

**A Local Law Amending the Code of the
Town of Somerset Chapter 205 Zoning**

Be it enacted by the Town Board of the Town of Somerset as follows:

The Code of the Town of Somerset is hereby amended by adding the following new Section:

§205.43.5 Commercial/Industrial Wind Energy Conversion Systems.

A. Purposes. The Town Board of the Town of Somerset adopts this Local Law to regulate the placement of commercial and industrial wind energy conversion systems to protect the public safety health and welfare; to provide a regulatory structure that promotes the protection of the Town of Somerset residents; to minimize the adverse impacts on the Town's character and environment and economy and property values; 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.

B. Authority. The Town Board of the Town of Somerset, 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 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 Somerset; Laws of the State of New York.

C. Findings. The Town Board of the Town of Somerset 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 Somerset, 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. Commercial 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. Further, Article X remains untested by judicial review addressing several potential legal issues. This Law is not unduly burdensome to the mandates or the process set forth in Article X, but is rather compatible with them.

2. The findings set forth in this Section are cumulative and interactive, and shall be liberally interpreted in conjunction, one with another.
3. Commercial/Industrial 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. Commercial/Industrial Wind Energy Facilities should benefit the residents of the local areas where they are sited.
5. Commercial/Industrial Wind Energy Facilities are, by their very nature not aesthetically pleasing, due their height, disruption of views and skylines, especially in rural flat landed communities without many high structures.
6. The Town of Somerset is a rural community devoid of large hills and consists of mostly flat terrain.
7. The Town of Somerset is an agricultural community supporting varied agricultural uses and is in the heart of Western New York's fruit growing region.
8. The Town of Somerset has very few tall structures.
9. The Town of Somerset is bordered on the north by Lake Ontario, and on the east, south and west by Towns which share Somerset's agricultural and rural residential character, and are similarly low, flat areas.
10. The only other municipality in the Town of Somerset is the Village of Barker, which is a small Village bedroom community, and which is also part of the rural, residential community devoid of high structures.
11. Commercial/Industrial Wind Energy Facilities represent potential for extreme adverse aesthetic

impacts due to their height as well as other affects.

12. The Town of Somerset is located on a major migration route for many species of birds, and is habitat for many species, both year round and seasonal.
13. The bat population in the Town of Somerset is important and in distress.
14. Commercial/Industrial Wind Energy Facilities are known to pose danger to birds and bats, and have been demonstrated to kill numerous members of both species annually.
15. Commercial/Industrial Wind Energy Facilities can cause danger to humans and animals, including livestock resulting from ice throw.
16. If not properly regulated, installation of Commercial/Industrial 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.
17. Commercial/Industrial Wind Energy Facilities, when improperly sited, are known to adversely affect property values, and cause economic hardship to property owners.
18. The Town of Somerset contains clusters and stretches of homes, including along Lake Ontario shoreline, in and around the Village of Barker, West Somerset, along Route 18 and Lake Road, as well as disbursed residences which residents have chosen as their homes, often because of a love for rural pastoral lifestyle.
19. Town of Somerset residents and visitors enjoy outdoor activities, including marine (boating, fishing, sailing, swimming, kayaking, etc.) and land (hunting, hiking, cycling, snowmobiling, jogging, etc.) all of which are potentially adversely affected by presence of Commercial/Industrial Wind Energy Facilities.

