springs.
Code Enforcement Officer.

AMBIENT SOUND – The background sound level (pre-development) found to be exceeded 90% of the time over which sound is measured in a noise analysis.

DECOMMISSIONING – The term shall mean to "physically remove" and shall include, but not be limited to:

a. Removal of the entire Wind Energy Facility, including the turbine, tower, all accessory facilities and equipment, transmission equipment, fencing and all other related above grade structures and improvements.

b. Removal of the foundations to a depth of no less than three (3) feet below grade.

c. Removal of project access roads (except for any roads that the project landowners wish to retain).

d. Restoration of the location of the Wind Energy Facility to its natural condition, except that any landscaping, grading or below-grade foundation may remain in the after-conditions.

HORIZONTAL AXIS- Primary orientation of the shaft supporting the rotating blades or rotor cage is perpendicular to the ground.

NYSERDA – (NEW YORK ENERGY RESEARCH AND DEVELOPMENT AUTHORITY) NYSERDA is a public benefit corporation created in 1975 under Article 8, Title 9 of the State Public Authorities Law through the reconstitution of the New York State Atomic and Space Development Authority. Its mission is to help New York meet its energy goals: reducing energy consumption, promoting the use of renewable energy sources, and protecting the environment.

NYISO – (NEW YORK INDEPENDENT SYSTEM OPERATOR) - NYISO is a not-for-profit organization formed in 1998 as part of the restructuring of New York State's electric power industry. Its mission is to ensure the reliable, safe and efficient operation of the State's major transmission system and to administer an open, competitive and non-discriminatory wholesale market for electricity in New York State.

RESIDENCE - Any dwelling suitable for habitation existing on the date an application is received. A residence may be part of a multi-family dwelling or multipurpose building, and shall include buildings such as hotels or motels, hospitals, day care centers, dormitories, sanitariums, nursing homes, municipal buildings, schools or other buildings used for educational purposes, or correctional institutions.

ROTOR CAGE- The area in which the fins or foils consume while in rotation.

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

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

SITE DENSITY- The number of WECS on each parcel of property.

SOUND PRESSURE LEVEL - According to the NYSDEC Program Policy on Assessing and Mitigating Noise Impacts, sound pressure level is the sound pressure in the atmosphere, which pressure is expressed in decibels. The sound pressure is measured by the sound level meter satisfying the requirements of the American National Standards specification of sound level meter, S1.4-1971, according to a frequency-weighted decibel scale. The sound pressure can be determined according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedure. Also, the perceived loudness of a sound as expressed in decibels (db). For example, the A-weighted decibel scale dB(A) represents those frequencies most readily audible to the human ear. The C-weighted decibel scale dB(C), approximates response of the human ear to low-frequency sounds. The G-weighted decibel scale dB(G) is designed for infrasound.

TOTAL HEIGHT - The height of the tower and the furthest vertical extension of the wind turbine rotor plane.

TRANSMISSION OWNER - The owner of the electric distribution networks. Examples include New York State Electric & Gas, National Grid, and Con Edison.

VIEW SHED –The area contained within a 5 mile radius of the WECS

VERTICAL AXIS - The vertical orientation of the rotation of the rotor cage on a WECS.

WIND ENERGY CONVERSION SYSTEMS- (WECS)- Any wind energy conversion systems consisting of any wind turbine, vertical or horizontal axis wind turbines, wind measurement tower or combination of these, including but not limited to related infrastructure, electric lines, sub stations, poles and accessory equipment.

WIND ENERGY FACILITY - Any wind turbine, small wind turbine or wind measurement tower or combinations of these, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

WIND ENERGY FACILITY PERMIT- A permit pursuant to this law granting the holder the right to construct, maintain and operate a Wind Energy Facility.

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

WIND TURBINE - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of more than 25 kW and which is intended to produce power for distribution on the utility grid.

WIND TURBINE (SMALL) - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended primarily to reduce consumption of utility power at that location.

