

**TOWN OF WESTERLO**  
**LOCAL LAW NO \_\_ OF THE YEAR 2021**  
**WIND ENERGY SYSTEMS LOCAL LAW**

BE IT ENACTED by the Town Board of the Town of Westerlo as follows:

**Article I**

**Section 1. Title**

This local law shall be known and may be cited as the “Wind Energy Conversion Systems”.

**Section 2. Purpose**

This Local Law is adopted to advance and protect the public health, safety, and welfare of the Town of Westerlo, including:

- 1) Taking advantage of a safe, renewable, and low-carbon emitting energy resource;
- 2) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses and farm operations;
- 3) Balancing the need to improve energy sustainability through increased use of renewable energy systems with concerns for preservation of public health, welfare, and safety, as well as environmental quality, visual and aesthetic values, and existing neighborhood social and ecological stability; and
- 4) Minimizing any adverse impacts on the character of the neighborhoods, property values, scenic, historic, and environmental resources of the Town.

These renewable energy regulations are intended to ensure these systems are appropriately designed, sited and installed, in a manner consistent with the Town of Westerlo's comprehensive plan. However, to the extent that a provision of this Local Law conflicts with any other local law of the Town, the provision of this Local Law shall apply.

**Section 3. Authority**

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

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

- 4) New York Town Law § 64(17-a) (Protection of Aesthetic Interests), and §64(23) (General Power).

## **Article II**

### Wind Energy Conversion Systems (WECS)

#### **Section 1. Definitions.**

As used in this Article, the following terms and conditions shall have the meanings indicated:

**ACCESSORY FACILITIES or EQUIPMENT:** Any structure other than a wind turbine, including WECS Buildings, overhead and underground electrical lines, guy wires, access roads or other facility related to the use and purpose of deriving energy from a wind turbine.

**APPLICANT:** Any individual, corporation, municipal corporation, municipal corporation-private entity cooperation, estate, trust-partnership, joint-stock company, association of two or more persons, limited liability company or other entity submitting an application to the Town of Westerlo for a WECS Permit, and its successors and assignees.

**APPLICATION:** The form approved by the applicable Board, together with all necessary and appropriatedocumentation that an applicant submits in order to receive a WECS Permit.

**DECOMMISSIONING PLAN:** A plan that includes all of the elements set forth in Section 5 of this Article.

**ENVIRONMENTAL LAWS:** Any law (including common law), statute, regulation, ordinance, order, code, guidance standard recognized by regulatory authorities, or other legal requirement relating to protection of the environment, Hazardous Material(s) and/or worker health and safety adopted by any applicable federal, state, or local governmental authority.

**HAZARDOUS MATERIAL(S):** Any pollutant, contaminant, hazardous or toxic substance, waste, and any other material (a) subject to regulation or governed by any Environmental Law; and (b) the presence, or discharge of, or exposure to which could result in liability as a result of its impact or potential impact on human health or the environment; and including asbestos and asbestos containing material; petroleum, petroleum products and waste oil; any flammable explosives, radioactive materials, or toxic mold.

**MATURE FOREST** - A mature forest is any unimproved land in excess of one (1) acre with trees that are predominantly six (6) inches [or more in diameter at Diameter Breast Height \(DBH\)](#).

**NACELLE:** The portion of the wind turbine that connects the rotor to the support tower, and houses the generator, gearbox, drive train, and braking system.

**NON-PARTICIPANT:** A parcel of land which is not subject to any lease, good neighbor agreement or other contract with the Applicant which authorizes WECS development by Applicant.

**PRIME FARMLAND, PRIME SOILS AND PRIME SOIL LANDS** - Agricultural land meeting (1) the national parameters for “Prime Farmland” as described in the then current guidelines set forth in the National Soil Survey Handbook § 622.03/Farmland Classification, as amended from time to time; and (2) “farmland of statewide importance,” pursuant to the State of New York classification system for Albany County, including the areas in the Town depicted on the Map annexed as Appendix D to this law.

**RIGHT OF WAY:** A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, and other similar uses.

**TOTAL HEIGHT:** The height of the wind turbine, measured from the tip of the turbine blade when vertically aligned above the nacelle.

**TOWER FACILITY:** Site where one or more wind turbines will be located, including all accessory facilities or equipment.

**WATT (“W”):** A unit of power. A power of one thousand watts (1000 W) is also referred to as one kilowatt (“kW”). A power of one million watts (1,000,000 W) is also referred to as one megawatt (“MW”).

**WATT-HOUR (“Wh”).** A unit of energy, equal to the amount of energy delivered in one hour by a power of one watt. Energy in the amount of one thousand watt-hours (1000 Wh) is also referred to as one kilowatt-hour (“1 kWh”). Energy in the amount of one million watt-hours (1,000,000 Wh) is also referred to as one megawatt-hour (“MWh”).

**WECS BUILDING:** Substations, operations and maintenance buildings, battery storage facilities and other WECS-related buildings.

**WECS PERMIT:** The official document or permit by which an Applicant is allowed to construct and use a Commercial WECS as granted or issued by the Town.

**WIND TURBINE:** Any tower, pole, or other structure, whether attached to a building, guyed, or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as a nacelle and generator for producing electricity.

