

Town of Jefferson Wind Energy Facilities Law

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§ 1. GENERAL PROVISIONS

Be it hereby enacted by the Town Board of the Town of Jefferson, Schoharie County, New York, as follows:

A. Title

This local law may be cited as the "Town of Jefferson Wind Energy Facility Law."

B. Purpose

The purpose of the law is to provide for the construction and operation of wind energy facilities in Town of Jefferson, subject to reasonable conditions that will protect the public health, safety and welfare.

C. Authority

The Town Board of the Town of Jefferson 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.

D. 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.

E. Permits

- 1) Permit Requirement. No wind energy facility shall be constructed, reconstructed, modified, or operated in the Town of Jefferson except by first obtaining a Wind Energy Facility Permit as provided under this law. A Feasibility Permit shall be required before the installation or construction of wind measurement towers, also known as anemometer towers (see § 5).
- 2) Exemptions. No permit or other approval shall be required under this law for a mechanical, non-electrical wind turbine utilized 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.
- 3) Transfer. The owner of the wind energy facility project shall be the applicant and, if granted, will be the holder of the Wind Energy Facility Permit. The Permit may be transferred to a new owner if the holder of the existing Wind Energy Facility Permit can demonstrate to the satisfaction of the Town and the Town Attorney

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that the liability to operate the facility in a safe manner and the liability of de-commissioning can be transferred to a specific new owner and is in the best interests of the Town.

F. Waivers

The 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 Town. The 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 Planning Board may attach such conditions as it deems appropriate to waiver approvals to ensure public health, safety and welfare. The 1000 foot setback requirement from residences, lodging facilities, camps, public buildings, churches or other institutions shall not be waived.

G. Enforcement and Penalties

- 1) The Town of Jefferson Board shall designate a code enforcement officer to enforce the provisions of this law. The Town Board may employ such professional expertise as may be necessary to support these enforcement efforts and to assist the Planning Board with application reviews. All reasonable professional fees required for application review and enforcement shall be paid by the applicant (see § 8).
- 2) 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 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 \$1000. The Town may institute a civil proceeding to collect civil penalties in the amount of \$1000 for each violation and each week said violation continues shall be deemed a separate violation.
- 3) The Town 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,

H. 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.

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I. Effective Date

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

§ 2. DEFINITIONS

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

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.

HUB HEIGHT - The distance measured from the surface of the tower foundation to the height of the center of the Wind Turbine hub, to which the blade is attached.

NEW YORK INDEPENDENT SYSTEM OPERATOR (NYISO) - 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 nondiscriminatory wholesale market for electricity in New York State.

NON-PARTICIPATING LANDOWNER - Any landowner except those on whose property all or a portion of a Wind Energy Facility is located pursuant to an agreement with the Facility Owner or Operator.

RESIDENCE - Any dwelling suitable for habitation existing in the Town of Jefferson on the date an application is received. A residence may be part of a multi-family dwelling or multipurpose building, but shall not 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.

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

SOUND PRESSURE LEVEL - According to the NYSDEC Program Policy on Assessing and Mitigating Noise Impacts, a measure of sound pressure in the atmosphere which can be determined according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEG 61400-11), or other accepted procedure. Also, the perceived loudness of a sound as expressed in decibels (db) or A-weighted decibel scale dB(A). For example, an L10 - 30 dBA

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indicates that in any hour of the day 30 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes.

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

TRANSMISSION OWNER - The owner of the electric distribution networks. Examples include New York State Electric & Gas and Delaware County Electrical Co-op.

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 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 100 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.

§ 3. PROCEDURES

A. Application Requirements

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

- 1) A copy of an executed interconnection agreement with NYISO and the applicable transmission owner.
- 2) A completed application for a Wind Energy Facility Permit.
- 3) A site plan prepared by a licensed professional engineer, including:
 - (a) Property lines and physical dimensions of the site;
 - (b) Location, approximate dimensions and types of major existing structures and uses on the site, public roads, and adjoining properties within 1000 feet of the base of any proposed wind turbine.
 - (c) Location and elevation of each proposed wind turbine.

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- (d) 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.
 - (e) Locations of buffers as required by this law.
 - (f) Location of all the residential structure(s) within 2000 feet of the proposed wind turbine.
 - (g) All proposed facilities, including access roads, electrical substations, storage or maintenance units, and fencing.
- 4) 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.
 - 5) A lighting plan showing any FAA-required lighting and other proposed lighting.
 - 6) 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 Town of Jefferson Planning Board on the recommendation of its Town Engineer or consultants.
 - 7) 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.
 - 8) 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.
 - 9) 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.
 - 10) List of property owners, with their mailing address, within 1000 feet of the base of the proposed turbine.
 - 11) A complaint resolution process to address complaints from nearby residents. Priority should be given to the complaints from residents within 2000 feet of the proposed wind turbine. The process shall use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every rea-

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sonable effort to resolve any complaint including the use of natural buffers, reconstruction at the complainant's site, and project modification.

