

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

SECTION 1: Local Law No. 2 of 2006, entitled "WIND ENERGY FACILITIES," is hereby adopted to read in its entirety as follows:

WIND ENERGY FACILITIES

Article I

§1 Title

This Local Law may be cited as the "Wind Energy Facility Law of the Town of Cherry Valley, New York."

§2 Purpose.

The Town Board of the Town of Cherry Valley adopts this Local Law to promote the effective and efficient use of the Town's wind energy resource through Wind Energy Conversion Systems (WECS), and to regulate the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

§3 Authority

The Town Board of the Town of Cherry Valley 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 §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).
5. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(General powers).
6. The State Environmental Quality Review Act ("SEQRA").

§4. Findings.

A. The Town Board of the Town of Cherry Valley finds and declares that

1. Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its

conversion to electricity may help reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.

2. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or energy consumption at that location can be reduced.

3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.

4. Wind Energy Facilities have the potential to cause significant aesthetic impacts if not properly sited, because of their large size, lighting, and shadow flicker effects.

5. If not properly regulated, installation of Wind Energy Facilities have the potential to create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction methods.

6. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.

7. If not properly sited, Wind Energy Facilities have the potential to adversely impact neighboring properties, including the property values of such properties.

8. Wind Energy Facilities are potentially significant sources of noise, and if such facilities are unregulated or improperly sited, or if such impacts are inadequately mitigated, they can negatively impact adjoining properties.

9. Without proper planning, construction of Wind Energy Facilities can create traffic problems and damage local roads.

10. If improperly sited, Wind Energy Facilities can interfere with various types of communications.

§5. Authorization of Planning Board to Review Wind Energy Facilities

The Town of Cherry Valley Planning Board is hereby authorized to review and either approve, approve with conditions, or disapprove applications for Wind Energy Facilities.

§6. Permits Required; Transfer; Modifications

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

B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Cherry Valley except with a Wind Energy Facility Permit approved pursuant to this Local Law.

C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Cherry Valley except pursuant to a Wind Energy Facility Permit issued pursuant to this Local Law.

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

E. This Local Law shall apply to all areas of the Town of Cherry Valley.

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

G. Transfer. No transfer of any Wind Energy Facility or Wind Energy Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), may occur without prior approval of the Town of Cherry Valley, which approval shall not be unreasonably withheld upon written acceptance of the transferee of all obligations of the transferor under such permit and this Local Law. No transfer shall eliminate or modify the liability of any permittee or applicant, nor of any other party under this Local Law.

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

§7 Definitions.

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

AMBIENT SOUND LEVEL – also referred to as Ambient Noise Level and Ambient Sound Pressure Level, means the background (exclusive of the development proposed) Sound Level ($L_{(90)}$) found to be exceeded 90 percent of the time over which sound is measured in a noise analysis. Unless indicated otherwise, frequency weighting according to the A-weighting scale is understood to be applicable.

EAF - Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

RESIDENCE - means any dwelling suitable for habitation existing in the Town of Cherry Valley on the date an application is received. For purposes of this definition suitable for habitation shall mean that its primary purpose is for private occupancy and it has both electrical service and a connection to an on-site or off-site potable water supply and wastewater treatment/disposal system on a full-time basis. A residence may be part of a multi-dwelling or multipurpose building, but shall not include buildings such as hunting camps, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

SEQRA - the New York State Environmental Quality Review Act, as codified in Article 8 of the New York State Environmental Conservation Law and its implementing regulations in Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Part 617 *et seq.* (6 NYCRR §617).

SOUND LEVEL – also referred to as Noise Level, means the statistical sound pressure level expressed as the sound pressure level that is exceeded for a given proportion of the time over which sound is measured. $L_{(10)}$ shall mean the standard abbreviation for the sound pressure level that is exceeded for 10 percent of the time over which the sound is measured. $L_{(90)}$ shall mean the standard abbreviation for the sound pressure level that is exceeded for 90 percent of the time over which the sound is measured. Unless indicated otherwise, frequency weighting according to the A-weighting scale is understood to be applicable.