**WIND ENERGY CONVERSION SYSTEM (“WECS”):** Shall mean any mechanism including a wind turbine designed for the purpose of converting wind energy into electrical energy and all accessory facilities related thereto. A WECS may be:

- a. Non-Commercial - A WECS that is incidental and subordinate to another use on the same parcel and which primarily produces energy for on-site consumption and has a capacity of less than 25 kilowatts.
- b. Commercial - A WECS that primarily produces energy for off-site sale or consumption, or any WECS that has a capacity of 25 kilowatts or more.

## **Section 2. Requirements for Non-Commercial WECSs.**

Non-Commercial WECSs shall be allowed within the Town in the zoning districts in compliance with this Local Law and receipt of a building permit. In addition to any other building permit requirements, the following shall apply to non-commercial WECSs:

(A) Site plan approval is required for all WECSs with a maximum height greater than 20 feet measured from the base of the unit or support structure, as it touches the ground.

(B) If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, receipt of such agency approvals shall be a precondition to the building permit.

(C) All wind turbine towers for Non-Commercial WECS shall be subject to the following setback: 1.5 times the Total Height, from adjacent property lines, right of ways, easements, public ways, power lines (not to include individual residential feed lines), and any pre-existing structures, as certified by a New York State Licensed Professional Engineer, or in compliance with the setback requirements for the zoning district, whichever is greater.

(D) Non-Commercial WECS shall have a maximum height of 100 ft, measured from the base of the unit or support structure, as it touches the ground.

(E) The minimum distance between the ground and any part of the rotor blade shall be no less than fifteen (15) feet.

(F) WECS shall not produce sound or vibration perceptible beyond the subject property's lot line.

(G) All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point at least twelve (12) feet above the ground. Setbacks for any anchor point for guy wires or cables shall be a distance of thirty (30) feet from any adjacent property lines.

(H) WECS shall be sufficiently secure so as to prevent access by unauthorized individuals.

(I) The color of the WECS shall be a single, non-reflective matte finished color or other industry standard color which minimizes negative visual impact.

(J) Except to assure human safety during construction of the WECS or as required by the Federal Aviation Administration (FAA), no WECS are to be artificially lit, no WECS shall use stroboscopic lighting and any WECS lighting shall be angled downward so as to minimize light pollution on adjacent property. Lighting impacts, including nighttime stargazing impacts, shall be limited to the minimum amount that is commercially reasonable.

(K) WECS must be designed and installed in conformance with all applicable codes, regulations, and industry standards as referenced in the International Building Code, International Fire Protection Code, and NAFPA 70.

(L) Each WECS shall have signage clearly readable from outside the site carrying emergency phone numbers and other useful contact information.

### **Section 3. General Application Requirements for Commercial WECS.**

A. Commercial WECSs shall be allowed within the Town in the zoning districts and subject to site plan approval by the Planning Board, issuance of a Special Use Permit by the Planning Board, and a building permit. Special Use Permit shall not be assignable or transferable without a permit modification approved by the Planning Board.

B. Complete applications for site plan approval and Special Use Permit for a commercial WECS shall be submitted to Building Department/ [Code Enforcement](#). The Applicant shall attend any Board meeting where the application is to be considered. Applications shall not be deemed "complete" until all requirements herein have been satisfied and a SEQR decision has been issued or a Draft EIS has been accepted and is satisfactory.

C. An application for a WECS permit shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. Applications not meeting the requirements stated herein may be deemed incomplete.

D. Applications for site plan approval and Special Use Permit for a commercial WECS shall include:

1. Name and address of the Applicant, name of project, boundary lines of parcel that project will be located on, a location map showing proposed site's location, date, north arrow, and scale of the plan.
2. Application fee (non-refundable) of \$1000.00.
3. Name and address of all owners of record of abutting parcels and those within 1000 feet of the property lines of parcel where development is proposed.
4. A map showing all existing lot lines, easements and right of ways, and a sketch plan showing proposed road access including provisions for paving, if any, proposed transmission lines, guy wires and accessory facilities, and location of all existing and proposed utility systems to the facility.
5. A survey of any parcel where any portion of the WECS will be located, a copy of which shall be provided to the owners of the surveyed land.
6. A map showing existing and proposed topography at five-foot contour intervals.
7. A landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features including size and type of plant material and erosion control measures.
8. Map plan plotted to scale, prepared by an architect, landscape architect, civil engineer, surveyor, land planner or other competent person, including thereon the following information:

- a) Preliminary architectural or engineering plans including elevations showing the use, location and dimensions of proposed buildings and open spaces.
- b) A map plan showing the proposed activity including the location, dimensions and square footage of WECS Buildings, other buildings on the Tower Sites, location and dimensions of driveways, ingress and egress from the property, driveway intersections with streets, parking areas and maneuvering areas.
- c) A storm drainage and grading plan for analysis of proposed handling of surface water runoff and erosion control, including, where applicable under State or Federal Requirements, a Storm Water Notice of Intent and a Storm Water Pollution Prevention Plan.
- d) A plan showing utilities and utility easements including method of sewage disposal in detail.
- e) Plans for all signs to be erected including dimensions, elevations and sign locations.

9. A landscape plan, prepared by a professional landscape architect or other competent person, showing-all existing natural land features, trees, forest cover and all proposed changes to these features including size and type of plant material and erosion control measures. Landscaping to be installed and maintained in front, side and rear yards as developed, including shade trees, deciduous shrubs, evergreens, defined areas of well-kept grassed areas and ground cover. All such landscaping, grassed areas and ground cover areas shall be maintained in a healthy growing condition at all times.

