

Local Law Filing

New York State Department of State
99 Washington Avenue, Albany, NY 12231

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

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

~~County~~
~~City~~ of Yates, Orleans County, New York
Town
~~Village~~

Local Law No. 2 of the year 2016.

A local law to Amend the Wind Energy Facilities Law of 2008
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

~~County~~
~~City~~ of Yates, Orleans County, New York as follows:
Town
~~Village~~

Section 1. Legislative History

The Zoning Local Law of the Town of Yates, Orleans County, New York, of the Town of Yates is hereby amended by replacing Section 591 in its entirety with the following new Section:
§591 Wind Energy Facilities Law.

A. **Purposes.** The Town Board of the Town of Yates adopts this Local Law to regulate the placement of wind energy conversion systems:

1. to protect the public safety, health and welfare;
2. to provide a regulatory structure that promotes the protection of the Town of Yates residents;
3. to minimize the adverse impacts on the Town's character, environment, economy and property values; and
4. to minimize negative impacts on the unique resources including, but not limited to, the Seaway Trail, the Lake Ontario shoreline corridor and adjacent lands and waterways; the residential and farming communities of the Town and Region.

B. **Authority.** The Town Board of the Town of Yates, 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), (6) and (7).
3. New York Municipal Home Rule Law, §10(1)(i) and (ii) and §10(1)(a)(6), (11), (12) and (14).

4. The supersession authority of New York Municipal Home Rule Law, §10(2)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this Local Law, and what variances may be granted to the extent such grant of power is different than under Town Law §267-a, 268 and §274-b, and as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this Local Law differ from the authority granted to the Town by Article 16 of the Town Law.

5. New York Town Law, Article 16 (Zoning).

6. 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).

7. New York Town Law §64(17-a)(Protection of Aesthetic Interests), (23)(General powers).

8. New York Real Property Tax Law §487.

9. Police Powers of the Town of Yates; Laws of the State of New York.

C. **Findings.** The Town Board of the Town of Yates makes the following findings:

1. Short-sighted planning has often resulted in creation of problem industries which adversely affect public health and quality of life, examples are found in Yates, as well as many other areas of New York State, where abandoned buildings and brownfields exist, health has been adversely affected, pollution has been proliferated, quality of life has been diminished, aesthetics have been compromised and community character has been degraded. Utility-Scale Wind Energy Facilities are not exempt from these problems and careful siting and protections are of paramount importance. Local communities have, through zoning, site plan approval, regulation and careful planning been primary protectors of their citizenry. This Local Law will contribute to this effort. The existence of Article X of the Public Service Law does not negate this responsibility, and in fact recognizes it.

2. The findings set forth in this Section are cumulative and interactive, and shall be liberally interpreted in conjunction, one with another.

3. Large or "Utility –scale" Wind Energy Facilities have increased significantly in number, and can potentially be sited without sufficient regard to their impact on the health, welfare and safety of residents, especially in small rural communities.
4. Utility-Scale Wind Energy Facilities should benefit the residents of the local areas where they are sited.
5. Utility-Scale Wind Energy Facilities represent, by their very nature, significant aesthetic changes to any rural community, due to their height, disruption of views and skylines, particularly in rural flat-landed and coastal communities without many high structures.
6. The Town of Yates is a rural community devoid of large hills and consists of mostly flat terrain and a significant Great Lakes coastline. The Town coastline borders a State Park and has been recognized in official planning documents (the LWRP) adopted by the State and Federal governments as an area of high aesthetic value
7. The Town of Yates is a rural, agricultural community supporting varied agricultural uses and is in the heart of Western New York’s fruit growing region.
8. The Town of Yates has very few tall structures.
9. The Town of Yates is bordered on the north by Lake Ontario, and on the east, south and west by Towns which share Yates’ agricultural and rural residential character, and are similarly low, flat areas.
10. The only other municipality in the Town of Yates is the Village of Lyndonville, which is a small Village bedroom community, and which is also part of the rural, residential community devoid of high structures.
11. The Town of Yates is located on a major migration route for many species of birds, and is habitat for many species, both year round and seasonal.
12. The bat population in the Town of Yates (as recognized by the Department of Environmental Conservation) is important and in distress. Independent experts¹ have concluded that the bats killed by utility-scale wind turbines can result in an appreciable reduction in agricultural yields, which would have an extreme negative impact on the Yates-area community
13. Utility-Scale Wind Turbines are known to pose danger to birds and bats, and have been demonstrated to kill numerous members of both species annually, including migratory birds protected by the Migratory Bird Treaty Act.
14. Utility-Scale Wind Energy Facilities can be dangerous to humans and animals (including livestock) resulting from ice throw or turbine failure. The setbacks established in this local law reflect minimum protections based on independent studies.²

1 Boyles, Justin G., et al. *Economic Importance of Bats in Agriculture* Science Magazine, April 1, 2011, Vol. 332, No. 6025, pp. 41-42

15. If not properly regulated, installation of Utility-Scale Wind Energy Facilities can create drainage problems through erosion, lack of sediment control for facility and access road sites, and can harm farmland through improper construction methods.

16. Utility-Scale Wind Energy Facilities, when improperly sited, may adversely affect property values and thereby cause economic hardship to property owners.

17. The Town of Yates contains clusters and stretches of homes as well as dispersed residences which residents have chosen as their homes, often because of a love for the rural pastoral lifestyle.

18. Many residents and visitors enjoy outdoor activities, including marine (boating, fishing, sailing, swimming, kayaking, etc.) and land (hunting, hiking, cycling, snowmobiling, jogging, birding, etc.) all of which are potentially adversely affected by presence of Utility-Scale Wind Energy Facilities.

19. Utility-Scale Wind Energy Facilities may be significant sources of noise, including infrasound that, if unregulated, can negatively affect quiet enjoyment of the area, properties, and health and quality of life of residents. Negative impacts from infrasound and vibrations are recognized as causes of injuries.³

20. Construction, maintenance and repair of Utility-Scale Wind Energy Facilities can create traffic problems and can cause damage to local roads and infrastructure.

21. Utility-Scale Wind Energy Facilities have the potential to cause electromagnetic interference with various types of communications.

22. Utility-Scale Wind Energy Facilities have the potential to adversely interfere with orderly development of the Town of Yates (according to the Western Orleans Comprehensive Plan), including single family residences and small subdivisions by making such development unappealing.

23. Utility-Scale Wind Energy Facilities need to be regulated for removal when no longer utilized, including providing a funding mechanism for their removal when no longer operating.

24. In formulation of this Local Law, many studies have been reviewed and taken into consideration. Wind energy laws in other locations have been reviewed and considered; experiences of other areas have been studied; and the Yates-Carlton-Kendall Lakefront Water Revitalization Plan (2002) and the Yates-Ridgeway-Shelby Western Orleans Comprehensive Plan (2003) have been consulted.

D. **Definitions.** As used in this Law, the following definitions apply. If any definition herein conflicts with a definition found elsewhere in the Town Code, the definitions set forth here apply. If not defined in this Section, the definitions as set forth in Section 591.4 shall apply.

2 Matilsky, Terry. *Analysis of Ice and Rotor Throw from Wind Turbines*. March 2005. The State University of New Jersey, Rutgers, Department of Physics and Astronomy. docs.wind-watch.org/terry-matilsky.doc

3 2016 ICD-10-CM Diagnosis Codes, listing external causes recognized as causing injury.