20. Commercial/Industrial 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.
21. Construction of Wind Facilities can create traffic problems and can cause damage to local roads and infrastructure.
22. Commercial/Industrial Wind Energy Facilities have the potential to cause electromagnetic interference with various types of communications.
23. Commercial/Industrial Wind Energy Facilities have the potential to adversely interfere with orderly development of the Town of Somerset, including single family residences and small subdivisions by making such development unappealing.
24. Commercial/Industrial Wind Energy Facilities need to be regulated for removal when no longer utilized.
25. Commercial/Industrial Wind Energy Facilities provide renewable energy. Their viability is highly dependent on State and Federal subsidies, and renewable energy companies are subject to economic pressure and potential bankruptcies. Funding and mechanism for removal when no longer operating, needs to be in place.
26. The Town of Somerset has regulated wind energy facilities for the past decade through local laws. This Local Law represents an updating of said regulation.
27. 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; the Town of Somerset Local Waterfront Revitalization Program and law have been considered and reviewed for compliance; the Town of Somerset Comprehensive Plan has been

considered and complied with; an Ad Hoc Committee was appointed to review the need for this law and to make recommendations; its conclusions and recommendations have been duly considered and given great weight.

29. When considering large scale construction and maintenance, due weight should be given to the following:
 - a) The relative distress caused to a community and its residents;
 - b) The actual necessity for such facility given energy production in the area and region, including clean energy production;
 - c) Past and present stresses and disruption imposed upon an area due to all types of energy production;
 - d) Alternatives to facilities, including location in other areas, location in areas where demand is needed, alternative methods of producing clean energy;
 - e) Location in areas of highest consumption;
 - f) Burden on a community and its residents versus reward to community and its residents, with emphasis upon quality of life.

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 205-7 shall apply.

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.

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.

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 overall 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.

dBc - C-Weighted Sound Pressure Level. Similar in concept to the A-Weighted sound Level (dBA) but C-weighting does not de-emphasize the frequencies below 1k Hz as A-weighting does. It is used for measurements that must include the contribution of low frequencies in a single number representing the entire frequency spectrum. Sound level meters have a C-weighting network for measuring C-weighted sound levels (dBc) meeting the characteristics and weighting specified in ANSI SI.43-1997 Specifications for Integrating Averaging Sound Level Meters for

Type 1 instruments. In this Law, dBC means L 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 Somerset together with the Town of Somerset Waterfront Consistency Law.

NON-PARTICIPANT - Any and all Somerset landowners having no contractual relationship with a wind developer.

PARTICIPANT - Any and all landowners having a signed lease, easement, or good neighbor agreement with a wind developer.

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

QUALIFIED ACOUSTICAL CONSULTANT - A person with demonstrated competence in the specialty of community noise testing who is a person with full membership in the Institute of Noise Control Engineers (INCE).

RESIDENCE - means any building suitable for habitation in the Town of Somerset 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, §205.43.5.

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 minimum area necessary 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 Niagara 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".

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. The C-weighted decibel scale (dBC) approximates response of the human ear to low-frequency sounds. The G-weighted decibel scale (dBG) is designed for infrasound. Sound Measurements shall use sound meters that meet the American National Standard Institute 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.

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.

WIND ENERGY CONVERSION SYSTEM ("WECS") or WIND ENERGY CONVERSION FACILITY - Any machine or wind facility that converts the kinetic energy in the wind into electricity, including all related infrastructure, electrical lines and substations, access roads and accessory structures, also known as Commercial/Industrial Wind Energy Conversion System. Excluded from the definition are non-commercial wind energy conversion systems regulated by §205.43.3 and having a height of 150 feet or less.

E. Applicability/Severability. No Wind Facility or Wind Energy Conversion System shall be constructed, reconstructed, modified or operated in the Town of Somerset, except in compliance with this Section, and in compliance with all conditions of approval established by the Town Board.

This Local Law shall, for all purposes, supersede the provision of the Town Code Section 205-43.2 (Commercial Wind Conversion Systems), provided that, if any provision, section or requirement of this Local Law shall be finally determined not to apply or to be unenforceable by any court or State or Federal agency having authority to so determine, then any provision of Town Code §205-43.2 having relevance to said provision, section or requirement, shall apply.

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

If any provision, section or requirement of this Local Law shall be finally determined not to apply, or to be unenforceable or void, by any Court, State or Federal agency having authority

to so determine, it shall not affect the validity or enforceability of this Law as a whole or any other part thereof.