E. The applicant for a Commercial WECS shall be responsible for reimbursing the Town for the cost of the engineering and legal review by a Town designated engineer or attorney.

1) The Applicant shall execute the Town's escrow agreement and deposit with the Town Clerk funds commensurate with the scale of the project and sufficient to reimburse the Town for all reasonable costs of its consultant evaluation connection with the review of any application. An initial deposit \$ 5000.00 (the "Initial Deposit") shall be filed with the application. The Town will maintain such funds in escrow and pursuant to the terms of the escrow agreement which shall be binding on the applicant and Town. The Town's consultants/experts shall invoice the Town for their services in reviewing the application.

2) The total amount of the funds needed as set forth in this section 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 any construction or modification. In the event the Initial Deposit will be insufficient for review of the application, the Building Department/ [Code Enforcement Office](#) shall notify the applicant, and the applicant shall supplement the escrow fund within thirty (30) days of notice from the Building Inspector/ [Code Enforcement Officer](#) of the estimated amount of the review fees necessary to process the application.

3) Should the sums being maintained in the escrow account by the Town of Westerlo become reduced to the point where there remains one thousand dollars (\$1000.00) or less

in said escrow account, upon receipt of written notice of such balance from the Town, Applicant will be required to replenish the escrow account with a deposit of an amount acceptable to the Town, which may be specified in the written notice. Failure on the part of Applicant to timely make such replenishment may result in the suspension of all activities by the Town in connection with the review or determination of any pending Application(s). In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be refunded to the Applicant.

4) Within five (5) days of filing an application for a WECS, the applicant shall post a sign on the lot that is the subject of the application. The sign is intended to provide the public with notice that an application for an approval is pending. The applicant shall be responsible for maintaining the sign. The sign shall satisfy local zoning requirements and the following criteria and standards:

- i) The sign should be installed in a location that is visible to the public; and not less than fifteen feet (15 ft), and not more than thirty feet (30 ft), from the edge of pavement of the nearest road providing access to the property that is the subject of the application, but the Building Inspector/ [Code Enforcement Officer](#) shall have discretion in determining the proper location of the sign (or multiple signs if the Building Inspector/ [Code Enforcement Officer](#) shall determine such to be needed). In the event the subject parcel does not have frontage on a public road, or is located in a densely, populated area, the Building Inspector/ [Code Enforcement Officer](#) shall determine, after consultation with the applicant and landowner, an appropriate location for the sign.
- ii) The sign shall be in a standard format, color, font and style to be determined by the Building Inspector/ [Code Enforcement Officer](#).
- iii) The sign shall state, in words or substance, the following information:
  - a) an application for an approval has been filed with the Town of Westerlo;
  - b) the telephone number of the Building Department/ [Code Enforcement Officer](#); and
  - c) the Town website for further information regarding the application/project.
- iv) The sign shall remain installed on the property until all public hearings are completed. If a second public hearing is required, the sign shall be reinstalled ten (10) days prior to a second or subsequent hearing. A continuation of a hearing shall be construed, for the purpose of this subsection, as a “second” hearing.

#### **Section 4. Special Use Permit Application Requirements.**

In addition to the general application requirements set forth **in** any applicable local law or zoning ordinance related to Special Use Permits and in Sections 2 and 3 of this local law, applications for a Special Use Permit shall also include:

A. Proof of real property ownership or proof that the landowner, if different than the Applicant, consents to the filing of the Application or the Applicant shall provide a copy of the agreement between the Applicant and the landowner authorizing the Applicant to use the landowner's property as proposed in the application. Where a WECS is to be located on private lands owned by a party other than the applicant, a copy of the lease agreement with the property owner must accompany the Special Use Permit application, and shall remain on file with the Building Department/ [Code Enforcement Officer](#).

B. Completed State Environmental Quality Review Act (SEQRA) Full Environmental Assessment Form (EAF) Part 1 and Albany County GML 239 referral form.

C. A visual impact study, which shall include a computerized photographic simulation demonstrating any visual impacts from strategic vantage points. The study results should assess how the visual impact may vary based on nighttime or daytime, seasonal conditions and vegetation (leaves on trees vs. leaves off trees). Color photographs assessing the visibility from key viewpoints, existing tree lines, and proposed elevations shall be submitted. Pictures shall be digitally enhanced to simulate the appearance of the as-built above ground site facilities as they would appear from distances within at least a ten (10) mile radius of such wind turbines. Pictures from specific locations may be required by the Board and all pictures shall be no smaller than 5" x 7" and provided in hard, color copy and digitally. The visual analysis shall also indicate the color treatment of the WECSs and related components, and any visual screening incorporated into the project that is intended to lessen the WECSs visual prominence.

D. Documentation of the proposed intent as well as a justification for the height of any wind turbines and justification for any clearing required.

E. A preliminary report prepared by the Applicant describing:

- 1) Surrounding topography in relation to the capabilities for generation of electricity by wind,
- 2) Required improvements for construction activities, including those within the public's right of way or land controlled by the Town,

3) Proposed mitigation measures for visual impacts and other environmental impacts of the WECS, if any,

4) Proposed safety measures to mitigate wind turbine failure.

F. An elevation map showing each wind turbine's height and design including a cross section of the structure and components of the nacelle; each wind turbine's compliance with applicable structural standards; and the WECS' nameplate capacity. A copy of all manufacturers' specifications for the wind turbines to be installed shall be included.