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

AMBIENT SOUND – Ambient sound encompasses all sound present in a given environment, being usually a composite of sounds from many sources near and far. It includes intermittent noise events, such as, from aircraft flying over, dogs barking, wind gusts, mobile farm or construction machinery, and the occasional vehicle traveling along a nearby road. The ambient also includes insect and other nearby sounds from birds and animals or people. The near-by and transient events are part of the ambient sound environment but are not to be considered part of the long-term background sound.

ACTUAL AMBIENT BACKGROUND LEVEL - is the measured noise level at the appropriate measurement point as specified in this Local Law using generally accepted noise engineering measurement practices. Background noise measurements shall be obtained at the appropriate measurement points, including the minimum points specified herein synchronized with wind speed measurements of hub height conditions at the nearest wind turbine location. "Actual ambient background level" does not include noise generated or caused by the wind energy facility.

ANSI – refers to or means the AMERICAN NATIONAL STANDARDS INSTITUTE.

APPLICANT – The person or entity filing an application and seeking license under this Local Law; the owner of a WECS or a proposed project; the operator of a WECS or proposed project; any person acting on behalf of an applicant, WECS project or proposed WECS. Whenever the term "applicant" or "owner" or "operator" are used in this Section. Said term shall include any person acting as an applicant, owner or operator.

APPLICANT'S ENGINEER(s) – Designated by the Applicant as his Consulting Professional Engineer(s), registered in the State of New York who prepares the required plans, reports and other documents as necessary and acts on the Applicant's behalf.

BACKGROUND SOUND – Background Sounds are those heard during lulls in the Ambient Sound environment and represent the quietest 10% of the time, for example the quietest one minute.

dBA – A-Weighted Sound Pressure Level. A measure of over-all sound pressure level designed to reflect the response of the human ear, which does not respond equally to all frequencies. It is used to describe sound in a manner representative of the human ear's response. It reduces the effects of the low with respect to the frequencies centered around 1000 Hz. The resultant sound level is said to be "Weighted" and the units are "dBA". Sound level meters have an A-weighting network for measuring A-weighted sound levels (dBA) meeting the characteristics and weighting specified in ANSI Specifications for Integrating Averaging Sound Level Meters, 51.43-1997 for Type 1 instruments and be capable of accurate readings (corrections for internal noise and microphone response permitted) at 20 dBA or lower. In this Law dBA means LAeq unless specified otherwise.

DECIBEL – A dimensionless unit describing the amplitude of sound and denoting the ratio between two quantities that are proportional to power, energy, or intensity. One of these quantities is

equal to 20 times the logarithm to the base 10 of the ratio of the measured pressure to the reference pressure, which is 20 micropascals.

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.

LWRP – The Local Waterfront Revitalization Program or Plan of the Town of Yates together with the Town of Yates Waterfront Consistency Law, including any amendments to said law or plan.

NON-PARTICIPANT – Any and all landowners having no contractual relationship with an Applicant or any aspect of a proposed facility.

PARTICIPANT – Any and all landowners having a signed lease, easement, or good neighbor agreement with an Applicant or any aspect of a proposed facility.

PERSON – Any person, partnership, LLC, corporation, joint venture, trust or other entity.

PROJECT PROPERTY LINE - The outer property line of all contiguous parcels of PARTICIPANTS in a SITE.

QUALIFIED ACOUSTICAL CONSULTANT – A person with demonstrated competence and expertise in the specialty of community noise testing, including but not limited to a person with full membership in the Institute of Noise Control Engineers (INCE).

RESIDENCE - means any building suitable for habitation in the Town of Yates on the date an application for a Wind Energy Facility Permit is received. A residence may be part of a multi-dwelling or multipurpose building, and shall include buildings such as hunting camps, seasonal residences, hotels, hospitals, motels, dormitories, nursing homes, schools, churches or buildings used for educational purposes, or public gatherings.

ROTOR DIAMETER – The diameter of the largest swept area of a rotating turbine blade.

SECTION or THIS SECTION – shall mean, unless otherwise identified, §591.

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

SETBACKS – a distance measured from the closest right-of-way line of the road right-of-way, property lines, village limits, edge of wetlands, high water level of Lake Ontario, edge of streambed, closest point of residence foundation to the base of the turbine or measurement tower, zoning districts, LWRP boundaries, or other point or line of reference.

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

SITE - The area proposed for a Wind Energy Facility to satisfy the required setbacks and any other standards in this Section. The Site may be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where an individual or group of individuals own or control adjacent properties, those properties may be combined for the purposes of this Law through an easement or other legally enforceable agreement recorded in the real property records in the Orleans County Clerk's Office. The agreement must, at a minimum, describe all lands that may be impacted if the WECS fell and must remain in effect as long as the WECS is in place. Where multiple adjacent lots are in single ownership or are combined through such agreement, such multiple or combined lots shall together be considered the "Site".

SMALL WIND ENERGY CONVERSION SYSTEMS ("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 100kW and which is intended to primarily reduce on-site consumption of utility power.

SOUND PRESSURE LEVEL - means the level, expressed in decibels, which is equaled or exceeded a stated percentage of time. Sound Pressure Level is spectrally weighted to correspond to a spectrum of interest. For example, the A-weighted decibel scale (dBA) represents those frequencies most readily audible to the human ear. Specifications for Integrating Averaging Sound Level Meters, S1.43-1997 for Type I instruments and be capable of accurate readings (corrections for interval noise and microphone response permitted) at 20 dBA or lower.

SPECIAL USE PERMIT - A construction and operating permit granted in accordance with the provisions of this Section.

STRUCTURE - Anything constructed, the use of which requires permanent or temporary location on the ground or attachment to something having permanent or temporary location on the ground, excluding residences, which are defined separately herein.

TOTAL HEIGHT - The height of the tower from the finished ground elevation to the furthest vertical extension of the turbine rotor plane.

TOWER HEIGHT – The height of the tower from the finished ground elevation at the tower base to the center of the hub forming the attachment point for turbine blades.

TOWN ENGINEER - The duly designated Engineer or Engineering Firm of the Town of Yates, or the Engineer or Engineering Firm assigned to represent the Town in various matters.

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

WIND ENERGY FACILITY – Any WECS or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures Excluded from the

definition are Small Wind Energy Conversion Systems regulated by this Section and having a height of 120 feet or less.

WIND ENERGY OVERLAY DISTRICT – a district that encompasses part or parts of one or more underlying districts and that establishes requirements for Wind Energy Facilities. Such District may be established only in the Agricultural-Residential or Industrial Districts.

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

E. Applicability/Severability.

1. No Wind Energy Facility or Wind Energy Conversion System shall be constructed, reconstructed, modified or operated in the Town of Yates, except in compliance with this Section.

2. No WECS, except a Small WECS, shall be constructed, reconstructed, modified, or operated in the Town of Yates, except in a Wind Energy Overlay District, pursuant to an application for rezoning and for special use permit approved pursuant to this Section.

3. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Yates except pursuant to a Special Use Permit issued pursuant to this Section.

4. If any provision of this Section conflicts with any other provision of the Town of Yates Code, provisions of this Section shall apply.