THIS AREA LEFT BLANK

§ 11. Application Requirements

A complete application for a Wind Energy Facility Permit shall include:

A. A completed application for a Wind Energy Facility Permit.

B. A site plan prepared by a licensed professional engineer, including:

1) Property lines and physical dimensions of the Site;

2) Location, approximate dimensions and types of major existing structures and uses on the Site, public roads, and adjoining properties within 500 feet of the boundaries of any proposed wind turbines, or 1½ times the total height of such wind turbines, whichever shall be greater.

3) Location and elevation of each proposed wind turbine.

4) Location of all above and below ground utility lines on the Site as well as transformers, the interconnection point with transmission lines, and other ancillary facilities or structures.

5) Locations of buffers as required by this law.

6) Location of the nearest residential structure(s) on the Site and located off the Site, and the distance from the nearest proposed wind turbine.

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

C. View Shed Rendering- A vertical drawing of the wind turbine 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 wind turbine of the same type and total height. The make, model, picture and manufacturer's specifications, including noise decibels data, and Material Safety Data Sheet documentation for all materials used in the operation of the equipment shall be provided for each proposed wind turbine. A visual analysis of the turbine/s as installed, which includes a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. These vantage points will be determined by the Joint Planning Board based on a site map to include a topographical and aerial simulation.

D. A lighting plan showing any FAA-required lighting and other proposed lighting. lighting shall be directed up and out, not down.

E. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Joint Planning Board, on the recommendation of its Village Engineer or consultants.

F. A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.

G. An operations and maintenance plan providing for regular periodic maintenance schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.

H. A decommissioning plan that addresses the anticipated life of the wind turbine, the estimated decommissioning costs, the method of ensuring funds shall be available for decommissioning and restoration, the method by which decommissioning cost shall be kept current, and the manner in which the wind turbine shall be decommissioned and the Site restored, less any fencing or residual minor improvements requested by the landowner.

I. List of property owners, with their mailing address, within 2,000 feet of the outer boundaries of the proposed Site.

J. A complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint, not to exceed sixty (60) days.

K. A transportation plan (see § 15) 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, as well as measures which will be taken to restore damaged/disturbed access routes following construction.

L. A Full Environmental Assessment Form (EAF), as provided by the New York State Environmental Quality Review Act (SEQRA) shall be prepared for the Wind Energy Facility. This Full Environmental Assessment shall, at a minimum, include:

1) A study of potential shadow flicker, including a graphic to identify locations where shadow flicker may be caused by the wind turbines and expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures to be taken to eliminate shadow flicker problems. If shadow

flicker impacts are of either high intensity or duration (more than 25 hours per year), then a second level analysis of shadow flickers modeling will occur, including an on-site assessment of property conditions.

If shadow flicker can not be minimized to a shorter duration or intensity, project modifications may be required. It is desirable to have no shadow flicker on off-site residences.

2) A visual impact study and its impact to the view shed with the proposed wind turbines as installed, which may include a computerized photographic simulation and digital elevation models demonstrating visual impacts from strategic vantage points. Color photographs of the Site accurately depicting existing conditions shall be included as well as a map indicating areas where the wind turbines will be visible to a person at five (5) feet above ground level. The visual analysis shall also indicate color treatment of system components and any visual screening to be incorporated into the project to lessen the system's visual prominence.

3) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Site, as well as Schoharie County Emergency Service including but not limited to fire coordinator, emergency management, sheriff.

4) A noise analysis by a competent acoustical consultant including:

a. A description and map of the project's noise-producing features which will include but not be limited to the range of noise levels expected (A-weighted, C-weighted and G-weighted), the tonal and frequency characteristics expected, the duration of sound, frequency of occurrence, and the effects of changes in wind speed and direction;

b. The manufacturer's data and standards for all structures, including designed noise levels and the noise levels determined by testing in the field;

c. A survey and report prepared by an independent, qualified, New York State engineer that analyzes the preexisting ambient noise including seasonal and twenty-four (24) hour variations at residences within one (1) mile of the Site boundary;