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

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 of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
 - b) Name 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 licensed surveyor or 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) Five times the total height of the proposed WECS;
 - (2) One thousand feet;
 - (3) Three thousand feet;
 - (4) One-half mile;
 - (5) One mile;
 - (6) One and one-half times the total height of the proposed WECS;

- (7) Two times the total height of the proposed WECS; and
- (8) Five thousand feet.
- (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 Somerset, 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.
- n) 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 Commercial/Industrial WECS" (H) Section of this Law.
 - (i) 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.

- (ii) 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.
- (iii) 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.
- (iv) 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 property lines and at the property line of the nearest residences not on the site for each residence in a 360° circle 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 both a dBA analysis and dBC analysis. The noise analysis/study shall demonstrate compliance with the noise provisions as set forth in the "Standards from Commercial/Industrial WECS" (H) Section of this Law.

- (v) 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 Somerset evaluating the potential impact of the project on values of properties in the Town of Somerset, and in addition a proposed means to protect property owners from 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 Commercial/Industrial WECS" (H) Section of this Law.
- (vi) 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.
- (vii) 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.

(viii) 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.

(ix) 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. A geotechnical report shall be provided and shall include: soil and geologic characteristics of the Site based on Site sampling and testing, a bedrock profile within one (1) mile of the Site, information on depth of well, average flow rate, and with permission by owner, test of water equality for

all wells within two (2) miles of the Site, grading criteria for ground preparation, cuts and fills, soil compaction, and a slope stability analysis.

- (x) 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.

- (xi) 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.

- (xii) Wildlife Impacts: An analysis of impacts on local wildlife shall be prepared, 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 Commercial/Industrial WECS Section.

- (xiii) Operation and Maintenance Plan: An operation and maintenance plan providing for regular periodic Wind Energy Facility schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
- (xiv) 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 Somerset.
- (xv) 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.

(xvi) A health report utilizing available background health, including mental health, analysis for the Town, and the region including age, proliferation of known health disorders; effects of noise presence of WECS and flicker effect on people, as well as a proposed means of accessing a health background on individuals who wish to participate for determination of health effects if a WECS is constructed. A thorough analysis of the potential health effects including mental health related to Commercial/Industrial Wind Turbines, and a Plan to mitigate each affects and to address them.

(xvii) An agriculture effect report, including impacts on all types of agricultural activities present in the Town of Somerset. 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.

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

(xix) A report and analysis on any effect on any 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 Niagara should the base be closed, including job loss and economic impact.

(xx) A report and analysis on any outdoor activities common in the Town of Somerset, including hunting, hiking, biking, etc.

(xxi) A complete report on:

- a. The need for the project including demand analysis, limitations on transport of power to high demand areas.
- b. Other "clean" energy power projects in the area, including the Niagara Power Project, with analysis of total clean power generated in Niagara County versus other areas in the State.
- c. The effect on the Great Lakes Seaway Trail, a national scenic byway.
- d. Increase expenses imposed upon the Town of Somerset as a result of the proposed project.
- e. All alternative sites identified by the applicant and its affected entities.
- f. Local power needs in the Town of Somerset and total power generated.
- g. Total disruption/burden placed upon the Town of Somerset for all power generation activities, including existing facilities and infrastructure. Compare to other areas of the State; use

population/energy usage per capita
verses total energy burden.

- o) For any requirement of a report, analysis or study, required pursuant to this Section (P) or required by any other provision of this Law, or by the Town Board in its review process, the Town may require an expanded or supplemental report or study by the applicant, or an independent study, analysis or report by a consultant of the Board's choosing. Applicant shall be responsible for the cost of any review/report study or analysis commissioned by the applicant, to be paid for from the escrow fund established pursuant to this Section.
- p) 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.
- q) 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.
- r) 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. This shall be submitted to the Town of Somerset indicating coverage for potential damages or injury to landowners and the public.
- s) 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.