SOUND PRESSURE LEVEL – means the quantity in decibels measured by a sound level meter satisfying the requirements of the American National Standards Specification of Sound Level Meters, S1.4-1971 according to a frequency-weighted decibel scale. Decibels shall mean 20 times the logarithm to the base ten of the ratio

of the root mean squared pressure of a sound to a reference pressure of 20 micropascals. dB shall mean the standard abbreviation for decibels. Frequency-weighting of the sound pressure level is obtained with the standardized dynamic characteristic "fast" or "slow" and weighting A, B or C; unless indicated otherwise, the A-weighting is understood to be applicable. dBA shall mean the standard abbreviation for the A-weighted sound pressure level in decibels.

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

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

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

WIND ENERGY CONVERSION SYSTEM ("WECS") - A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").

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

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

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

§8. Applicability

A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed in the Town of Cherry Valley after the effective date of this Local Law, including any Wind Energy Facility, applied for but not yet approved prior to the date of this Local Law.

B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that

1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Local Law prior to recommencing production of energy.

2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.

3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed

no later than twenty-four (24) months after said effective date, unless a Wind Energy Permit for said Wind Energy Facility is obtained.

§§9 Reserved for Future Use

Article II

Wind Energy Conversion Systems

§10 Applications for Wind Energy Permits for Wind Energy Conversion Systems

No application for a Wind Energy Permit shall be complete until the following materials are received by the Planning Board, in acceptable form, unless specifically waived by the Planning Board. Such information shall be in addition to and not instead of any information required by the Town of Cherry Valley, under any related Local Law or Ordinance, including but not limited to the Town of Cherry Valley Site Plan Law:

A. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.

B. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

C. Address, or other property identification, of each proposed tower location, including Tax Map section, block and lot number.

D. A description of the project, including the number and maximum rated capacity of each WECS.

E. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following.

1. Property lines and physical dimensions of the Site;
2. Location, approximate dimensions and types of major existing structures and uses on the Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the proposed WECS Site.
3. Location and elevation of each proposed WECS.
4. Location of all above ground utility lines on the Site or within one radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.

5. Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.

6. To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower location equal to:

- (i) One and a halftimes the tower height.
- (ii) Five hundred foot perimeter.
- (iii) One thousand foot perimeter.
- (iv) One thousand five hundred foot perimeter.
- (v) Two thousand foot perimeter.

7. Location of the each residential structure, both on the Site and off the Site, that is located within two thousand five hundred feet from the nearest individual Wind Energy Facility, as well as the specific distance from the nearest individual Wind Energy Facility to each residential structure.

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

F. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.

G. Landscaping Plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.

H. Lighting Plan showing any FAA-required lighting as well as all other proposed lighting. The application should include a copy of any determination by the Federal Aviation Administration to establish required markings and/or lights for each structure that is part of the facility, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.

I. List of property owners, with their mailing address, within 500 feet of the boundaries of the proposed Site.

J. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include the following information at a minimum: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; (5) the method, such as by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include at a minimum, the removal of all structures and debris to a depth of 3 feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.

K. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time

limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.

L. An application shall include at a minimum, the following information relating to the construction/installation of the wind energy conversion facility:

1. A construction schedule describing commencement and completion dates; and

2. A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.

M. Completed Part 1 of the Full EAF.

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

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

P. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment and submits a Draft Environmental Impact Statement ("DEIS"), the Town Board shall issue a positive declaration of environmental significance.

Q. The following information must be submitted by the applicant, either with the application, or, in the event of a positive declaration under SEQRA, as part of any DEIS submitted by the applicant with respect to the application for a Wind Energy Facility:

1. Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and/or commercial businesses and must describe measures that shall be taken to eliminate or mitigate the impacts of shadow flicker on such residences, including but not limited to operational measures to stop rotation at such times when modeling predicts that shadow flicker will impact neighboring residences.

2. Visual Impact: Applications shall include a visual impact study of the WECS as proposed, which should include, at a minimum, a computerized photographic simulation demonstrating any visual impacts from strategic vantage points, including visual impacts associated with both the facility itself, as well as any proposed above-ground collection or transmission components. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence. In addition, such visual impact study must address, among others, the visual impact of any proposed facility upon New York State Route 20, and Otsego County Route 54, which have been approved for designation in the State of New York's Scenic Byway Program. Such Visual Impact analysis should conform to DEC guidelines where relevant.