G. A description of the general geographic areas that would be acceptable for wind projects within the Town; furthermore, demonstration that the proposed site is the most appropriate site within the immediate area for the location of the WECS.

H. If the WECS is a "major electric generating facility" subject to Article 10 of the Public Service Law and its accompanying regulations, all documents and information required to be provided to the Town, as well as any document or information provided to the Public Service Commission or other public agency which is specifically requested by the Town.

I. A report showing soil logs, soil profile analysis, and storm water run-off calculations for the area being disturbed.

J. Plans to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive runoff, and flooding of other properties, as applicable. There shall be pre-construction and post-construction drainage calculations for the site completed by a certified engineer. From this the engineer must show how there will be no increase in runoff from the site, or how such runoff is sufficiently mitigated.

K. Insurance certificates in compliance with Section 5(I) of this local law.

L. If the property of the proposed WECS is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted, but may be in memo or summary form.

M. Appropriate geotechnical, vibration, structural safety, and noise studies prepared by qualified professionals.

N. Demonstrated compliance with, or inapplicability of, any Town road maintenance or road use local laws, which may include, but shall not be limited to, a proposed road use agreement.

O. If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, the applicant shall notify the Board of such requirement and the Board shall coordinate the review as deemed appropriate. Before any digging or excavation occurs, all underground utilities shall be properly marked. Applicant shall comply with all "Dig Safely NY" regulations including 16 NYCRR Part 753 during construction and decommissioning. A copy of any such license, approval, permit, certificate or registration shall be provided to the Board prior to approval of any WECS permit.

P. A complaint resolution plan for the Applicant to address and resolve complaints regarding the WECS from local residents. The plan may utilize 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. The Applicant's complaint resolution plan to address and resolve complaints regarding any WECS located within the Tower Facility from local residents shall be provided to the Board, posted on the Applicant's website, if any, and provided to any resident upon request.

Q. A report detailing the potential impacts of ice-throw and blade-throw on structures and property within the Town, including proposed safety measures to mitigate such impacts.

R. A noise analysis prepared by a qualified acoustical consultant documenting the noise levels associated with each proposed WECS. The noise analysis shall provide pre-existing ambient noise levels, including low frequency noise levels. The study shall document noise levels at participant and non-participant residences, as well as Sensitive Sites, and model estimated changes resulting from the Applicant's WECS project.

S. A shadow flicker study, identifying locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with occupants of residences, schools, businesses, and other occupied buildings and describe measures that will be taken to eliminate or mitigate impacts of the flicker. Adequate mitigation measures include, but are not limited to, temporary turbine shutdowns during periods that produce flicker, and shielding or blocking measures (such as landscape plantings and window treatments) for those that submit complaints for exposures that exceed the annual limit.

T. A study evaluating possible impacts to birds, bats and other wildlife, including any threatened or endangered species. Based on the results of the study, the Applicant shall present a plan for mitigating any significant, negative impacts to such wildlife and indicate any and all state or federal permits or approvals, including any incidental take permits, the Applicant is required to, or intends to, obtain.

U. A report identifying active water supply wells or water supply intakes on parcels within 1,500 feet of any sites where blasting may occur.

V. A post-construction monitoring and compliance plan ("PCMC Plan") for the purpose of certifying WECS project compliance. The PCMC Plan shall require the Applicant to present data reports to the Town showing its compliance with the requirements of this local law, any unanticipated impacts (positive and negative) to the environment, participants and non-participants, wildlife (including any threatened or endangered species), water quality in the project area, wetlands and stormwater erosion controls at each of the following intervals following construction of the WECS: 6 months, 1 year 2 years, 5 years and every 5 years thereafter.

W. A Decommissioning Plan in accordance with Section 8 of this local law.

## **Section 5. Special Use Permit Standards for Design.**

In addition to the general requirements set forth in any applicable local law or zoning ordinance related to Special Use Permits, an application for a Special Use Permit for a Commercial WECS shall also meet the following standards:

A. Location — Applicants for a WECS permit shall locate, erect, and site WECS' in accordance with the following requirements:

- (1) WECS shall be located in a manner that minimizes significant negative impacts on existing microwave communications links. No WECS shall be installed in any location along the major axis of an existing microwave communications link where, when considering any mitigation strategies of Applicant, its operation is still likely to produce significant electromagnetic interference in the links operation.
- (2) WECS shall be located in a manner that minimizes significant negative impacts on existing fixed broadcast, or reception antenna (including residential reception antenna) for radio (including amateur short wave), television, or wireless phone or other personal communications systems. No portion of a WECS shall be installed in any location where, when considering any mitigation strategies of Applicant, its proximity with existing fixed broadcast, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or other personal communication systems is still likely to produce significant interference with signal transmission or reception. No communication antennas may be affixed to or made part of any commercial WECSs. No advertising shall be depicted on any part of any commercial WECSs.
- (3) WECS shall be located in a manner that minimizes significant negative impacts on bird and bat species, including local populations and migrating populations. No portion of a WECS shall be installed in any location where, when considering any mitigation strategies of Applicant, there are still likely to be significant, negative impacts on birds or bats.
- (4) WECS shall be located in a manner consistent with all applicable state and Federal wetlands law and regulations.
- (5) All WECS shall be located in a manner that minimizes the risk to public health and safety posed by ice-throw and blade-throw. All WECS shall be equipped with a nacelle-mounted ice sensor, a shaft vibration sensor or other available technology capable of directly or indirectly detecting blade ice formation. Such sensor(s) or technology shall cause the automatic shutdown of a WECS when blade ice buildup is detected at levels that pose a substantial risk to public health and safety. Ice and blade throw incidents occurring at a Tower Facility shall be promptly reported by the Applicant to the Board.
- (6) No Non-Participant residence, school, business, or other occupied building shall be subjected to more than 30 hours of shadow flicker annually.