5. Nothing in this section shall prevent the ability of the Town of Yates to appeal or seek court determination of any action by any agency, tribunal, or lower court.

6. Notwithstanding any other provision of this Zoning Local Law, Special Use Permits for Wind Energy Facilities shall be issued by the Town Board.

7. Exemptions. No permit or other approval shall be required under this Section for WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one and a half times its Total Height from a property line, and does not exceed 120 feet in height. Towers over 120 feet in Total Height utilized solely for agricultural operations in a state or county agricultural district shall apply for a site plan in accordance with this Section, but shall not require a height variance. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.

8. This Section shall apply to all areas of the Town of Yates outside the Village of Lyndonville.

9. Transfer. No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock or membership rights of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of

the transferor under this Section, and the Town Board's determination, which will not be unreasonably withheld, that the transferee can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor nor of any other party under this Section unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations or violations.

F. Applications for Wind Energy Conversion Systems.

1. An application for Special Use Permit for a Wind Energy Facility or a single WECS shall include the following:

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

b) Name and address of the property owner. If the property owner is not the applicant, the application shall include proof of site control by recorded document establishing that applicant is authorized to utilize the property for the intended purpose.

c) Address, or other property identification, of each proposed WECS location, including Tax Map section, block and lot number, latitude and longitude coordinates.

d) A description of the project, including the number and maximum rated power output capacity of each WECS.

e) For each WECS proposed, a plot plan prepared by a New York State licensed surveyor or a New York State licensed professional engineer drawn in sufficient detail to clearly describe the following:

(i) Property lines and physical dimensions of the Site;

(ii) Location, approximate dimensions and types of existing structures and uses on Site, public roads, and adjoining properties within a three thousand foot radius of the proposed WECS.

(iii) Location and ground elevation of each proposed WECS.

(iv) Location of all above and below ground utility lines on the Site, and all related transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.

(v) Location and size of structures above 35 feet within a three thousand foot radius of any proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are considered structures.

(vi) Location of and measured distances (accurate GPS measurements may be utilized) of each proposed WECS tower from every setback required pursuant to his section.

(vii) To help demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower site having a radius equal to:

- (1) Each applicable distance setback established in this Section
- (2) One-quarter mile;
- (3) One-half mile; and
- (4) One mile.

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

(ix) The names and addresses of all property owners within a three thousand foot radius of each WECS, as shown on the assessment roll of the Town of Yates, together with the current use of all such property.

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

g) Landscaping Plan: depicting vegetation and forest cover describing the area to be cleared of vegetation and forest cover and areas where vegetation and forest cover shall be added, identified by species and size of specimens at installation, and their locations.

h) Lighting Plan: showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, the application shall so state and such determination shall be submitted prior to final approval.

i) Decommissioning Plan: A decommissioning plan as specified in this Section.

j) Complaint Resolution Plan: A Complaint Resolution Plan to address complaints within 24 hours of receipt of notice thereof and to resolve any complaint in a diligent and timely manner under the circumstances.

k) Information relating to the construction/ installation of the Wind Energy Facility as follows:

(i) A proposed construction schedule describing commencement and completion dates of the project and beginning and ending hours of daily construction

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

l) Completed Part 1 of the Full EAF.

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

2. As part of the application, or as a supplement to the application, simultaneously submitted, the following: Each submittal shall contain a thorough analysis/explanation of the ability and means to comply with the "Standards for Utility-Scale WECS" (H) Section of this Law.

a) Shadow Flicker: The applicant shall submit 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 be present at locations of any residences, highways, parks or open recreation areas and detail measures that will be taken to mitigate or eliminate such interference and to comply with the requirements of this Section.

b) Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which shall include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least several 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.

c) Fire Protection/Emergency Response Plan: A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Wind Energy Facility to address coordination with local emergency/fire protection providers during the construction or operation phase in the event of an emergency, fire or other hazard.

d) Noise Analysis/Study: A noise analysis by a qualified acoustical consultant documenting the noise levels associated with each proposed WECS. The study shall document noise levels at the property line of all properties not part of the site. The noise analysis shall be performed according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other procedure accepted by the Town Board, and shall include a dBA analysis. The noise analysis/study shall demonstrate compliance with the noise provisions as set forth in the "Standards from Utility-Scale WECS" (H) Section of this Law.

e) Property Value Analysis: Property value analysis prepared by a New York State licensed appraiser experienced in appraising rural properties of the type and nature typically found in the Town of Yates evaluating the potential impact of the project on values of properties in the Town of Yates, and in addition a proposed means to protect property owners from potential decrease in values caused by the establishment and operation of the proposed WECS, and to comply with the property value preservation subsection set forth in the "Standards for Utility-Scale WECS" (H) Section of this Law.

f) Electromagnetic Interference: An assessment of potential electromagnetic interference with microwave, radio, television, satellite systems, personal communication systems and other wireless communication, including broadband, weather and other radar, identifying specific potential interference established systems.

g) Transportation Impacts: An analysis of impacts on local transportation identifying impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Transportation impacts to be considered shall include, at a minimum, potential damage to local road surfaces, road beds and associated structures; potential traffic tie-ups by haulers of WECS' materials; impacts on school bus routes; impacts of visitors to the WECS' facilities. Local roads shall include all state highways, county highways, town highways, and village streets and highways, which will be or may be used by the applicant.

h) Transportation Plan: 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 and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, and measures to restore damaged/disturbed access routes and all other infrastructure following construction. Roads shall include all state highways, county highways, town highways, and village streets and highways, which will be or may be used by the applicant.

i) Ground Water Impacts: An analysis of impacts on local ground water resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification, or operation decommissioning and post decommissioning of each WECS.

j) Geotechnical: A report shall be provided and shall include a description of the geologic and/or geotechnical conditions of the site, including a description of terrain, brief geological and seismic history, groundwater conditions and associated design or construction problems, description of exploration and sampling methods and outline of testing methods employed, narrative of soil identification and classification, by stratum, description of laboratory test borings and results, plot plan, drawn to scale, showing test borings or pits, soils resistivity test, identifying resistivity of soil for corrosion protection of underground metals and electrical grounding design, and boring logs (which logs identify other pertinent data deemed necessary by the geotechnical engineer for design recommendations, such as unconfined compressive strength, standard penetration test values, location of water table, location and classification of rock, etc.), and engineering recommendations based on borings and laboratory testing should be provided for tower foundation design and other project components.