3. Fire Protection and Emergency Response: Applications shall include a fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Site.

4. Noise Assessment: Applications shall include a Noise Impact Assessment conducted by a reputable acoustical consultant documenting the noise levels associated with the proposed WECS and its

impact on humans. Such Noise Impact Assessment should be conducted in accordance with the criteria recommended by the New York State Department of Environmental Conservation's Program Policy guidance document entitled: "Assessing and Mitigating Noise Impacts", utilizing adjacent property lines as receptor locations. Such Noise Assessment must also describe measures that shall be taken to eliminate or mitigate the impacts of noise on nearby receptors.

5. Avian Analysis: Applications shall include an Avian Analysis assessing the reasonably anticipated impacts of the WECS upon bird and bat species. The scope of such analysis should 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 avoid or mitigate such impacts to the extent practicable. The applicant should also identify plans for post-construction monitoring or studies to assess actual operational impacts of the WECS upon birds and bats.

6. Property Values: Applications shall include a property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring WECS Sites. Such analysis should include actual data concerning the impacts of previously constructed facilities in the State of New York on property values.

7. Electromagnetic Interference: Applications shall include an assessment of potential electromagnetic interference from the proposed facility with microwave, radio, television, personal communication systems and other wireless communication.

8. Transportation Plan: Applications shall include a transportation plan describing routes to be used in delivery of project components, equipment and building materials and those to be used to provide access to the site during construction. Such plan should also describe any anticipated improvements to existing roads, bridges or other infrastructure, as well as the measures which will be taken to restore damaged or disturbed access routes following construction.

9. Groundwater Impact Study: Applications shall include a study relating to the potential impacts to groundwater related specifically to excavation and/or blasting during the construction phase of the project.

10. Cultural Resource Study: Applications shall include a study describing the potential impacts of the project upon cultural resources. Such study should be conducted in coordination with the New York State Office of Parks, Recreation and Historic Preservation ("NYSOPRHP"). Such study should include any follow-up study or assessment recommended in the initial study itself, or by NYSOPRHP.

R. The applicant shall, prior to the receipt of a building permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner.

S. A statement, signed under penalty of perjury, that the information contained in the application is true and accurate.

T. In addition to the materials required in accordance with this section, complete applications should include any additional study or assessment determined to be required by the lead agency during review of the project pursuant to SEQRA. No application shall be determined to be complete until the SEQRA review with respect to such application is concluded.

§ 11 Application Review Process

- A. Applicants may request a pre-application meeting with the Town Planning Board or with any consultants retained by the Town Planning Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meetings Law.
- B. Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any waivers are requested, waiver application fees shall be paid at the time of the receipt of the application. In addition, the applicant shall provide the Planning Board, free of charge, with a reasonable number of additional copies necessary to coordinate review with involved agencies and interested parties, pursuant to SEQRA.
- C. Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application, unless the Town Board waives any application requirement, no application shall be considered complete and ready for final action until deemed complete and until either a negative declaration is issued under SEQRA, or, a Final Environmental Impact Statement and SEQRA Findings are issued by the lead agency.
- D. If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Town Clerk shall transmit the application to the Town Planning Board.
- F. The Planning Board shall hold at least one public hearing on the application. Notice shall be provided by first class mail to property owners within 500 feet of the boundaries of the proposed WECSs, and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Town Planning Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Planning Board, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses. .
- G. The public hearing may be combined with any other public hearing required, including public hearings held pursuant to SEQRA.
- H. Referral shall also be made, when applicable, to the Otsego County Planning Board, pursuant to General Municipal Law §§239-1 and 239-m.
- I. SEQRA review. Applications for WECS shall be deemed Type I projects under SEQRA. The Town of Cherry Valley Planning Board shall be responsible for the review of the proposed project under SEQRA, shall where appropriate, act as lead agency under SEQRA and shall coordinate its review with all other involved agencies having discretionary approval over any aspect of the proposed project in accordance with the requirements of SEQRA.
- J. The Planning Board may in its discretion, require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.
- K. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings, which Statement may also serve as the Town's decision on the applications.