B. Environmental Impact.

(1) The Planning Board shall act as the lead agency under the State Environmental Quality Review Act (SEQRA). Applicant shall identify all other involved and interested agencies.

(2) In addition to all appropriate considerations under SEQRA, the Zoning Board of Appeals shall also consider the following impacts that have been deemed of local importance:

(a) Scenic / View Impact — Each of the WECS shall be of substantially the same design, construction materials, finishing and color treatment as described in Section \_\_\_ above. Visual screening intended to lessen the WECSs visual prominence shall be incorporated to the maximum extent possible. The wind turbines at a tower facility shall each be of substantially the same design, construction material, finishing and color. Visual screening intended to lessen the WECS' visual prominence shall be incorporated to the maximum extent possible.

(b) Wildlife — All potential impacts to local wildlife, especially threatened or endangered species, resulting from the design and siting of all WECS must be reviewed by all relevant state and federal regulatory agencies, with consideration of input from local governmental agencies and non-profit organizations with relevant expertise. The Applicant must obtain all necessary state and federal wildlife permissions and permits, including, but not limited to incidental take permits. Environmental review shall also consider negative impacts on bird and bat species, including local populations and migrating populations. The Applicant shall present and implement a plan for such mitigation.

(c) Noise Impact— The level of noise produced during WECS operation shall not:

i) exceed a maximum noise limit of 45 (dBA) Leq (8-hour) at any [nonparticipant](#) residence and 55 dBA Leq (8-hour) for any participant residence.

ii) exceed a limit of 40 dBA L(night-outside), annual equivalent continuous average nighttime sound level from the WECS outside any non-participant residence, and a limit of 50 dBA L(night-outside), annual equivalent continuous average nighttime sound level from the WECS outside any participant residence.

iii) produce any audible prominent tones, as defined under ANSI S12.9 Part 4-2005 Annex C at any non-participant residences.

iv) exceed a maximum noise limit of 65 dB Leq at the full octave frequency bands of 16, 31.5, and 63 Hertz outside of any non-participant residence in accordance with Annex D of ANSI standard S12.9-2005/Part 4 (Sounds with strong low-frequency content (infrasound)).

v) produce human perceptible vibrations inside any non-participant residence that exceed the limits for residential use recommended in ANSI

Standard S2.71-1983 (August 6, 2012) "Guide of evaluation of human exposure to vibration in Buildings."

vi) exceed a limit of 40 dBA Leq (1-hour) at the outside of any non-participant residence from any WECS Building

(d) Open Space — All WECS 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.

(e) Impacts to agricultural lands and soils.

C. Lightning Strike / Grounding — The applicant shall show that all applicable manufacturers specifications, New York State and U.S. standards for the construction, operation, and maintenance of the WECS have been or are being complied with.

D. Wind Speed / Wind Load — Certification is required by a registered professional engineer or manufacturer's certification that the tower design is sufficient to withstand wind-load requirements for structures as established by the Building Code of New York State.

E. National and State Standards — The applicant shall show that all applicable manufacturers, New York State and U.S. standards for the construction, operation, and maintenance of the proposed wind turbine have been met or are being complied with. Any WECS shall be built, operated, and maintained to applicable industry standards of the Institute of Electrical and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI). The applicant shall furnish evidence, over the signature of a professional engineer licensed to practice in the State of New York, that such wind turbine is in compliance with such standards.

F Operating Considerations.

(1) Building and Grounds Maintenance — Upon completion of installation, the site shall be returned as close as possible to its natural state. Any damaged, spare or unused parts, maintenance equipment, oil and all similar materials shall be removed from the premises within thirty (30) days or kept at a covered, on-site storage facility.

(2) Ownership Changes — If the ownership of a WECS operating under a WECS Permit changes, the WECS permit shall remain in force and all conditions of the WECS permit will continue to be obligations of succeeding owners. The Town Clerk shall be notified and the ownership change registered with the Town. All signs required under provisions of this Article shall be changed accordingly.

(3) Modifications — Any and all substantial modifications, additions, or changes to a WECS authorized to operate under this Article, whether structural or not, shall be made by application to the Board except where modification is required for routine maintenance and repairs which become necessary in the normal course of use of such WECS or become necessary as a result of natural forces, such as wind or ice. Additionally, any modification resulting in significant modifications to the public health, safety, welfare, environment, of

the Town or the visual or sound impacts of the project, must be reviewed and approved by the Board.

G. Blasting; Water Supply Protection.

(1) The Applicant shall file a notice with the Town confirming that no wind turbine or WECS Building will be located within 100 feet of an existing water supply well or water supply intake.

(2) Blasting shall be prohibited within 500 feet of any known existing, active water supply well or water supply intake on a non-participant parcel.