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

l) Cultural, Historical and Archeological Resources Plan: An analysis of impacts on cultural, historical and archeological resources addressing and assessing impacts anticipated during construction, reconstruction, modification or operation of each WECS. This assessment shall be conducted in accordance with standards of the New York State Office of Parks, Recreation and Historic Preservation.

m) Wildlife Impacts: An analysis of impacts on local wildlife shall be prepared by a consultant hired by the Town and paid for by the applicant, addressing impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Wildlife impacts to be considered shall include, at a minimum, anticipated impacts on flying creatures (birds, bats, insects), as well as wild creatures existing at ground level. An assessment of the impact of the proposed development on the local flora and fauna. The analysis will include migratory and resident avian species and bat species. The scope of such assessment shall take into consideration New York State Department of Environmental Conservation and the United States Fish and Wildlife Service studies, standards and recommendations and must at a minimum consist of pre-construction data of three years, and literature/ studies/survey for threatened and endangered and species of concern and migratory species that provide relevant information on critical flyways and migration routes, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to address any impacts, as well as plans for three-year post-installation studies. The reports shall provide sufficient information to allow the Town Board to make a determination on any mitigation conditions or a denial of permits as provided in standards for WECS Section.

n) Blade Throw Report: A report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades and pieces of turbine blade may be thrown. (The basis of the calculation and all assumptions must be thoroughly explained and justified.) The frequency incidence of reported ice and blade throws and the conditions at the time of the ice and blade throw must be included and the report must specifically address the climatic and weather conditions found in the Town of Yates.

o) Stray Voltage Report: An assessment, pre- and post-installation, of possible stray voltage problems on the Site and neighboring properties within one (1) mile of the project boundary to show what properties need upgraded wiring and grounding.

p) An agriculture effect report, including impacts on all types of agricultural activities present in the Town of Yates. The report shall address effect of wind turbulence and disruption on fruit production, effect on beef and dairy farms, grain farming and all other farming activities. The report must address insect and bee population effects, effects on orchard and crop pollination, micro-climate effects and impacts on orchard and crop growing seasons.

q) A report/analysis of the effects on the economy of the Town, including income of residents and effects on other industries and jobs.

r) A report and analysis on any effect on any aviation in the airspace above the town including general aviation, National Defense, Homeland Security and State aviation (including drones), Mercy Flight, crop-dusters, and the military installation in the County of Niagara, including the Niagara Falls Air Reserve Station, its potential effects on flight patterns, its potential to cause radar interference, effect on base siting evaluations, the potential economic effect on the County of Orleans should the base be closed, including job loss and economic impact.

s) A report and analysis on any outdoor activities common in the Town of Yates.

t) The applicant shall, prior to the receipt of a Special Use Permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner. Applicant shall also provide proof of complying with Public Service Commission power purchase requirements.

u) A statement, signed under penalties of perjury that the information contained in the application is true and accurate to the best of applicant's knowledge.

v) Proof of continuous liability insurance in the amount of \$5,000,000 per occurrence with a total policy minimum of \$10,000,000 per year.

w) Disclosure of Financial Interests. For any financial interest held by a Municipal Officer or his or her relative in any wind development company or its assets within three years prior to the date of an application for a permit under this local law, the Wind Company shall disclose the application the Municipal Officer or his or her relative, and the nature and scope of the financial interest of each person.

3. Escrow Account. The applicant shall fund an Escrow Account as required by this Section to cover the amount by which the Town's cost to review the applicant's application, including the cost of any independent study, analysis or report and the cost of the Town Engineer exceed the application fees paid by the applicant. The applicant and the Town may enter into an agreement as to the amount of the Escrow Account. If no agreement is reached prior to review, the fund shall be 1.5 percent of the total estimated cost of the project, including both "hard" and "soft" costs, approvals, etc. The amounts paid to the Town shall not exceed this amount. This amount is determined to be the best estimate of all costs to the Town for its review process as set forth in this Section. The Escrow Account shall be funded prior to review of the application. If at the end of the review process, and decision on the application by the Town Board, funds remain in the Escrow Account fund, the balance shall be returned to the applicant together with an accounting of the expenditures incurred by the Town.

4. Copies of all applications and proposed plans should be made available to the public within seven days of receipt by the Town Board and placed in the Town Library and Town Clerk's office as well as on the Town of Yates website.

G. Application Review Process.

1. Applicants may request a pre-application meeting with the Town Supervisor, Town Code/Zoning Enforcement Officer and such consultants as the Supervisor shall determine. Such meeting shall be informal, and no party shall be bound by any statements made.

2. An original executed and fifteen (15) copies of the application and a complete digital version shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. The Town Clerk shall forward one copy to the Code/Zoning Enforcement Officer and five (5) copies to the Town Supervisor and additional copies to such individuals as the Supervisor shall direct.

3. The Code/Zoning Enforcement Officer, in consultation with the Town Engineer and any other consultants deemed necessary, shall determine whether the application is complete. If the

application is deemed incomplete, the Town Code/Zoning Enforcement Officer 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 WECS proposed is increased. When the application is complete, it shall be filed and the applicant shall be notified it has been accepted for filing.

4. Upon filing of a complete application, the Town Clerk shall transmit the application to the Board.

5. In addition to the public hearing requirement, the Town Board may in its discretion require the Applicant to conduct information sessions for the public benefit. The number of such sessions shall be at the discretion of the Town Board and notice shall be given to media in such a manner as the Town Board shall determine. During these sessions, the public will be afforded the opportunity to question the Applicant regarding the Project.

6. The Town Board shall hold at least one formal public hearing on the application. Notice shall be published in the Town's official newspaper, no less than ten days before the hearing. In the event any hearing is adjourned by the Board to hear additional comments, no further publication or mailing shall be required. Notice shall also be given to property owners in the Town of Yates at the address shown on the assessment roll of the Town of Yates, or by publishing such notice in the Town's newsletter.

7. At the discretion of the Town Board, the public hearing may be combined with public hearings on any Environmental Impact Statement. Notice for SEQRA public hearings must meet the specification set out in 6 N.Y.C.R.R. §617.12 (c).

8. Notice of the project shall also be given, when applicable, to (1) the Orleans County Planning Board, if required by General Municipal Law §239-1 and 239-m, and (2) to adjoining Towns where the project site is located within three thousand feet of the adjoining Town boundary.

9. SEQRA Review. Applications for Utility-Scale WECS are deemed Type I projects under SEQRA. The Town Board may conduct its SEQRA review in conjunction with other agencies or communities, in which case the records of review by said agencies or communities shall be part of the record of the Town Board's proceedings. The applicant shall be responsible for the Town's legal, engineering and other specialized consultant fees in connection with the SEQRA.

10. After a thorough and detailed evaluation of the application in which the Town Board completes the required "hard look" pursuant to SEQRA (unless otherwise preempted by the Article 10 regulatory process), and after consideration of all materials and public input and upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, the Town Board shall approve, approve with conditions, or deny the application(s). The Board shall issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.

11. If approved, the Town Board will issue, to the applicant, a Special Use Permit for each WECS for the purpose of construction and continued operation based on satisfaction of all conditions

for said Permit. This authorizes the Code Enforcement Officer/Building Inspector to issue a building permit for each WECS, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Local Law.

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

13. If any approved WECS is not substantially commenced within one year of issuance of the permit, the special use permit shall expire.

H. **Standards for WECS.** The following restrictions on location, standards and conditions shall apply to all Utility-Scale WECS.

1. Restricted areas:

a) Wind Energy Conversion Systems shall only be allowed in the Agricultural / Residential (AR) and Industrial (I) Districts, and within a Wind Energy Overlay District.

2. Setbacks. No Wind Energy Conversion Systems shall be allowed within the following setbacks. If more than one setback applies, the most restrictive setback shall prevail. All setbacks are measured from the outside base of the tower and all heights are based on Total Height. Setbacks are provided as specific distances and as variable distances depending on the height of a WECS, in recognition that different WECS configurations are available, and taller WECS may become available, and that higher facilities present increased impacts.

a) From restricted areas:

(i) From the boundary line of a non-AR or Industrial District:

(1) A minimum of 1800 feet.