L. Upon receipt of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article and applicable law.

§12 Standards for WECS

The following standards shall apply to all WECS, unless specifically waived by the Planning Board.

A. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.

B. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECS and telecommunications facilities.

C. In order to minimize any visual impacts associated with Wind Energy Facilities, no advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.

D. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan.

E. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. WECSs within a multiple WECS project shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Project, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

F. The use of guy wires is disfavored. A WECS using guy wires for tower support shall incorporate appropriate measures to protect the guy wires from damage which could cause tower failure.

G. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems can be reasonably expected to produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the interference.

H. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.

I. WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.

J. WECSs shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.

K. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.

L. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.

M. The maximum Total Height of any WECS shall be 410 feet.

N. Any substation used in conjunction with a WECS shall be sited in a manner that will have the least intrusive impact upon adjacent residences and shall be sheltered and/or screened with a physical barrier and/or vegetation in a matter to eliminate its views from such residences. The Planning Board shall assess such siting in accordance with the requirements of this Local Law and the Town's Site Plan Law.

O. Construction of the WECS shall be limited to the hours of 7 a.m. to 7 p.m., Monday through Friday, unless the prior written approval of the Planning Board is received to allow deviation from such hours.

P. In processing any application for a WECS or in reviewing such project under SEQRA, the Planning Board shall consider any applicable policy or guideline issued by the New York State DEC (i.e., visual impacts, noise impacts).

Q. Turbine blades shall pass no closer than thirty (30) feet to the ground during operation of the facility.

§13 Required Safety Measures

A. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.

B. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information. The Town Board may require additional signs based on safety needs.

C. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.

D. The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet.

E. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

§14 Traffic Routes

A. Construction of WECSs poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECSs and for associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles, including impacts on local residential areas; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Wind Energy Permit conditions may limit WECS-related traffic to specified

routes, and include a plan for disseminating traffic route information to the public.

B. The applicant is responsible for repair of all damages to Town Roads occurring during the construction or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to local roads.

§15 Setbacks and Noise Standards for Wind Energy Conversion Systems

A. Due to the non-industrial character of the Town of Cherry Valley, the Sound Level statistical sound pressure level ($L_{(90)}$) shall not exceed the Ambient Sound Level by more than 6dBA at the nearest property line to any proposed WECS. Sites can include more than one property and the requirement shall apply to the combined properties. In the event the Ambient Sound Level exceeds 50dBA, the standard shall be the Ambient Sound Level plus a maximum of 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

B. In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph A. of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and 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.

C. The Ambient Sound Level shall be expressed in terms of the highest whole number Sound Level in dBA. Ambient Sound Levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries when considering specific receptors. Ambient Sound Level measurements shall employ all practical means of reducing or compensating for the effect of wind generated noise artifacts at the microphone so as to measure the actual sound level most accurately. Ambient Sound Level measurements should be performed when wind velocities aloft are sufficient to allow wind turbine operation and should report Ambient Sound Levels for wind speeds aloft corresponding to turbine cut-in as well as the wind speed aloft corresponding to production of the greatest noise.

D. Any noise level falling between two whole decibels shall be the lower of the two.

E. The following minimum standards shall apply to any tower, turbine, windmill, building housing mechanical components or electrical substation that is part of any Wind Energy Conversion System or Facility, unless specifically waived or varied by the Planning Board as part of a permit. The following minimum standards do not apply to the transmission or collection system components of such WECS or Facility, except for electrical substations. Each WECS shall be setback from Site boundaries, measured from the center of the applicable component part of the WECS:

1. Twelve hundred (1,200) feet from the nearest Site boundary property line.
2. Twelve hundred (1,200) feet from the right of way of State Route 20 or County Route 54.
3. Five hundred (500) feet from the right of way of all other public roads.

4. Two thousand (2,000) feet from the nearest off-site residence, school or church, measured from the exterior of such residence, whether or not said residence is located in the Town of Cherry Valley.

5. One and a half times the Total Height of the WECS from any non- residential structure (other than a school or church) or any above-ground utilities, unless waived by the utility companies.