d. The analysis must be accompanied by a topographic map showing, in increments of 5 decibels out to a level of 20 decibels, the noise level contours of the Site vicinity, in order to visualize the cumulative noise impacts from the Wind Energy Facility on surrounding properties. All residences within the greater of one (1) mile of the Site boundary or the twenty (20) decibel contour shall be clearly shown;

e. Where noise can carry far and in unexpected directions, the study must consider sounds carried from hilltop to hilltop, hilltop to valley, and along valleys in a radius of ten miles from a Wind Energy Facility. The study must also produce an analysis of cumulative noise impacts; and

f. The applicant shall submit a design for post-development noise monitoring as well as a description of proposed noise control features, including specific measures to protect workers, and to mitigate noise impacts to a level of insignificance off-site. A summary of the applicant's proposed noise complaint resolution program must be included.

5) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, 911 and other wireless communication by an independent contractor as determined by the Planning Board with the applicant paying all fees.

6) An assessment of the impact of the proposed development on the local flora and fauna, including migratory and resident avian species and bat species. 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 a literature survey for threatened and endangered species and 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 post-installation studies.

7) An assessment of potential immediate and long-term impacts to local flora and fauna, micro and macro habitats, and ground and surface water related to but not limited to, excavation, blasting, clear-cutting and grading during the Site preparation phase including construction of access roads.

8) An assessment of archaeological resources that may be impacted by the project. Such assessment shall be conducted in coordination with the New York State Office of Parks, Recreation and Historic Preservation.

9) 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.

10) 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.

11) A geotechnical report that includes:
    - 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
    - a slope stability analysis

M. A statement signed under penalties of perjury that the information contained in the application is true and accurate.

§ 12. Application Review Process

A. Applicants must arrange a pre-application meeting with the Joint Planning Board and the professional consultants retained by the Village for application review. The applicants will be responsible for any expenses incurred for this meeting with consultants.

B. Ten copies of the complete application shall be submitted to the Village Clerk. Payment of all application fees shall be made at the time of submission.

C. The Joint Planning Board shall, within 45 days of receipt, or such longer time as may be accepted by the applicant, determine if all information required hereunder is included in the application. If the application is deemed incomplete, the applicant shall be provided with a written statement listing missing data. If applicant fails to provide data within 45 days, the application shall expire. Upon submission of a complete application, the Joint Planning Board shall proceed with its review.

D. The Joint Planning Board shall hold at least one public hearing on the application. Notice shall be published in the Village's official newspaper, no less than 14 nor more than 31 days before any hearing, but, where any hearing is adjourned by the Joint Planning Board to hear additional comments, no further publication shall be required. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers. All property owners within two thousand (2,000) feet of the property lines of a proposed Wind Energy Facility shall be given notice of a public hearing via certified mail at the expense of the applicant.

E. Notice of the project shall also be given, if applicable, to the Schoharie County Planning Commission, as required by General Municipal Law § 239-m.

F. Following receipt of the recommendation of the Schoharie County Planning Commission (if applicable), the holding of the public hearing, and completion of the SEQRA process, the Joint Planning Board may approve, approve with conditions, or deny the Wind Energy Facility Permit application, in accordance with the standards in this law. The Joint Planning Board may also impose financial guarantee and inspection requirements and require permit renewals. Any denial shall be in writing setting forth competent reasons for such denial with references to relevant sections of this law.

§ 13. Wind Energy Facility Development Standards

The following standards shall apply to Wind Energy Facilities in the Village of Sharon Springs.

A. All power transmission lines from the tower to any building, substation, or other structure shall be located underground in accordance with National Electrical Code Standards.

B. No television, radio or other communication antennas may be affixed or otherwise made part of any wind turbine, except with approval by the Joint Planning Board. Applications may be jointly submitted for wind turbine and telecommunications facilities.

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

D. No tower shall be lit except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground level facilities shall appear on the Wind Energy Facility development plan indicating the direction of lighting and must be approved by the Joint Planning Board or their consultants.

E. All applicants shall use measures to reduce the visual impact of wind turbines to the greatest extent possible. Wind turbines shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Wind turbines within a multiple wind turbine project shall be generally uniform in size geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

F. Guy wires shall not be permitted except to address unique safety issues and then only with specific permission by the Joint Planning Board in the form of a waiver.