(2) A minimum of 4.5 times the Total Height.

(ii) From the Waterfront Revitalization Area Boundary as established in the Town of Yates LWRP:

(1) A minimum of 1800 feet.

(2) A minimum of 4.5 times the Total Height.

b) From structures (excluding residences):

A minimum of 2 times the Total Height from any building.

c) From property lines:

(i) Properties on which a residence or business structure is present: A minimum of 3.0 times the Total Height) from Project Property Line.

(ii) Properties on which no residence or business structure is present (vacant properties): A minimum of 4.5 times the Total Height from the Project Property Line. This higher setback is designed to afford the owner of vacant properties the same setback as owners of developed properties.

d) From all public road and highway right-of-ways:

(i) A minimum of 1800 feet.

(ii) A minimum of 3.0 times the Total Height.

e) From aboveground transmission lines (excluding project infrastructure of WECS facility) greater than 12 kilovolts:

transmission (i) A minimum of 2 times the Total Height from any above-ground line greater than 12 kilovolts.

f) From the boundary of the Village of Lyndonville

(i) A minimum of 1800 feet.

(ii) A minimum of 4.5 times the Total Height

g) From all boundaries with other towns:

(i) A minimum of 1800 feet.

(ii) A minimum of 3.0 times the Total Height.

h) From residences:

(i) A minimum of 1800 feet.

(ii) A minimum of 4.5 times the Total Height.

j) No WECS shall be located where the placement would violate the noise standard established in paragraph 26 of this subsection.

3. All power collection and distribution lines from any WECS to any building or other structure shall be located underground to the maximum extent practicable.

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

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

6. 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 Site plan.

7. All applicants shall use measures to reduce the visual impact of WECS to the extent possible. All structures in a project shall be finished in a single, non-reflective, matte finished color. Individual WECS shall be constructed using wind turbines whose appearance, with respect to one another, so as to provide reasonable uniformity in overall size, geometry, and rotational speeds. No graphics shall be on any part of the tower, hub, or blades.

8. 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 will 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 up to and 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 Special Use Permit for the specific WECS causing the interference.

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

10. 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. The use of previously developed areas will be given priority wherever possible. All top soil disturbed during construction, reconstruction or modification of each WECS will be stockpiled and returned to the site upon completion of the activity, which disturbed the soil.

11. WECSs shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity to the maximum extent practicable, that are listed by the U.S. Fish & Wildlife Service as threatened or endangered, and species of special interest as listed by the NYSDEC.

12. No Wind Energy Facility shall be located in a state or Federal wetlands, or state wetlands buffer area

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

14. The New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind power projects in effect, as of the date of the application, and shall be adhered to on agricultural properties, both inside and outside of state agricultural districts. 15. Construction of the WECS shall be limited to the hours of 7 AM to 7 PM Monday through Friday, unless a different schedule is approved by the Town Board.

16. If it is determined that a WECS is causing stray voltage issues, the operator shall take the necessary corrective action to eliminate these problems up to and including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for suspension or revocation of the Special Use Permit for the specific WECS causing the problems.

17. WECSs shall be located in a manner that minimizes significant negative impacts on the historical and cultural aspects of the community (i.e. high concentration of historic stone houses and buildings and old style barns). This shall be done in coordination with the New York State Office of Parks, Recreation and Historic Preservation. In addition, the review of NY's Department of State guidelines for Scenic Areas of Statewide Significance shall be respected.

18. 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.

19. Fencing may be required, as determined by the Town Board.

20. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24-hour, 7-day week coverage. The Town Board may require additional signs based on safety needs.

21. No climbing pegs or tower ladders shall be located closer than fifteen (15) feet to the ground level at the base of the tower structure

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

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

24. The owner and/or operator of a WECS that has received approval under this section, or through the Article X process shall provide an annual report of compliance with noise standards established in either this local law or the applicable permit by a qualified acoustical consultant performed according to industry standards.

25. Traffic Routes.

a) Construction and delivery vehicles for Wind Energy Facilities shall use traffic routes established as part of the application review process.

b) The applicant is responsible for remediation of damaged roads and infrastructure upon completion of the installation and/or maintenance of a Wind Energy Facility. The applicant shall comply with all requirements of any Town of Yates Infrastructure, Preservation or Protection Law.

c) Prior to placing the Wind Energy Facility in operation, and for the life of the project, the applicant shall repair or reconstruct all town highways damaged by the applicant to the standards set forth by the Town Highway Department based on the condition of town highways prior to the commencement of construction by the applicant.

26. Noise Standards for Wind Energy Systems. The noise standards established in this paragraph shall be additional setbacks for placement of WECS. They do not apply to properties within the Site.

a) The equivalent level (LEQ) generated by a Wind Energy Conversion System (WECS) shall not exceed the limits listed in Table 1 when measured at the nearest off-site residence existing at the time of application, or for which a building permit has been issued. If the A-weighted background sound pressure level, without the WECS, is within 5 dB of some or all of the limits in Table 1 or exceeds some or all of the limits in Table 1, then the A-weighted criterion to be applied to the WECS application for those affected limits shall be the A-weighted background level +5 dB. Note: For example, during daytime, if the background is less than or equal to 40 dB, then the limit is 45 dB. However, if the background is greater than 40 dB, say 44 dB, then the applicable WECS limit is the background level plus 5 dB which calculates to 49 dB for this example.

b) .

Table 1. WECS noise limits at residential receivers:

(1 Hour LEQ Derived Per ANSI S12.9 Part 4 and S12.100)

	Daytime 7 am to 8 pm	Nighttime 8 pm to 7 am
A-weighted level (dB)	45	40

Table 2. WECS noise limits at non-participating property lines and other district boundaries:

(1 Hour LEQ Derived Per ANSI S12.9 Part 4 and S12.100)

	Daytime 7 am to 8 pm	Nighttime 8 pm to 7 am
A-weighted level (dB)	50	40

c) A-weighted background community noise levels shall be based on measured hourly L90 levels gathered following the procedures specified in ANSI/ASA S12.9 Part 3 (R2013) Short Term Measurements with an Observer Present, and ANSI/ASA S12.100-2014 Methods to Define and Measure the Residual Sound in Protected Natural and Quiet Residential Areas. The day shall be divided into two time periods: (1) daytime, the hours from 7 AM to 8 PM, and (2) nighttime, the hours from 8 PM to 7 AM. If insect noise can possibly dominate some of the hourly L90

measurements then A_i weighting shall be used in lieu of the Standard A-weighting, or measurements shall not be made when insect noise possibly can dominate some of the hourly L90 measurements.⁴ The background shall be reported by time period, and computed as follows. The minimum hourly L90 shall be tabulated by time period and by day, and the arithmetic average by time period over all the periods of measurement shall be computed. These three averages of daily minima shall be reported as that site's daytime, evening, and nighttime A-weighted background, respectively.

d) Point of Measurement: The A-weighted background measurements shall be made along the line from the nearest proposed WECS to the dwelling in question. If the parcel of land has no dwelling, then the line shall terminate within 25 feet of the center of the parcel. The actual position of the microphone shall be within the property in question and should be within 25 feet to either side of the line, no closer than 50 feet from the property boundary, and no closer than 25 feet from the house or any other structures. If positioning within this "measurement box" is not possible because of unique site conditions such as the position being underwater or the property being too small, then the unique conditions shall be fully documented and an alternate position selected and justified. Background measurements shall be taken in leaf on and leaf off conditions

e) Background prediction and measurement. Background measurements shall be conducted by the applicant throughout the area using sufficient sites to generally characterize the background in various areas of the community. Background measurement points shall at a minimum include locations within the Village of Lyndonville, locations within the Waterfront Area Revitalization District.