- t) All wind speed data obtained by applicant from any wind measurement tower in the Town, including explanation of methodology utilized to obtain measurements.
- u) The applicant shall fund an escrow 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. 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 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 fund, the balance shall be returned to the applicant together with an accounting of the expenditures incurred by the Town.
- v) 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 Somerset 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 Somerset at the address shown on the assessment roll of the Town of Somerset, 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 Niagara 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 Commercial/Industrial 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 and engineer's 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" 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, and the completion of the SEQRA process, 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 Commercial/Industrial WECS. The following restrictions on location, standards and conditions shall apply to all Commercial/Industrial WECS. Applications must demonstrate compliance with these standards.

1. Restricted areas:
 - a) No Commercial/Industrial Wind Energy Systems shall be allowed in any Residential District (R, R-1, RLS), or in the Business (B) District.
 - b) No Commercial/Industrial Wind Energy Systems shall be allowed within the boundary areas of the Town of Somerset LWRP.
2. Setbacks. No Commercial/Industrial Wind Energy Systems shall be allowed within the following setbacks. If more than one setback applies, the most restrictive setback shall prevail.
 - a) From restricted areas:
 - (i) A minimum of 1500 feet from any Residential District boundary line (R-1, R-2 and RLS).
 - (ii) A minimum of 1500 feet from the boundary area of the Town of Somerset LWRP.

b) From structures:

A minimum 2 times the total WECS height from any building.

c) From property lines:

A minimum 2 times the total WECS height from any property line excluding adjoining lot lines of the project participants. Such setbacks from property lines do not apply if the application is accompanied by a legally enforceable agreement recorded in the Niagara County Clerk's Office for a period of the life of the permit, that the affected adjacent landowner(s) agree to the elimination of the setback.

d) From public road and highways:

A minimum 1500 feet or 2 times the total WECS height from any public road and highway, whichever is greater.

e) From aboveground transmission lines greater than 12 kilovolts:

A minimum 2 times the total WECS height from any above-ground transmission line greater than 12 kilovolts.

f) From the boundary of the Village of Barker:

A minimum of one-half (1/2) mile (2640 feet).

g) From residences:

A minimum of 2000 feet.

h) From another Commercial/Industrial WECS turbine:

A minimum of 2000 feet.

3. All power transmission lines from the tower to any building or other structure shall be located underground.
4. No television, radio or other communication antennas may be affixed or otherwise made part of any Commercial/Industrial WECS, except pursuant to the Town Site Plan Review and Subdivision Law. Applications may be jointly submitted for WECS under this Law and telecommunications facilities under the Site Plan and Subdivision Law.
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. Motion-sensitive on-demand lighting is required. 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 lettering, company insignia, advertising, or 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, particularly bird and bat species, including those that may be listed by the U.S. Fish & Wildlife Service as threatened or endangered. When the Town Board determines that significant negative impacts have not or cannot be sufficiently mitigated by a proposed WECS, no permit may be issued.
12. WECSs shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
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. For all aspects of the application and operations of WECS, 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 any other agricultural effects identified shall be mitigated shall be adhered to, both inside and outside of agricultural districts.

15. The maximum total height of any WECS shall be determined by application of all parts of this Section to the application. The minimum feasible height shall be the maximum height of any WECS, and applicant shall justify any requested maximum height and demonstrate to the Town Board's satisfaction the reason why a lower height is not feasible. Notwithstanding the forgoing, no wind tower total height shall exceed 450 feet.
16. 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.
17. 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.
18. 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.
19. 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.