§16 Noise and Setback Easements

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

1. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) setbacks less than required; and

2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been 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 Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Article, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.

B. Waivers granted under this Section differ from waiver requests under Article IV of this Local Law in that no Article IV waiver is required if a waiver is given under this Section, and a Article IV waiver must be sought rather than a waiver under this Section if the adjoining property owner will not grant an easement pursuant to this Section.

§ 17 Issuance of Wind Energy Permits

A. Upon completion of the review process, the Town of Cherry Valley Planning Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.

B. If approved, the Planning Board will direct the Town Clerk to issue a Wind Energy Permit upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this Local Law.

C. The decision of the Planning Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

D. If any approved Wind Energy Facility is not substantially commenced within one year of issuance of the Wind Energy Permit, the Wind Energy Permit shall expire.

§18 Abatement

A. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees

that, without any further action by the Planning Board, the applicant shall de-commission and remove said system at its own expense. Removal of the system shall include at a minimum the removal of the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Planning Board that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's limit the ability to order a remedial action plan after public hearing.

B. Non-function or lack of operation may be proven or inferred by reports to the Public Service Commission, NYSEERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board and Planning Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.

C. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town of Cherry Valley, in a form approved by the Town Attorney, for the removal of non-functional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully funded before a building permit is issued. The amount of the bond or security fund shall be no less than 125% of the cost of removal of the facilities and the restoration of the Site.

§19 Limitations on Approvals; Easements on Town Property

A. Nothing in this Local Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Local Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

B. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

§20 Permit Revocation

A. Testing fund. A Wind Energy Permit shall contain a requirement that the applicant 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 Town 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 Permit and this Local 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 Town Planning Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Planning Board, but the total period may not exceed 180 days.

B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days

after written notice from the Town Planning Board. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Planning Board, but the total period may not exceed 180 days.

C. Notwithstanding any other abatement provision under this Local Law, , and consistent with § 19(A) and §21 (B), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town Planning Board may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Wind Energy Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Planning Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

Article III

Wind Measurement Towers

§21 Wind Site Assessment

As a wind site assessment is typically conducted to determine the wind speeds and the feasibility of using particular Sites, installation of Wind Measurement Towers, also known as anemometer ("Met") towers, shall be permitted in accordance with this Article.

§22 Applications for Wind Measurement Towers

An application for a Wind Measurement Tower shall include

A. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.

B. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

C. Address of each proposed tower location, including Tax Map section, block and lot number.

D. Proposed Development Plan and Map.

E. Decommissioning Plan, including a security bond for removal.

§23 Standards for Wind Measurement Towers

A. The distance between a Wind Measurement Tower and the property line shall be at least one and a half times the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.

B. Wind Energy Permits for Wind Measurement Towers may be issued for a period of up to two years. Permits shall be renewable upon application to the Town Board in accordance with the procedure of § 1-20.

Article IV

Small Wind Energy Conversion Systems

§24 Purpose and Intent

The purpose of this Article is to provide standards for small wind energy conversion systems designed for home, farm, and small commercial use on the same parcel, and that are primarily used to reduce consumption of utility power at that location. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

§25 Applications.

Applications for Small WECS Wind Energy permits shall include:

A. Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.

B. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

C. Address of each proposed tower location, including Tax Map section, block and lot number.

D. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.

E. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.

F. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.

G. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.

H. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

§26 Development Standards.

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

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

B. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Article.

C. Small Wind energy systems shall be used primarily to reduce the on-site consumption of electricity.

D. Tower heights may be allowed as follows:

1. 65 feet or less on parcels between one and five acres.
2. 80 feet or less on parcels of five or more acres.
3. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

E. The maximum turbine power output is limited to 10 KW.

F. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.

G. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.

H. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.

I. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

J. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.

K. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner

L. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:

1. Tower-climbing apparatus located no closer than 12 feet from the ground.
2. A locked anti-climb device installed on the tower.
3. A locked, protective fence at least six feet in height that encloses the tower.

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

N. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.

O. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.

P. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.

Q. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacture.