f) For purposes of determining whether a proposed wind energy facility would satisfy the noise standards of this Section, noise levels at the appropriate measurement point are predicted assuming that all of the proposed wind facility's turbines are operating between cut-in speed and the wind speed corresponding to the maximum sound power level established by IEC 61400-11 (version 2002-12). Studies shall evaluate leaf on and leaf off conditions.

g) In the event audible noise due to Wind Energy Facility operations contains a steady or pure tone, or an intermittent or reoccurring tone, such as a whine, screech, or hum, the tones shall be eliminated.

h) Any noise level falling between two whole decibels shall be rounded to the nearest whole decibel.

i) The maximum noise level for any WECS measured from the property boundary lines of any school shall not exceed 40 dBA, regardless of whether the property is within the Site.

j) Noise Enforcement. For any WECS constructed pursuant to permit by Article X of the Public Service Law or Town permit, enforcement protocol shall be mutually agreed upon with the applicant, or by the application of this Section. The Town, using the services of the Town Engineer, may conduct or contract for any measurements. In addition to report filed by the

⁴ Schomer, Paul D., et al., "Proposed 'A_i'-Weighting; A-Weighting to Remove Insect Noise from A-Weighted Field Measurements," InterNoise 2010, Lisbon, Portugal, 13, June 16, 2010.

applicant/operator, the applicant/operator shall cooperate with any Town testing of noise levels, including providing access to all sites for that purpose.

The duration of any WECS measurement shall be 30 minutes. During the 30-minute period, the equivalent level (LEQ) generated by the WECS shall be measured. The WECS operator shall cooperate by turning the Wind Turbines on and off as needed for the test and to provide the SCADA information to confirm that the wind turbine was operating at full power and not in a noise reduced mode. The measurement location shall be at any residential property as given in Clause A, and at any point on this residential property at which the background community noise may be measured per Clause C. Measurements shall be entirely within the appropriate time period, e.g., during nighttime for nighttime enforcement, and the WECS shall operate continuously during the 30-minute measurement.

The microphone shall be situated between 4 and 4.5 feet above the ground. Measurements shall be conducted within the general provisions of ANSI/ASA S12.9 Pt 3 and S12.100 as above, and using a meter that meets at least the Type 2 requirements of ANSI S1.4 and S1.4A-1985 (R2006). The instrument noise for shall be at least 10 dB below the lowest level measured.

A calibrator shall be used as recommended by the manufacturer of the sound level meter. The fundamental level of the calibrator and the sensitivity of the sound level meter shall be verified annually by a laboratory using procedures traceable to the National Institute of Standards and Technology.

A wind screen shall be used as recommended by the sound level meter manufacturer.

An anemometer shall be used and shall have a range of at least 0 to 15 miles per hour (0 to 6.7 meters per second) and an accuracy of at least ± 2 miles per hour (± 0.9 meters per second). Measurements with wind speeds over 2.2 m/s shall be rejected.

A compass shall be used to measure wind direction to at least an 8-point resolution: N, NE, E, SE, S, SW, W, NW. Measurements shall be A-weighted, or, alternatively, in one third- octave bands. For A-weighted measurements, the uncertainty (tolerance) of measurements shall be 1 dB for a type 1 meter and 2 dB for a type 2 meter. For one third- octave-band measurements, the meter shall meet the type 1 requirements of ANSI S12.4 and S12.4a-1985 (R2006), and the uncertainty of measurements shall be disclosed in each one-third octave band along with the method used to calculate them.

For all measurements, the surface wind speed, measured at a 1.5-m height, shall be less than 2.2 m/s.

All measurements shall be corrected for the background on the basis of mean square pressures. For one-third-octave-band measurements, each one-third-octave band shall be individually corrected for the background in that band. That is, both the WECS (which always includes the background) and the background alone shall be measured in each one-third-octave band. For either A-weighted data or one-third-octave band data, the background shall be measured during a like period when the WECS is not operating, and Table II shall be used to correct for the background, by band in the case of one-third octave-band data. A like period includes the same or like location, like surface wind speed and

direction, like time of day and day-of-the-week (e.g., Monday-Thursday night, Friday or Saturday night, or Sunday night), etc.

After correction, when using data measured in one-third-octave bands, all remaining bands, excluding bands set equal to zero, shall be converted to A-weighted bands and then shall be summed on a mean square pressure basis to establish the WECS background-corrected A-weighted sound level.

Table 3. Correction in dB that shall be subtracted from the WECS sound level measurement (which always includes the background sound level) because of the background sound so that the result is just the sound level of the WECS alone (See Note 1 below).

Δ , difference (dB)	<3	3-4	5-6	7-10	>10
K, correction (dB)	Notes 2,3	3	2	1	0

NOTE:

1. This table provides a simple correction to measurements of WECS sound in the presence of the background. For example, the sound of a WECS (along with the background sound which is always present) is measured as 40 dB(A), and the background sound level alone (without the WECS) is measured as 34 dB(A). Then Δ , the difference in decibels is 6 dB (first row, third column), and the corresponding correction shall be 2 dB (second row, third column). That is, 2 dB shall be subtracted from the measured 40 dB(A) level, and it is adjusted to and reported as 38 dB(A). The same procedure is followed in each band for one-third-octave-band data.

2. When using directly measured A-weighted levels, if the difference between the WECS sound level (plus background sound level) and the background sound level alone is less than 3 dB, then it shall not constitute a violation of this chapter.

3. When using measured one-third-octave-band data, if the difference between the WECS sound pressure level (plus background sound pressure level) and the background sound pressure level alone, each in the same one-third-octave band, is less than 3 dB, then the WECS level for that one-third-octave band shall be set to zero.

The report shall include a sketch of the site showing distances to the structure(s), to the property line, etc., and several photographs showing the structure(s), the property, and the acoustical instrumentation.

All instrumentation shall be listed by manufacturer, model, and serial number. This instrumentation listing also shall include the A-weighted noise floor and the one-third-octave band noise floors, if utilized, for each sound level meter used.

27. Economic Effects. No Wind Energy Facilities shall be sited unless a cost benefit analysis utilizing the information provided in Section 1001.27 of the Public Service Law Article 10 regulations demonstrates the benefits to the Town outweigh the costs.

28. Health Effects. No WECS shall be constructed unless a health impact analysis utilizing all applicable County and State health regulations demonstrates all negative health impacts have been mitigated to the maximum extent practicable.

29. When a WECS has been constructed in the Town of Yates, the applicant/owner/operator shall inventory all bird or bat kill and report the same to the Town on a quarterly basis. If a tower or towers in a WECS are determined to cause numbers of bird or bat kill which are determined to cause excessive impact, after consultation with the Department of Environmental Conservation and other involved agencies, remedial action shall be required up to and including suspension or revocation of a permit or any part thereof.