- 12) A Full Environmental Assessment Form ("EAF") and Visual EAF Addendum Form, 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:

(a) 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 or mitigate problems.

(b) A visual impact study of 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. 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.

(c) 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 Management Office.

(d) A noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed wind turbine, existing noise levels at site property lines and at the nearest residence not on the site. The noise analysis shall include low frequency noise. The applicant shall also submit plans for post development noise monitoring.

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

(f) 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.

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

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(h) 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.

B. Application Review Process

- 1) Applicants are encouraged to arrange a pre-application meeting with the Planning Board and consultants retained by the Town for application review.
- 2) Ten copies of the complete application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of submission.
- 3) The 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. Upon submission of a complete application, the Planning Board shall proceed with its review.
- 4) The Planning Board shall hold at least one public hearing on the application. Notice shall be published in the Town's official newspaper, no less than 14 nor more than 31 days before any hearing, but, where any hearing is adjourned by the 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.
- 5) Notice of the project shall also be given, if applicable, to the adjoining municipalities as required by the General Municipal Law.
- 6) Following receipt of the recommendation of Schoharie County Planning Commission(if applicable), the holding of the public hearing, and completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the Wind Energy Facility Permit application, in accordance with the standards in this law. The 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.

§ 4. DEVELOPMENT STANDARDS

A. Wind Energy Facility Development Standards

The following standards shall apply to wind energy facilities in the Town of Jefferson, unless specifically waived by the Planning Board.

- 1) All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
- 2) No television, radio or other communication antennas may be affixed or otherwise made part of any Wind Energy Facility, except with approval by the Town of

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Jefferson Planning Board. Applications may be jointly submitted for wind turbine and telecommunications facilities.

- 3). No advertising signs are allowed on any part of the wind energy facility, including fencing and support structures.
- 4) No tower shall be lit except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the wind energy facility development plan.
- 5) All applicants shall use measures to reduce the visual impact of wind turbines to the 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.
- 6) Guy wires shall not be permitted except to address unique safety issues and then only with specific permission by the Planning Board in the form of a waiver.
- 7) 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.
- 8) All construction debris shall be removed from the site or otherwise disposed of in a manner acceptable to the Planning Board.
- 9) 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 Windpower Projects published by the State Department of Agriculture and Markets, to the maximum extent practicable.
- 10) Wind turbines shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity.
- 11) 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 Planning Board on the advice of the Town Engineer and other Town consultants.
- 12) Shadow flicker on surrounding residences shall be minimized through the use of buffers or other means so that it is of low intensity and under 15 hours duration

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per year. If shadow flicker cannot be minimized to a shorter duration or intensity, project modifications will be required.

B. Required Site Safety Measures

- 1) 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.
- 2) Wind energy facilities shall be constructed to prevent unrestricted public access to the facilities and reduce any attractive nuisance aspects of the use.
- 3) Warning signs 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 containing emergency contact information.
- 4) 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.
- 5) The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.
- 6) Wind turbines 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.

C. Traffic Routes and Road Maintenance

- 1) Construction and delivery vehicles for wind turbines and/or associated facilities shall propose, and the Planning Board shall approve or modify, designated traffic routes to minimize traffic impacts from construction and delivery vehicles, wear and tear on local roads and impacts on local business operations.
- 2) The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a wind turbine. A public improvement bond may be required prior to the issuance of any building permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to Town or County roads if any of these roads will be among the designated traffic routes. The applicant shall consult with the Town Highway Superintendent, the Schoharie County Department of Public Works, and the NYS Department of Transportation, as applicable, to obtain a written recommendation for bonding form and amount, which form and amount shall be approved by the Planning Board.
- 3) The applicant shall provide pre-development and post-development photographic evidence of the condition of any Town, or County roads along the proposed route.

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D. Setbacks and Noise

- 1) A set back distance of 1000 feet shall be established from each wind turbine to any public road, residence, lodging facility, camp, public building, church or other institution. The owner of the wind turbine shall be solely responsible for maintaining this setback without encroachment from future development; and shall negotiate a lease with all property owners within a 1000 foot radius measured from the outside base of the wind turbine that will preserve this setback until the turbine is decommissioned and dismantled. An example of a typical lease and a statement that the property owners have leased the development rights, signed by all parties, shall be made part of the application.
- 2) Wind Turbines shall be set back from the nearest occupied residence located on a non-participating landowner's property a distance of not less than five (5) times the hub height, as measured from the center of the wind turbine base to the nearest point on the foundation of the occupied building. The landowner may sign a waiver that sets forth the applicable setback distance not to be less than 1000 feet.
- 3) The statistical sound pressure level generated by a wind turbine shall not exceed LIO -50 dBA measured at the nearest residence. 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.
- 4) In the event audible noise due to wind energy facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph (B) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.
- 5) Should the ambient noise level (exclusive of the development in question) exceed the applicable standard given above; the applicable standard shall be the ambient dBA plus 5 dBA. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than six (6) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public buildings. Ambient noise level measurements shall be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation.