20. Fencing may be required, as determined by the Town Board.
21. 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.
22. 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.
23. The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet.
24. WECSs shall-be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
25. The owner and/or operator of a WECS that has received approval under this section and for which a permit has been issued shall file with the Town Clerk on an annual basis an Operation and Maintenance Compliance report detailing the operation and maintenance activities over the previous year and certifying full compliance with the Operation and Maintenance Plan. The annual report shall include a noise analysis by a qualified acoustical consultant performed according to the International Standard For Acoustic Noise Measurement Techniques For Wind Generators (IEC 61400-11) or such other procedure as accepted by the Town Board during the permit review process which certifies to the Town that the noise level of the WECS is in full compliance

with the provisions of this Section and the permit as issued.

26. Traffic Routes.

- a) Construction and delivery vehicles for WECSs and/or associated 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 WECS. The applicant shall comply in all requirements of any Town of Somerset Infrastructure, Preservation or Protection Law.
- c) In addition to complying with any Town of Somerset Infrastructure Preservation or Protection Law, Prior to placing the Wind Energy Facility in operation, and for the life of the project, the applicant shall repair or reconstruct all state highways, county highways, town highways and village streets and highways damaged by the applicant to the standards set forth by the Niagara County Highway Department regardless of the condition of such highways, roads and streets prior to the commencement of construction by the applicant.

27. Noise Standards for Wind Energy Systems.

- 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) In all cases, the corresponding C-weighted limit shall be the operable A-weighted limit (from Table I or based on the A-weighted background, as appropriate) plus 18 dB. The application shall include certification by a qualified acoustical consultant as to the predicted A- and C-weighted WECS sound levels at potentially impacted residential sites. The qualified acoustical consultant shall be a member of the Institute of Noise Control Engineering of the USA. The background shall be measured and predicted in accordance with clause C below.

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	35
C-weighted level (dB)	63	50

- 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 possibly can dominate

some of the hourly L90 measurements¹ then Ai weighting (see Schomer *et al.*, 2010²) 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. 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) Parcels 3 acres or smaller:

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.

1

In relatively quiet areas insect noise, especially during summer months, can easily dominate the A-weighted ambient sound level. This domination occurs partly because the primary frequencies or tones of many, if not most, insect noises are in the range of frequencies where the A-weighting is a maximum, whereas, most mechanical and WECS noises primarily occur at the lower frequencies where the A-weighting significantly attenuates the sound. Also, insect noise and bird song do not mask WECS noise at all because of the large differences in frequencies or tones between them.

2

Schomer, Paul D. *et al.*, "Proposed 'Ai'-Weighting; a weighting to remove insect noise from A-weighted field measurements," InterNoise 2010, Lisbon Portugal, 13-16 June 2010.

- e) Parcels larger than 3 acres.

The A- weighted background measurements shall be made along the line from the nearest proposed wind turbine to the property line of the residence, or vacant parcel. The actual position of the microphone shall be within the property in question, shall be at the property line closest to the any wind turbine, and shall be no more than 50 feet from the property boundary. 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. The microphone shall be no closer than 50 feet from the house or any other structures.

- f) Measurement requirements.

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 12.100 (see above), and using a meter that meets at least the Type 2 requirements of ANSI S1.4 and S1.4A-1985 (R2006). The meter noise floor shall be 20 (dBA) or lower. The report shall include each hourly measured A-weighted L90 level, the tabulated daily minima by time period, and the three time period averages. The report also 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 meter used.

- g) 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.

- h) The starting point for predicting WECS A- and C-weighted levels at potentially impacted residential parcels shall be the manufacturer-supplied octave band sound power levels as measured by the manufacturer in accordance with International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11 and 61400-14 with all tolerances added to the Apparent Sound Power Level used in the model). At a minimum, the octave band data shall include the 10 octave bands with nominal center frequencies ranging from 16 Hz to 8000 Hz (see ANSI S1.6-1984), and the sound power levels for these bands shall be tabulated in the report. Any data not available from the manufacturer shall be estimated from field measurements on like wind turbines already in use. Any such field measurements shall be described fully and documented in the report.

- i) 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.