30. Real Property Value Protection Plan ("RPVP Plan"). The WECS owner(s) ("applicant") shall compensate residential property owners whose residences suffer a decline in value attributable to the WECS. The RPVP Plan shall apply to residences and farms within one mile of any wind turbine. If a property owner is unable to obtain the price that the owner believes the property is worth, the turbine owner shall pay for an appraisal by an independent licensed appraiser. The Plan shall include a method to agree upon an independent appraiser in advance and both parties shall be bound by the appraisal. If the appraisal shall determine the theoretical value of the property if no WECS existed. If the homeowner were unable to obtain this price, the turbine owner shall pay the difference between the sales price and the appraisal price.

a) Other Agreement Conditions.

(i) If a property owner wants to exercise this option, they must do so within 10 years of the WECS receiving final approval.

(ii) A property owner may elect to exercise this option only once.

(iii) The turbine owner and the property owner may accept mutually agreeable modifications of this Agreement, although the applicant is not allowed to put other conditions on a financial settlement (e.g. confidentiality). If the property owner accepts some payment for property value loss, based on an alternative method that is considered an exercise of this option.

(iv) This Agreement applies to the property owner of record as of the date of the issuance of the approval to build the WECS, and is not transferrable to subsequent owners.

(v) The property owner of record as of the date of the issuance of the WECS approval must reasonably maintain the property from that time, until they choose to elect this option.

(vi) The property owner must permit full access to the property by the appraisers, as needed to perform the appraisals.

(vii) The property owner must inform the appraisers of all known defects of the property as may be required by law, as well as all consequential modifications or changes to the property subsequent to the date of the WECS application.

(viii) This Agreement will be guaranteed by the turbine owner (and all its successors and assigns), for 10 years following the WECS receiving final approval.

(ix) Payment by the turbine owner not made within 60 days will accrue an interest penalty. This will be 12 percent annually, from the date of the written election from property owner.

31. Shadow Flicker. No off-Site residence shall experience, based on an astronomical worst case scenario, more than 30 hours per year or 30 minutes on the worst affected day.⁵

32. Where the Town Board is the approving entity, it may set forth appropriate conditions of approval of an application.

I. **Decommissioning.**

1. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant shall, without any further action by the Town Board, remove said system at its own expense in accordance with the provisions of subsection C of this Section. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town Board's ability to order a remedial action plan.

2. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSEERDA or by lack of income generation. Upon request of the Town, evidence shall be provided to the Town that the specific turbine has operated in the year.

3. Decommissioning and Site Restoration Plan and Requirements. There shall be a decommissioning and site restoration plan containing the information and meeting the requirements in this section.

a) The plan shall provide for the removal from the Project Parcels, and lawful disposal or disposition of, all Wind Turbines and other structures, hazardous materials, electrical facilities, and all foundations to a depth of not less than 60 inches below grade. The plan shall provide for the removal of all access roads that the owner of the Project Parcels wants removed. The plan shall provide for the restoration of the Project Parcels to farmland of similar condition to that which existed before construction of the WECS.

b) The plan shall provide for the decommissioning of the site upon the expiration or revocation of the WECS permit (or, where applicable State authority under Article X of the Public Service Law) , or upon the non-functioning of the WECS.

⁵ The 30 minutes per day rule for shadow flicker at any given receptor is based on a psychology academic survey by the University of Kiel (Pohl et al 2000).

c) The Plan shall include: (a) the estimated decommissioning cost in current dollars based on prevailing wages;(b) how said estimate was determined; (c) the method of ensuring that funds will be available for decommissioning and restoration; and (d) the method that will be used to keep the decommissioning costs current, by adjusted annually based on a suitable index such as the "RS Means Heavy Construction Cost Data" index.

d) The plan shall include provisions for financial security to secure completion of decommissioning (removal of non-functional towers and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund in an amount to be determined by the Town Board for the period of the life of the facility. This fund shall be no less than the estimated cost of full decommissioning and restoration in the form of irrevocable security in form and content as approved by the Town Board. All decommissioning funding requirements shall be met prior to commencement of construction.

e) The plan shall include written non-revocable authorization from the permit holder and the owners of all Parcels within the project for the Town to access the Parcels and implement the decommissioning and site restoration plan, in the event the permit holder fails to implement the plan. The written authorization shall be in a form approved by the Town and shall be binding on the heirs, assigns and distributees of the owner(s), and shall be recorded in the Office of the Orleans County Clerk.

f) Use of Decommissioning Fund.

(i) Any non-functional WECS or any WECS for which the special use permit has been revoked, shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration within 180 days of the date on which the facility becomes non-functional or of the revocation of the special use permit, by the applicant or owner of the WECS.

(ii) If removal of the WECS is required and the applicant, permittee, or successors fails to remove the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the Town Board shall contract for such removal and restoration and to pay for the removal and restoration from the posted decommissioning and site restoration fund.

(iii) If the fund is not sufficient, the Town shall charge the WECS owner for the costs over and above the amount of the fund.

J. Limitations on Approvals; Easements on Town Property.

1. 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.

2. Notwithstanding anything to the contrary contained in this Local Law or any other local law, ordinance, rule or regulation of the Town of Yates, Building Permits shall not be issued for new construction on the same parcel as a permitted WECS when the proposed construction includes residential use in the two times the height fall zone. This applies to all residences whether or not within the Site. No property or lot upon which a WECS has been permitted shall be further subdivided in a manner that allows residential use in the two times the height fall zone and/or as set forth in the permit.

K. Permit Enforcement Revocation.

1. Testing fund. A Special Use Permit shall contain a requirement that the applicant perform periodic noise testing by a qualified acoustical measurement consultant, which shall be included in the annual Operation Maintenance and Compliance report required under this Section, and may be required more frequently upon request of the Code Enforcement Officer in response to complaints or reasonable suspicion of violation of permit requirements. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Local Law and shall include an evaluation of any complaints received by the Town. The Town may, if the Code/Zoning Enforcement Officer so determines, conduct or have conducted, such testing as it determines in addition to the applicant/operator. Such testing shall be paid for by the applicant.

2. 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 and requirements of this Section. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition or any provision of this Section, the owner, or operator shall immediately notify the Code Enforcement Officer. Upon such notice, or if the Code Enforcement Officer determines that a violation exists, he shall determine the severity of the non-compliance. If he determines the violation to be a threat to the life, safety, health or immediate well-being of the public, he may order the WECS to be shut down. Upon notification of a violation, the applicant/owner/operator shall submit a remediation plan in writing within 10 days outlining the steps to be taken to remedy the violation. If no plan is submitted, or if remediation is not completed within 90 days of notice, or at any other time the Code Enforcement Officer deems appropriate, the Code Enforcement Officer shall notify the Town Board.

3. Notwithstanding any other enforcement provision under this Section, if the WECS is not repaired or made operational or brought into compliance after said notice, the Town may, after a public hearing 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 suspension of the permit until compliance is achieved, or (3) order revocation of the Wind Energy Permit for the WECS and/or (4) require the removal of the WECS within 90 days. If the WECS is not removed, the Town shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

L. Fees.

1. Non-refundable Application Fees for WECS, Wind Measurement Towers, and Small WECS shall be established by the Town Board and reviewed periodically. The fee may be changed by

resolution of the Town Board. Until established, the fee shall be \$1,000.00 per megawatt of rated maximum capacity submitted with the application.