G. No wind turbine 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 communication systems would produce electromagnetic interference with signal transmission or reception. If it is determined a wind turbine is causing electromagnetic interference, the operator shall take necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of issues with the affected parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Facility Permit for the specific wind turbine or wind turbines causing the interference.

H. All construction debris shall be removed from the Site and disposed of in a legal manner under County & local waste management regulations and re-cycling methods.

I. Wind turbines shall be designed to minimize the impacts of land clearing and the loss of important open spaces. Development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Wind Power Projects published by the New York State Department of Agriculture and Markets.

J. Wind turbines shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity.

K. Storm water run-off and erosion control shall be managed in a manner consistent with all applicable State and Federal laws and regulations and such standards as shall be applied by the Joint Planning Board on the advice of the Village Engineer and other Village consultants.

L. Wind turbines shall be located in a manner that minimizes shadow flicker on off-site residences. It is desirable to have no shadow flicker on off-site residences.

M. Color : WECS shall be a non-obtrusive non reflecting color. Galvanized steel or metal is acceptable for the support structures. The painting or coating shall be kept in good repair for the life of the wind turbine

§ 14. Required Site Safety Measures

A. All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

B. Accessory facilities or equipment shall be gated or fenced to prevent un-restricted public access to the facilities and reduce any attractive nuisance aspects of the use.

C. Warning signs with a minimum of 2 sq.ft. shall be posted at the entrances to the Wind Energy Facility and at base of each tower warning of electrical shock or high voltage and must contain emergency contact information.

D. No climbing pegs or tower ladders shall be located closer than 15 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 30 feet.

F. Wind Energy Facilities shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

§ 15. Traffic Routes and Road Maintenance

A. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a Wind Energy Facility. A public improvement bond shall be required prior to the issuance of any building permit in an amount, determined by the Joint Planning Board, sufficient to compensate the Town, Village, County or State for any damage to Town, Village, County or State roads if any of these roads will be among the designated traffic routes. The applicant shall consult with the Town/Village Highway Superintendent and/or the Schoharie County Department of Public Works and/or the State Department of Transportation to obtain a written recommendation for bonding form and amount, which form and amount shall be approved by the Joint Planning Board.

B. The applicant shall provide pre-development and post-development photographic evidence of the condition of any Town, Village, State or County roads along the proposed route. These photos will be submitted to the Joint Planning Board prior to the start of the project and also at the completion of the project for review.

§ 16. Setbacks & Noise

A. Each wind turbine shall be set back as follows:

Residences: a distance no less than the greater of (a) two (2) times its total height or (b) one thousand (1,000) feet.

Property lines: a distance no less than one and a half (1.5) times its total height.

Public Roads: a distance no less than the greater of (a) one and a half (1.5) times its total height or (b) five hundred (500) feet.

State Wetlands: a distance no less than one thousand five hundred (1,500) feet.

The statistical sound pressure level generated by a Wind Energy Facility shall not exceed the ambient decibel level, both A-weighted and C-weighted, plus 5 decibels measured anywhere along the Site boundary. Ambient sound level measurements shall employ all practical means to reduce or compensate for the effect of wind generated noise artifacts at the microphone so as to measure the actual sound level most accurately. Ambient sound level measurements should be performed when wind velocities aloft are sufficient to allow wind turbine operation and should report ambient sound levels for wind speeds aloft corresponding to turbine cut-in as well as the wind speed aloft corresponding to production of the greatest noise. The sound pressure level at any off-site residence shall not exceed ambient sound plus 5 decibels, both A-weighted and C-weighted, as determined in accordance with the stipulations of Section 11(L)(4) of this local law. Independent verification by an acoustical engineer certified with the Institute of Noise Control Engineering shall be provided before and after construction demonstrating compliance with this requirement

§ 17. Noise and Setback Waiver

A. In the event a Wind Energy Facility does not meet a setback requirement or exceeds noise or other criteria established in this Local Law as it existed at the time the Wind Energy Permit is granted, a waiver may be granted from such requirement by the Joint Planning Board.