NOTE: Minimum distances or setbacks are a very inexact means to limit WECS noise. It is far more appropriate to deal with each application on its own merits, taking into account the ground surface in the area, the number and placement of the wind turbines, and the sound power produced by the particular model of the WECS.

- j) Any noise level falling between two whole decibels shall be rounded to the nearest whole decibel.
- k) The maximum noise level for any WECS measured from the property boundary lines of any school shall not exceed 40 dBA.
- l) The Town, using the services of the Town Engineer, may conduct or contract for any measurements. In addition to report filed by the 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 II. 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

Notes:

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.

28. Economic Effects. WECS shall be sited and constructed so as to minimize any adverse economic effects on the Town, its residents and its economic activities, including agricultural

activities in accordance with conditions established by the Town Board.

29. Health Effects. WECS shall not adversely affect the health, including mental health of the residents of the Town of Somerset. All available material and studies as well as baseline health reports of willing residents must be contained in a Health Maintenance Plan for any WECS project. Pre-construction, health exams shall be provided to willing residents. Reports of residents' exams shall be sealed or maintained in the possession of residents or their physicians unless they are made available by residents in accordance with HIPAA procedures.
30. No WECS shall be located in the Town of Somerset which, after all data, required reports and studies are considered, it is determined by the Town Board, will cause unacceptable interference with or danger to bird or bat populations, or to migration routes.

When a WECS has been constructed in the Town of Somerset, the applicant/owner/operator shall inventory all bird or bat kill and report the same to the Town on a monthly basis. The applicant/owner/operator shall also provide access to the site and surrounding area to the Town designated representative to inventory killed birds or bats on a daily basis, if requested.

If a tower or towers in a WECS are determined to cause numbers of bird or bat kill which are determined to cause excessive, 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.

31. Real Property Value Protection Plan. The WECS owner(s) ("applicant") shall assure the Town of Somerset that there will be no loss in real property value within two miles of each wind turbine within their WECS. To legally support this claim, the applicant shall consent in

writing to a Real Property Value Protection Agreement ("Agreement") as a condition of approval for the WECS. This Agreement shall provide assurance to non-participating real property owners (i.e. those with no turbines on their property) near the WECS, that they have some protection from WECS-related real property values losses.

The applicant shall agree to guarantee the property values of all real property partially or fully within two miles of the WECS. Any real property owner(s) included in that area who believe that their property may have been devalued due to the WECS, may elect to exercise the following option:

- a) All appraiser costs are paid by the applicant, from the Escrow Account. Applicant and the property owner shall each select a licensed appraiser. Each appraiser shall provide a detailed written explanation of the reduction, if any, in value to the real property ("Diminution Value"), caused by the proximity to the WECS. This shall be determined by calculating the difference between the current Fair Market Value (FMV) of the real property and what the FMV would have been at the time of exercising this option, assuming no WECS was proposed or constructed.
 - (i) If the higher of the Diminution Valuations submitted is equal to or less than 25% more than the other, the two values shall be averaged ("Average Diminution Value": ADV).
 - (ii) If the higher of the Diminution Valuations submitted is more than 25% higher than the other, then the two appraisers will select a third licensed appraiser, who shall present to applicant and property owner a written appraisal report as to the Diminution Value for the real property. The parties agree that the resulting

average of the two highest Diminution Valuations shall constitute the ADV.

(iii) In either case, the property owner may elect to receive payment from applicant of the ADV. Applicant is required to make this payment within 60 days of receiving said written election from property owner, to have such payment made.

b) 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 from the Town of Somerset.

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

(iii) The applicant 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 permit, and is not transferrable to subsequent owners.