2. Reimbursement of Expenses Related to WECS Project: The Town Board of the Town of Yates has determined that the review of building and electrical permits for WECS requires specific expertise for those facilities. Accordingly, for such facilities (WECS), an administrative fee of \$500.00 per permit request shall be charged for administrative costs, plus the amount charged to the Town by the outside consultant(s) hired by the Town to review the plans and inspect the work. The Town and the applicant will enter into an agreement as to the amount of the Escrow Account. If no agreement is reached prior to the review of the application, the fund shall be 1.5 percent of the total estimated cost of the project, including both “hard” and “soft” costs, approvals, etc. The fees and Escrow Account fund amounts established herein may be amended from time to time by resolution of the Town Board.

3. 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 Account agreement to pay the engineering, other consultants and legal costs of any application review, including the review required by SEQRA.

M. Project Management and Oversight.

1. Upon approval by the Town Board of a WECS Special Use Permit application, and as a condition to the issuance of a WECS Special Use Permit, the applicant shall designate a field representative and site manager who will be responsible for overseeing compliance with the conditions of the Permit. Such representative and site manager shall be in place for as long as the WECS is in place. The applicant shall provide and update, at all times, the names, addresses, daytime telephone numbers and emergency telephone numbers of field representative and site manager to the Town Code Enforcement Officer and the Town Supervisor.

2. As a condition to the issuance of a WECS Special Use Permit, the services of an engineering firm and other consultants (as necessary) will be retained by the Town of Yates during the construction phase of the WECS project at the applicant’s expense.

3. Prior to commencing construction, the applicant shall pay the Town a project inspection fee in the amount of the 0.5% percent of the estimated cost of construction, including all materials, contracts and labor. Said amount is determined to be the reasonable cost to the Town to provide for such inspection. If the cost to the Town is less than that amount, the balance shall be refunded to the applicant upon completion of the construction, issuance of a Certificate of Occupancy and approval of all State and Federal agencies.

4. A representative of the Town's engineering firm shall be on-site at all times during the construction phase. The firm will also monitor road and infrastructure use and determine any damages to same.

5. The Town engineering firm’s duties shall include coordination with the Code Enforcement Officer or other consultants selected by the Town for enforcement actions. The firm’s

representative may recommend that the Code Enforcement Officer issue a "stop work order" for issues including but not limited to: (a) safety, and (b) permit compliance issues.

6. The applicant shall provide the Town engineering firm representative and the Code Enforcement Officer with "As Built" Drawings within (1) one week of completion of each portion of the construction phase or as requested by the engineering firm representative, or Building Inspector.

7. All up-grades or changes to the WECS project, as permitted, shall be reviewed and approved by the Town engineering firm and Code Enforcement Officer prior to the implementation of such upgrades or changes. No changes to basic design, height or location will be permitted unless approved as an amendment to the application by the Town Board.

8. In the event of an accident, the Town Code Enforcement Officer shall have the authority to shut down all of the affected turbines until a thorough investigation has taken place, a cause has been determined and steps have been taken to ensure the problem will not reoccur, as evidenced by a report to the Code Enforcement Officer.

N. Enforcement; Penalties and Remedies for Violations.

1. This Local Law shall be enforced by the Town Code Enforcement Officer.

2. 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, operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, shall be guilty of a violation and subject to a fine of not more than \$250.00 or to imprisonment for a period of not more than 15 days, or to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each day such violation shall continue.

3. The Code Enforcement Officer may, after notice of violation, enter into a Consent Order with the applicant/owner/operator, to remedy the violation with specifications to be taken and an agreed schedule.

4. Special Proceeding: In addition to any other remedy, the Town Board may institute an action or proceeding in equity, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a Wind Energy Facility and shall be entitled to injunctive relief, including a Temporary Restraining Order and a Temporary Injunction as the Court deems appropriate.

O. Small Wind Energy Conversion Systems

1 PURPOSE AND INTENT. The purpose of this Section is to provide standards for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Section is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

2. PERMITTED AREAS. Small Wind energy systems may be permitted in any District upon issuance of a Special Use Permit.

3. APPLICATIONS

a) Applications for Small WECS special use permits shall include:

(i) Name, address, and 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.

(ii) Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (1) confirming that the property owner is familiar with the proposed applications and (2) authorizing the submission of the application.

(iii) Address of each proposed tower Site, including Tax Map section, block, and lot number.

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

(v) A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.

(vi) Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.

(vii) 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.

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

4. 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 Section 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 Section.

c) Small Wind energy systems may be used primarily to reduce the on-Site consumption of electricity.

d) Tower heights may be allowed as follows:

(i) 65 feet or less on parcels between one and five acres.

(ii) 120 feet or less on parcels of five or more acres.

(iii) 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 100 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 (e.g., public parks, roads, trails). To the greatest extent feasible a small wind energy system:

(i) Shall not project above the top of ridgelines.

(ii) If visible from public viewing areas, shall use natural landforms and existing vegetation for screening.

(iii) Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential 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:

(i) Tower-climbing apparatus located no closer than 12 feet from the ground.

(ii) A locked anti-climb device installed on the tower.

(iii) 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 Building Code and National Electric Code. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

5. 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 a 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 the 40 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

6. 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.

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

P. Miscellaneous.

1. Nothing in this Local Law, including the issuance of the permit by the Town, shall eliminate any property or rights of property owners or residents to enforce their legal remedies including, but not limited to, actions in law or equity in the nature of nuisance proceedings, or tort or negligence proceedings.

2. The Town Board may grant a variance from any provision of this Section 591 pursuant to the procedures for granting a variance under this Code. The Town Board may grant a waiver from any application provision of this Section 591 upon written request of an applicant.

3. The Town opts out of the tax exemption provisions of Real Property Tax Law §487 pursuant to the authority granted by Subsection (8) of said law.

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. No Supersession of Moratorium

Nothing in this local law shall supersede or repeal Local Law No. 1 of 2016. Local Law No. 1 of 2016 shall remain in full force and effect.

Section 4. Effective Date

This local law shall take effect upon the filing with the Secretary of State in accordance with the Municipal Home Rule Law. If any part or section of this local law shall be held to be invalid, the remaining

provisions thereof shall not fail but shall remain in full force and effect. All local laws, ordinances, rules or regulations, or parts or portions thereof that conflict or are contrary to any portion of this local law are hereby repealed.

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2016, of the ~~(County)~~ ~~(City)~~ (Town) ~~(Village)~~ of Yates, New York was duly passed by the Town Board on _____, 2016, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the ~~(County)~~ ~~(City)~~ (Town) ~~(Village)~~ _____ was duly passed by the _____ on _____ 20____, and was (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the ~~(County)~~ ~~(City)~~ (Town) ~~(Village)~~ of _____ was duly passed by the _____ on _____ 20____, and was by the _____ on _____ 20____. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on _____ 20____, in accordance with the applicable provisions of law.

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

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the ~~(County)~~ ~~(City)~~ (Town) ~~(Village)~~ of _____ was duly passed by the _____ (Name of Legislative Body) on _____ 20____, and was (approved) ~~(not disapproved)~~ ~~(repassed after disapproval)~~ by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

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

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

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

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

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

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

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

(SEAL)

Town Clerk, Town of Yates

Date: March _____, 2016