§27 Standards

A Small Wind Energy System shall comply with the following standards:

A. Setback requirements. A Small WECS shall not be located closer to a property line than one and one half times the Total Height of the facility

B. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed ambient noise levels (exclusive of the development proposed) by more than 6 dBA at the nearest property line to any proposed Small WECS. Sites can include more than one piece of property and the requirement shall apply to the combined properties. In the event the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus a maximum of 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

§28 Abandonment of Use

A Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town Planning Board.

B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this

section.

Article V

Waivers

§29 Waivers.

A. The Town 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 Local Law if, in the opinion of the Town Planning Board, the grant of said waiver is in the best interests of the Town of Cherry Valley. The Planning Board may consider as reasonable factors in evaluating the request, which may include, when applicable, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives, and the scope of the request.

B. The Planning Board may attach such conditions as it deems appropriate to waiver approvals as it deems necessary to minimize the impact of the waiver.

Article VI

Miscellaneous

§30 Fees

A. Non-refundable Application Fees shall be as follows:

1. WECS Wind Energy Permit: \$50 per megawatt of rated maximum capacity
2. Wind Measurement Towers Wind Energy Permit: \$200 per tower.
3. Small WECS Wind Energy Permit: \$ 150 per WECS
4. Wind Measurement Tower Wind Energy Permit renewals: \$50 per Wind Measurement Tower.

B. Building Permits. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall \$25 per permit request for administrative costs, plus the amount charged to the Town by the outside consultant and/or attorney hired by the Town of Cherry Valley to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties.

C. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any

application review, including the review required by SEQRA.

§31 Tax Exemption

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

§32 Inspections

A. The owner of each Wind Energy Facility shall submit a bi-annual inspection report to the Town Board or its designee on the structural and operational integrity of the facility. Such report shall be prepared by or under the direction of a Professional Engineer licensed by the State of New York. If such report recommends that repairs or maintenance measures be undertaken, the owner shall provide with such report a written schedule for undertaking such repairs or maintenance.

B. Wind Energy Facilities shall not begin operation until all approvals required under this law are obtained and all required certifications are provided.

C. Following the issuance of any approval required under this local law, the Planning Board or its designee shall have the right to enter onto the Site upon which a Wind Energy Facility has been placed, at reasonable times in order to inspect such facility and its compliance with this Local Law.

D. After undertaking such inspection, the Planning Board or its designated representative shall provide notice of any non-compliance with the terms of this Local Law or the conditions of approval of any permit issued hereunder, and shall provide the owner or applicant with a reasonable time frame to cure such violation, such timeframe to be determined based upon the seriousness of the violation, its impact upon public safety, and the impact of the violation upon residents of the Town.

§33 Construction Related Damage

The owner of every Wind Energy Facility constructed pursuant to this law shall, to the extent practicable, repair or replace all real or personal property, public or private, damaged during the construction of such facility.

§34 Enforcement; Penalties and remedies for violations.

A. The Town Board and/or Planning Board shall appoint such Town staff or outside consultants as it sees fit to enforce and implement this Local Law.

B. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than six months, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$350 for each violation and each week said violation continues shall be deemed a separate violation.

C. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies

and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

§35 Fiscal Responsibility

A. The Planning Board may, at its discretion, request the most recent annual audited financial report of the permittee prepared by a Certified Public Accountant, licensed by the State of New York, during the review process. If such report does not exist, the Planning Board may, in its sole discretion, require a suitable alternative to demonstrate the financial responsibility of the applicant and its ability to comply with the requirements of this Local Law.

B. No transfer of any Wind Energy Facility or permit, or sale of the entity owning such facility, including the sale of more than 30% of the stock of such entity (not counting sale of shares on a public exchange) shall occur without prior approval of the Town of Cherry Valley, which approval shall occur upon demonstration of fiscal responsibility by such entity and written acceptance by such entity of the obligations of the permittee under this Local Law and the terms of the permit. Any such transfer shall not eliminate the liability of any entity for any act occurring during its ownership or status as permittee.

§36 Certification.

Prior to operation of any approved and constructed Wind Energy Conversion Facility, the applicant must provide a certification that the project complies with applicable codes, industry practices and conditions of approval (where applicable).

SECTION 2: Severability

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

SECTION 3: Effective Date

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