B. Such waiver shall be in the form required for the filing of deeds and the waiver shall be filed in the County Clerk's Office. The waiver shall include a statement of findings made by the Joint Planning board and all conditions required by the Joint Planning Board for the issuance and continuation of the waiver. Such variance shall be permanent and shall state that they may not be revoked without the consent of the Joint Planning Board, which consent shall be granted upon either the decommissioning of the benefited wind turbine in accordance with this law, or the

acquisition of the burdened parcel by the owner of the benefited parcel or the wind turbine. No such waiver shall permit noise levels at any other location within or outside the areas prescribed to exceed the limitations of this law.

§ 18. Issuance of Wind Energy Facility Permits

A. The Joint Planning Board shall, within 120 days of determining the application is complete, and upon consideration of the standards in this law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated. This time period may be extended for another **sixty (60) days** at the request of the applicant and/or the Joint Planning Board deems it necessary for additional information, to seek expert and/or legal advice or other legitimate reasons.

B. Upon written approval, the Joint Planning Board shall direct the Village Code Enforcement Officer to issue a Wind Energy Facility Permit upon satisfaction of all conditions for the permit and upon compliance with the New York State Building Code.

C. The decision of the Joint Planning Board shall be filed within **fifteen (15) days** in the office of the Village Clerk and a copy mailed to the applicant by first class mail.

D. If any approved Wind Energy Facility is not substantially commenced within **two (2) years** of issuance of the Wind Energy Facility Permit, the Wind Energy Permit shall expire, unless the Joint Planning Board shall have granted an extension.

§ 19. Abatement

A. If any wind turbine remains inoperative for a continuous period of **twelve (12) months**, the owner shall remove said system at owner's expense following the requirements of the decommissioning plan. 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 owner demonstrates to the Village Board that it has been making good faith efforts to restore the wind turbine to an operable condition, but nothing in this provision shall limit the Village Board's ability to order a remedial action plan after public hearing.

B. Lack of operation may be proven by reports to the Public Service Commission, the New York State Energy Research and Development Authority (NYSERDA), New York Independent System Operator(NYISO), or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Joint Planning Board all reports to and from the purchaser of energy from individual wind turbines, if requested and necessary to prove the wind turbine is

functioning, which reports may be edited as necessary to protect proprietary information.

C. The applicant, or successors, shall continuously maintain a fund or bond payable to the Village of Sharon Springs, in a form approved by the Village Board for the removal of inoperable towers and appurtenant facilities, in an amount to be determined by the Village Board, 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 decomissioning bond requirements shall be fully described in the decommissioning plan.

§ 20. Limitations on Approvals

Nothing in this law shall be deemed a guarantee against any future construction or Joint Planning Board 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.

§ 21. Permit Revocation

A. The applicant shall fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as biannually, or more frequently upon request of the Village 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 Wind Energy Facility Permit and this law and shall also include an evaluation of any complaints received by the Village Board and Code Enforcement Officer. The applicant shall have 90 days after written notice from the Village Code Enforcement Officer, to cure any deficiency. An extension of the 90 day period may be considered by the Village Code Enforcement Officer for review, but the total period may not exceed 180 days.

B. A wind turbine 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 wind turbine become inoperable, or should any part of the wind turbine be damaged, or should a wind turbine violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Village 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. Should a wind turbine not be repaired or made operational or brought into permit compliance after said notice, the Village Board may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, order either remedial action within a particular timeframe, or order revocation of the Wind Energy Facility Permit for the wind turbine and require its removal within 90 days. If the wind turbine is not removed, the Village Board shall have the right to use the security posted as part of the decommission plan to remove the wind turbine.