(v) The property owner of record as of the date of the issuance of the WECS permit 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 applicant (and all its successors and assigns), for 10 years following the WECS receiving final approval from the Town of Somerset, by providing a bond (or other surety), in an amount determined to be acceptable by the County.
- (ix) Payment by the applicant 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.
- (x) For any litigation regarding this matter, all reasonable legal fees and court costs will be paid by the applicant.
- (xi) Upon application, applicant shall provide a performance bond (or equivalent) in an amount determined by the Town of Somerset and held by the Town of Somerset. This surety account will ensure execution of all aspects of this Agreement (including compensation of eligible property owners in the case of default by applicant). Failure to maintain this surety account shall be cause for revocation or suspension of the WECS Permit.

32. Any other standard or requirement established by the Town Board as set forth as a condition of approval of an application shall apply.

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, NYSERDA or by lack of income generation. The applicant shall make available to the Town all reports from the purchaser of energy from individual WECS. Upon request of the Supervisor, the Supervisor may also require periodic documentation reporting the power output generated by the WECS.
3. Decommissioning and Site Restoration Plan and Requirements. An application for a Wind Energy Facility permit shall include 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 upon the non-functioning of the WECS.

- c) The Plan shall include: a) the estimated decommissioning cost in current dollars; (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 125% of the estimated cost of full decommissioning and restoration in the form of a cash deposit with the Town in the amount of 25% of such fund and the balance of such fund in the form of an irrevocable bond 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 Niagara 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 permittee, by accepting the permit, authorizes the Town Board to 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 permit holder 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 Somerset, Building Permits shall not be issued for new construction on the same parcel as a permitted WECS when the proposed construction is

located within a setback required by this Section. No property or lot upon which a WECS has been permitted shall be further subdivided in a manner that would result in a reduction of the setbacks required by this Section 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 permit 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 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 Somerset 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 for an inspection and/or certification procedure for these unique facilities, and the applicant will be required to deposit the sum of \$100,000.00 in an escrow account with the Town which the Town may use to pay for any expenses it incurs related to this project. The fees 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 agreement to pay the engineering 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. This person will have the authority to make management and technical decisions as situations demand. 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. The applicant shall also provide contact information for all entities providing operation, maintenance and monitoring services.
2. As a condition to the issuance of a WECS Special Use Permit, the services of an engineering firm will be retained by the Town of Somerset during the construction phase of the WECS project.

3. Prior to commencing construction, the applicant shall pay the Town a project inspection fee in the amount of the 3 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. The engineering firm will oversee all aspects of construction and will be included in all design, construction, and planning meetings and shall be provided with all technical information, specifications and drawings. A representative of the 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 engineering firm's duties shall include coordination with the Code Enforcement Officer for enforcement actions and project specification compliance and they will be confirming that all project specifications are implemented. 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, (b) developer compliance issues, and (c) insufficient project documentation.
6. The applicant shall file daily, weekly and monthly construction plans and will follow the planned work schedule as much as possible. When daily, weekly, or monthly schedules are not completed as planned, updated schedules shall be developed and given to the engineering firm representative.
7. The applicant shall provide the 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.

8. All up-grades or changes to the WECS project, as permitted, shall be reviewed and approved by the 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.
9. A final Maintenance Plan shall be provided to and approved by the Code Enforcement Officer, which input from the engineering firm prior to issuance of a Certificate of Occupancy, including but not limited to:
 - a) List of all item requiring regular maintenance.
 - b) Duration of accumulated time between scheduled maintenance.
 - c) Work to be completed during the maintenance operation.
 - d) Person responsible for the maintenance.
 - e) Process applicant uses to ensure maintenance is carried out appropriately.
10. All performance data routinely monitored during turbine operation shall be provided to the Code Enforcement Officer. Data shall include but not limited to:
 - a) Vibration levels.
 - b) Noise levels.
 - c) Rotational Speeds.
 - d) Kilowatt hours of production.
11. All maintenance reports shall be filed with the Code Enforcement Officer monthly, or more frequently as required.

12. 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 week 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. 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 reserves its right to opt out of the tax exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by Subsection (8) of said law or by any other provision of law.

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