(3) If environmental or engineering constraints require blasting within 1,000 feet of a known existing, active water supply well on a non-participant parcel, the Applicant shall engage a qualified third party to collect pre- and post-blasting water samples at all water wells within the

above specified distances of blasting, provided the Applicant is granted access by the property owner. These water samples will be sent to a New York State Department of Health (NYSDOH) certified laboratory for potability testing. The results of such tests and reports shall be made available to the Town upon request.

(4) If environmental or engineering constraints require siting of collection lines or access roads within 100 feet of a known existing, active water supply well, the Certificate Holder shall perform the pre- and post-construction water potability testing provided the Applicant is granted access by the property owner. These water samples will be sent to a New York State Department of Health (NYSDOH) certified laboratory for potability testing. The results of such tests and reports shall be made available to the Town upon request.

(5) Should the NYSDOH-certified laboratory testing conclude that the water supplied by an existing, active water supply well met federal and New York State standards for potable water prior to construction, but failed to meet such standards post-construction, the Applicant shall cause a new water well to be constructed, in consultation with the property owner, at least 100 feet from collection lines and access roads, and at least 1,000 feet from wind turbines, as practicable given siting constraints and landowner preferences. During the construction of any new water well as required by this sub-section, the Applicant shall supply the affected individuals on the property with potable water.

(6) All blasting shall be completed by a third party licensed blaster, holding the appropriate certificate of competency, in accordance with all applicable laws, regulations and best industry practices, including but not limited to: 12 NYCRR Part 61, GEM-22 (Geotechnical Engineering Manual: Procedure for Blasting (as amended)), 12 NYCRR part 39, 49 CFR 177, 29 CFR 1926 Subpart U, 12 NYCRR Part 53 and Section 203-3.02 (Unclassified Excavation and Disposal) of the Department of Transportation "Standard Specifications". In the event of a conflict between this section and other applicable laws, regulations and best practices, the standard most protective of the environment, health and safety shall be applied.

H. Certifications and Special Use Permit General Conditions. Special Use Permits for Commercial WECS shall include the following general conditions:

(1) Post-Installation — If any report supplied to the Town pursuant to the PCMC Plan indicates non-compliance with the requirements of this local law or unanticipated negative impacts, such report shall also be accompanied by a mitigation and minimization plan ("MM Plan") to bring the WECS into compliance as soon as possible but in any case, not longer than 120 days. The Applicant shall reimburse the Town for all reasonable expenses incurred, including professional fees and costs, to monitor, review, evaluate and advise the Town on the PCMC Plan, each MM Plan and the Applicant's post-construction compliance in general. Such reimbursement shall be made within 30 days of Applicant's receipt of an invoice for such costs and expenses from the Town.

2) Indemnification — Any Special Use Permit issued hereunder shall contain a provision requiring the holder of the permit, to the extent permitted by law, to defend, indemnify, protect, save, hold harmless and exempt the town, officials of the Town, its officers, agents, servants, and employees, from any and all penalties, damage, or charges arising out of claims, suits, demands causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of or are caused by the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a WECS within the Town. Reasonable attorney's fees, consultant's fees and expert witness fees are included in those costs that are recoverable by the Town.

3) Continuing Obligations — All applicable requirements set forth in this local law or any other applicable federal, state or local law shall remain in force for the life of the WECS permit.

4) The owner or operator of the Commercial WECS shall bear full responsibility for timely, competent, and effective address to any fires, downed wires, or other problematic contingencies as may occur and shall annually recertify that capability in a form acceptable to the Building Department/ [Code Enforcement Officer](#) and Fire Company.

5) The owner or operator of the WECS shall offer training to the Fire Company and other first responders on how to coordinate with crews dispatched by the owner or operator to address fires, downed wires, or other problematic contingencies at the site.

I. Insurance / Liability — Prior to the commencement of construction of the WECS, the Applicant shall provide the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of public liability insurance, of a level to be determined by the Board in consultation with the Town's insurer, to cover damage or injury which might result from the failure of a tower or towers or any other part(s) of the generation or transmission facility. The public liability insurance policy shall specifically include the Town and its officers, boards, employees, committee members, attorneys, agents, and consultants as additional named insured (using endorsement # CG2026), with coverage of at least \$2,000,000 per

occurrence / \$4,000,000 aggregate (\$5,000,000 and \$10,000,000, respectively, for WECS subject to Article 10 of the Public Service Law).

## **Section 6. Site Plan Requirements.**

In addition to the general application requirements set forth in any applicable local law or zoning ordinance related to Site Plan approval and in Sections 2 and 3 of this local law, applications for a site plan approval shall also include:

A. Plan of lighting for the exterior of structures and for any interior roadway, driveway, parking area, and off -street loading area. The lighting plan shall show compliance with the following standards:

(i) to assure human safety during construction of the WECS;

(ii) to assure safe entry to and exit from the wind turbines by Applicant's employees and contractors during operation, or

(iii) as required by the Federal Aviation Administration (FAA), no wind turbines shall be artificially lit, no wind turbines shall use stroboscopic lighting and all lighting shall be angled downward so as to minimize light pollution on adjacent property. No WECS Buildings shall be artificially lit at nighttime except to the minimum extent necessary for operations or security, using low-intensity lighting that is angled downward.

B. A proposed construction and implementation schedule, and schedule of hours of operation.

## **Section 7. Site Plan Approval Standards.**

In addition to the general requirements set forth in Section 6 of this local law, site plan approval for a Commercial WECS shall also meet the following standards:

A. Setbacks. Each Wind Turbine that is part of a Commercial WECS shall be setback as follows, measured from the center of the Wind Turbine. If more than one setback applies, the most restrictive setback shall control:

(1) 1.5 times Total Height, or more, from any non-participant boundary property line.