§ 22. Wind Measurement Towers

Installation of wind measurement towers, also known as anemometer towers, shall be permitted, upon the issuance of a Wind Energy Facility Permit, to determine the wind speeds and the feasibility of using particular sites. The distance between a wind measurement tower and the property line shall be at least 1½ times the total height of the tower. Wind Energy Facility Permits for wind measurement towers shall be issued for a period of two years and shall be renewable upon application to the Joint Planning Board. An application for a wind measurement tower shall include:

A. Name, address, telephone number and signatures of the applicant and agent for the applicant, if any.

B. Name, address, telephone number and signature of the property owner along with written authorization by the property owner to submit the application.

C. Proposed development plan.

D. Decommissioning plan, including a security bond for removal, should the tower not be converted to permanent use for wind energy generation.

Other development standards as set forth above for Wind Energy Facilities shall be applied to the maximum extent practicable, as determined by the Joint Planning Board; recognizing the temporary nature of wind measurement towers.

§ 23. Small Wind Turbines

The Joint Planning Board is hereby authorized to approve, approve with conditions, or disapprove small wind turbine applications designed for residential, farm, institutional and business use on the same parcel. Such applications shall be processed in the same manner as those prescribed above for all wind energy facilities, but may be appropriately modified by the Joint Planning Board to reflect the scale of the proposed facility. All small wind turbines shall comply with the following standards and with all other requirements of this law not in conflict herewith:

A. A system shall be located on a lot a minimum of one acre in size; however, this requirement can be met by multiple owners submitting a joint application

B. Small wind turbine shall be used primarily to reduce the on-site consumption of electricity

C. Total heights shall be a maximum of 100 feet on parcels between one and five acres and 150 feet or less on parcels of five or more acres

D. A small wind turbine shall be set back one and one-half (1.5) times the height of the tower.

E. The maximum combined turbine power output is limited to 25kW.

F. Tower-climbing apparatus shall be located no closer than 12 feet from the ground, a locked anti-climb device shall be installed on the tower or a locked, protective fence of at least six feet in height that encloses the tower shall be installed to restrict tower access

G. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from the ground up to a minimum of eight feet

H. If any wind turbine remains inoperative for a continuous period of twelve (12) months, the owner shall remove said system at owner's expense following the requirements of the decommissioning plan
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 owner demonstrates to the Village Board that it has been making good faith efforts to restore the wind turbine to an operable condition, but nothing in this provision shall limit the Village Board ability to order a remedial action plan after public hearing.

§ 24. Fees

A. The Village Board shall, by resolution, establish and from time to time modify a schedule of fees for Wind Energy Facility Permit applications.

B. The Joint Planning Board may hire any consultant and/or expert necessary to assist the Code Enforcement Officer in reviewing and evaluating the application, including but not limited to Site inspections, the construction and modification of the Site, once permitted, and any requests for recertification. An applicant shall deposit with the Village Board funds sufficient to reimburse the Village Board for all reasonable costs of consultant and expert evaluation and consultation to the

Village Board in connection with the review of the application.

C. The initial deposit for large turbine shall be $7,500 per project and shall be placed with the Village of Sharon Springs preceding the pre-application meeting. The Village of Sharon Springs shall maintain a separate escrow account for all such funds. The Village's consultants/experts shall invoice the Village of Sharon Springs for their services on a monthly basis, for which amounts will be charged to the escrow account with notice to the applicant. If at any time during the process this escrow account has a balance less than $2,500, the applicant shall immediately, upon notification by the Village Board, replenish said escrow account so that it has a balance of at least $5,000. Such additional escrow funds shall be deposited with the Village of Sharon Springs **before** any further action or consideration is taken on the application.

D. Should the amount held in escrow by the Village Board be more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant. The total amount of the funds required for these services may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of construction.

E. Fees are based on the current Village of Sharon Springs Building Permit Fee Schedule. Fees for all small wind turbines will be determined by this same Schedule.

§ 25. Tax Exemption

The Village Board 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.

Village Board review & approval	**01/20/2011**
Public Hearing	**02/17/2011**
Village Board Final Approval	**02/17/2011**
NY State Approval of Original Law	**03/14/2011**
Public Hearing on Amendments	**05/19/2011**
Amendments Approved by Village Board	**05/19/2011**
NYS Approval of Amendments	_____

END