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E. Noise Easements

- 1) An applicant may, with approval from the Planning Board, meet noise standards by obtaining written consents from affected property owners stating they are aware of the wind energy facility and the noise limitations imposed by this law, and that consent is granted to allow noise levels to exceed the maximum limits provided herein.
- 2) Such consents shall be in the form required for easements and be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the 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 easement shall permit noise levels at any other location within or outside the areas prescribed to exceed the limitations of this law.

§ 5. APPROVALS

A. Issuance of Wind Energy Facility Permits

- 1) The 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 with consent of the applicant. Should the applicant not consent to such an extension and the time period elapse without a decision, the application shall be considered approved without conditions.
- 2) If approved, the Planning Board shall direct the Town Code Enforcement Officer to issue a Wind Energy Facility Permit upon satisfaction of all conditions for said Permit, and upon compliance with the New York State Building Code.
- 3) The decision of the Planning Board shall be filed within 15 days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- 4) If any approved wind energy facility is not substantially commenced within two years of issuance of the Wind Energy Facility Permit, the Wind Energy Facility Permit shall expire, unless the Planning Board shall have granted an extension.

B. Abatement

- 1) If any wind turbine remains non-functional, inoperative or the output from the turbine has deteriorated to less than 10% of its rated capacity averaged over a continuous period of 12 months, the applicant shall remove said system at its own 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

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apply if the owner demonstrates to the Town 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 Town's ability to order a remedial action plan after public hearing.

- 2) Non-function, lack of operation, or deteriorated performance may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the 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 redacted as necessary to protect proprietary information.
- 3) The applicant, or successors, shall continuously maintain an insurance policy payable to the Town, in a form approved by 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. All costs of the financial security shall be borne by the applicant. All decommissioning insurance requirements shall be fully described in the decommissioning plan.

C. Limitations on Approvals

Nothing in this 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 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.

D. Permit Revocation

- 1) The applicant shall fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as bi-annually, or more frequently upon request of the Planning 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 Wind Energy Facility Permit and this law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Planning Board, to cure any deficiency. An extension of the 90 day period may be considered by the Planning Board, but the total period may not exceed 180 days.
- 2) 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, producing energy at least 10% of rated capacity, 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 per-

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mit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Planning Board. The applicant shall have 90 days after written notice from the Planning Board, to cure any deficiency. An extension of the 90 day period may be considered by the Planning Board, but the total period may not exceed 180 days.

- 3) Should a wind turbine not be 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, 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 Planning Board shall have the right to redeem the insurance policy required as part of the decommission plan to remove the wind turbine.

§ 6. WIND MEASUREMENT TOWERS

Installation of wind measurement towers, also known as anemometer towers, shall be permitted upon the issuance of a Feasibility Permit, to determine the wind speeds and the viability of using particular sites. The distance between a wind measurement tower and the property line shall be at least 1.5 times the total height of the tower. Feasibility Permits for wind measurement towers shall be issued for a period of two years and shall be renewable upon application to the Planning Board. An application for a wind measurement tower shall include:

- 1) Name, address, telephone number and signatures of the applicant and agent for the applicant, if any.
- 2) Name, address, telephone number and signature of the property owner along with written authorization by the property owner to submit the application.
- 3) Proposed development plan for the delivery, erection and maintenance of the wind measurement tower.
- 4) Decommissioning plan, including an insurance policy 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 Planning Board, recognizing the temporary nature of wind measurement towers.

§ 7. SMALL WIND TURBINES

The Planning Board is hereby authorized to approve, approve with conditions, or disapprove small wind turbine applications, limited to 100 kW or less, 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 maybe appropriately modified by the Planning Board to reflect the scale of the pro-

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posed facility. All small wind turbines shall comply with the following standards and, to the maximum extent practicable, with all other requirements of this law not in conflict herewith:

- 1) 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.
- 2) Only one small wind turbine per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one site for purposes of this law. Turbines shall be setback from property lines at least 1,1/2 times the total height of the tower.
- 3) Small wind turbine shall be used primarily to reduce the on-site consumption of electricity.
- 4) 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.
- 5) 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.
- 6) 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 setback at least 50 feet from property lines and enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

§ 8. FEES

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

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

- 1) The initial deposit shall be \$7,500 and shall be placed with the Town preceding the application meeting. The Town shall maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for their services on a monthly basis, 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

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notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application.

- 2) Should the amount held in escrow by the Town 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. The initial deposit in the case of Small Wind Turbines shall be no more than \$500.