(2) 1.50 times Total Height, or more, from the center of any public roadway.

(3) 2.0 times Total Height, or 1,500 feet, whichever is greater, from any nonparticipant residence, measured from the exterior of such residence.

(4) 1.50 times Total Height, or more, from any non-participant commercial, retail or industrial Building. "Building" for the purposes of this subsection shall mean any structure with at least three walls and a roof that is used for commercial, retail or industrial purposes.

(5) 2.0 times Total Height, or 1,500 feet, whichever is greater, from a Sensitive Site.

B. Lighting. WECS shall not be artificially lighted except as described in Section 4(V)7 of this Article. Lighting impacts, including nighttime stargazing impacts, shall be limited to the minimum amount that is commercially reasonable.

C. Utility Service. All WECS collection lines, including those running to and from on-site collection substations, shall be underground to the maximum extent practicable given topography and other constraints.

D. Height

(1) The minimum distance between the ground and any part of the commercial WECS rotor blade shall be no less than thirty (30) feet.

E. WECS Buildings. Unless contrary standards are expressly required by another governmental authority, the following standards shall apply to WECS Buildings:

(1) Site plans for the property shall provide for the preservation of natural vegetation in large unbroken blocks that also allow contiguous open spaces and vegetative screening to be established when adjacent parcels are developed. Areas within 15 feet on each side of any substation or battery storage facility shall be cleared, and kept clear, of combustible vegetation and other combustible growth.

(2) The following setbacks shall be maintained: a minimum one hundred fifty (150) foot setback from the property lines of a non-participant parcel with a residence or a parcel with a Sensitive Site, a minimum one hundred (100) foot setback from the center of adjacent Town, County and State roads, and a minimum seventy-five (75) foot setback from all other adjacent property lines.

(3) WECS Buildings shall be constructed in accordance with all applicable provisions of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law the New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, each as currently in effect and as hereafter amended from time to time, and all applicable provisions of the codes, regulations, and industry standards as referenced in either of the foregoing. The Applicant shall obtain necessary local floodplain development permits if any WECS Building is proposed within special flood hazard areas.

(4) Battery storage systems and related equipment shall conform to the Town of WesterloEnergy Storage Systems Local Law.

(5) Site access for WECS Buildings shall be maintained, including snow removal at a level acceptable to the local fire department the local ambulance service.

F. Construction, Notice and Safety Considerations

(1) An emergency telephone number shall be provided to the Board and posted at any WECS Building and on the Applicant's website, if any, so that the appropriate people may be contacted should any WECS need immediate attention.

(2) All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point at least twelve (12) feet above the ground. Setbacks for any anchor point for guy wires or cables shall be a distance of fifty (50) feet from any Non-Participant.

(3) A caution sign shall be placed at the primary entrance of each parcel where a Tower Facility is located. Signs shall be placed four (4) to six (6) feet high, i.e., at eye level. Said signs shall be a minimum of one foot square and no larger than two square feet in size and shall have the words "CAUTION: WIND TURBINES IN USE" printed thereon. In addition, the Applicant's name, address, and telephone number shall be printed thereon.

(4) WECS shall be sufficiently secure so as to prevent access by unauthorized individuals.

(5) Each wind turbine shall conform to the following specifications:

(a) WECS shall use tubular towers

(b) The color of all WECS shall be a single, non-reflective matte finished color or other industry standard color which minimizes negative visual impact.

(c) Each wind turbine within a WECS shall be generally uniform in size and geometry.

G Access Roads - Whenever possible, existing roadways shall be used for access to the WECS site. In the case of constructing roadways, they shall be constructed in a manner so that they are not conspicuous to the surrounding environment and mitigate any increased runoff.

H Accessory Structures / Facilities — Transmission facilities and WECS Buildings shall be located behind existing ridges or vegetation, to screen from visibility; otherwise, applicant shall provide a plan for visual representation.

I Siting Considerations. It is a goal of the Town to preserve, to the maximum extent practicable, agricultural land with Prime Farmland and Prime Soils; and Mature Forests. No large-scale WECS project shall be permitted on:

(1) any site that either

(a) contains more than one (1) acre of Mature Forest at the time the application was filed or

(b) was a Mature Forest one (1) year prior to the submission of an application for a large-scale WECS project.

## **Section 8. Decommissioning.**

A. All applications for a WECS Permit shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the WECS.

B. Commercial WECS are deemed abandoned after:

1. twelve (12) months without electrical energy generation;
2. eighteen (18) months after issuance of all municipal permits if construction is not complete;
3. upon the effective date of notice of abandonment the applicant or subsequent owner provides to the Town; or
4. upon a failure to file a declaration as set forth above.

C. Prior to issuance of a building permit, the owner or operator of the WECS shall post a letter of credit or other suitable financial guarantee, as determined by the Town, in a face amount of not less than 120% of the estimated cost of complete decommissioning and removal to ensure proper, safe removal of the WECS and accessory facilities in accordance with the decommissioning plan described below. The Applicant shall provide detail as to how said estimate was determined, which will be subject to review and approval by the Town's professional consultants. Such guarantee shall not factor in salvage value of the facility materials. The amount of the financial guarantee shall be reviewed by the Applicant and the Board every five years and may be changed based upon majority vote of the Board. The form of the guarantee must be reviewed and approved by the Town Attorney, and the guarantee must remain in effect until the system is fully removed and final inspection is completed by the Town or its designee. Prior to removal of a WECS, a demolition permit for removal activities shall be obtained from the Town or its designee.

D. The applicant shall submit a decommissioning plan that ensures that the site will be restored to a useful, nonhazardous condition, which plan shall be implemented without delay if:

- (1) the Applicant ceases operation of the WECS for a period of 18 months,
- (2) begins but does not complete construction of the project within 18 months after receiving WECS permit approval, or
- (3) the permit for the WECS expires or is not renewed. The plan shall include but not limited to the following:
  - (a) WECS removal shall include removal of all aboveground equipment, and removal of foundations to a depth of four (4.0) feet below grade. Below ground

accessory facilities, such as collection lines, are not required to be removed, unless otherwise required by applicable law. In addition, access roads may be left in place if written consent is received by the Town from the landowner and the landowner agrees to properly maintain all storm water management, run-off and erosion controls. However, all WECS equipment or materials or accessory facilities installed underground must be fully removed and the land reclaimed where such equipment or materials will (i) interfere with or prevent continued compliance by the landowner with any Environmental Laws, (ii) give rise to any liability to the Town or the landowner under any Environmental Laws, or (iii) form the basis of any claim, action, suit, proceeding, hearing or investigation under any Environmental Laws.

- (b) Restoration of the surface grade and soil after removal of equipment.
- (c) Revegetation of restored soil areas with native seed mixes, excluding any invasive species, with preference given to the landowner where possible.
- (d) A reasonable timeframe for the completion of site restoration work.

E. In the event that construction of the WECS has been started but is not completed and functioning within 12 months of the issuance of the final WECS Permit approval, the Town may notify the Applicant to complete construction and installation of the facility within 90 days. If the Applicant fails to perform, the Town may notify the owner and/or operator to implement the decommissioning plan. The decommissioning plan must be completed within 180 days of such notification by the Town.

F. Upon cessation of activity of a fully constructed WECS for a period of 30 days, the Town may notify the owner and/or operator of the facility to implement the decommissioning plan. Within 90 days of notice being served, the owner and/or operator shall restore normal, active operation of the WECS, or implement the decommissioning plan which must then be fully complete within 12 months of the beginning of its implementation.

1. Upon revocation, termination or non-renewal of the permit for a WECS, the applicant, owner and/or operator must fully complete the decommissioning plan.
2. If the owner and/or operator fails to fully implement the decommissioning plan within the a 12 month time period (or 180 days, where construction has started but not complete) and restore the site as required, the Town may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and may, in accordance with the law, recover all expenses incurred for such activities from the letter of credit or other financial guarantee and from the defaulted owner and/or operator. Any cost incurred by the Town which has not been fully paid by the owner and/or operator shall be assessed against the property, shall (in addition to any other available remedies) become alien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer

and in the same manner as other taxes. The decommissioning plan shall provide for the ability of the Town, or its assignee or designee, to access the property owners' land in order to complete decommissioning if necessary.

### **Section 9. Expedited Process**

A. This section shall apply to WECSs with a rated maximum power of 2 kilowatts (2 kW) or less, which are Grid-Tied, and which do not include or incorporate a Storage System, notwithstanding the use of the WECS. All WECS must meet the set-back requirements set forth for said zoning district in the Zoning Law.

B. To request Expedited Process, the applicant shall submit to the Town Building Department/Code Enforcement Office the following:

1) A completed application on the form provided by the Town, showing all the criteria stated above for Expedite Process are met;

2) A set of project plans which includes, at a minimum:

a) The project address;

b) Section, block and lot number of the subject property (tax identification number);

c) Property owner's name, address and telephone number; and

d) Name, address and telephone number of the person preparing the plans.

3) A site plan showing the location of the major components of the WECS and other equipment to be located on a roof or legal accessory structure, along with all defined setbacks and height measurements for all WECS. The plan should set forth the relative location of the components at the site, including but not limited to, location of the Wind Collector(s), existing electrical service location, utility meter, inverter location, system orientation and tilt angle, and the access and pathways that are compliant with International Fire Prevention and Building Code, if applicable.

C. Once the application and all required supporting documentation is submitted to the Building Department/Code Enforcement Officer and the Fire Company, the Building Department/Code Enforcement Officer is satisfied that all of the necessary plans and information have been included, and the Fire Company has communicated its approval, the Building Department/Code Enforcement Officer shall issue a combined building and electrical permit for the subject WECS.

### **Section 10. Fees**

The Town Board shall establish by resolution, which may be amended from time to time, a schedule of fees to cover costs associated with application and permitting, review and approval, and monitoring. Fees may include the reasonable costs of an independent technical assessment of the application by a consultant.

**Section 11. Severability**

Each separate provision of this local law shall be deemed independent of all other provisions herein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

**Section 12. Conflict with Other Laws**

Where this Law differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, the more restrictive or protective law of the Town and the public shall apply.

**Section 13. Repeal of Other Laws**

All local laws in conflict with provisions of this Local Law are hereby superseded. This Local Law supersedes any inconsistent provisions in the Town of Westerlo Code relating to zoning.

**Section 14. Effective Date**

This Local Law shall take effect immediately, as provided by law, upon filing with the Secretary of State.