

Local Law No. ___ of 2021

Wind Energy Facilities

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

SECTION 1: Local Law No. ___ of 2021, entitled “WIND ENERGY FACILITIES,” is hereby adopted to read in its entirety as follows:

Article I

§1 Title

This Local Law may be cited as the “Wind Energy Facility Law of the Town of Howard, New York.”

§2 Purpose

The Town Board of the Town of Howard adopts this Local Law to promote the effective and efficient use of the Town’s wind energy resource through Wind Turbine Generators (WTGs), and to regulate the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

§3 Authority

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

1. Article IX of the New York State Constitution, §2(c)(6) and (10).
2. New York Statute of Local Governments, § 10 (1) and (7).
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(6), (11), (12), and (14).
4. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).
5. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(General powers).

§4 Findings

A. The Town Board of the Town of Howard finds and declares that:

1. Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.

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

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

4. Wind turbines represent significant potential aesthetic impacts because of their large size, lighting, and shadow effects, if not properly sited.

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

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

7. Wind turbines may be significant sources of noise, which, if unregulated, can negatively impact adjoining properties.

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

9. If improperly sited, wind turbines can interfere with certain types of communications.

10. Wind turbines may cause a nuisance to people by shadow flicker effects if not properly sited.

11. The Town is familiar with visual impacts from turbines that are 500 feet or less in height, but is not familiar with turbines approaching heights now being discussed in the wind turbine industry (650 feet +/-), and therefore has established different setbacks for those.

12. The Town of Howard's Comprehensive Plan establishes the following goals and findings that the regulations established herein seek to further and promote:

- a. That the Town should protect and enhance its rural character;
- b. That the Town should encourage and protect the agricultural community as an essential enterprise in the Town;
- c. That the Town should protect the scenic values and natural beauty of the Town;
- d. That orderly, planned development should be encouraged to encourage efficient and effective use of tax dollars;
- e. That it should seek to preserve open spaces, special terrain features, and unique farm land;
- f. That the Town should ensure that land, water, and air are not despoiled;
- g. That small businesses should be encouraged in the Town;
- h. That of the 135 people who returned community surveys, 94 expressed an opinion on wind energy development. Of those 94, 72 were positive and 22 negative; and
- i. That of the 15 different items identified as issues "facing the Town in the future," the three highest issues identified were: Property Taxes/Budget/Cost of Maintaining Road/No Tax Base (31 people); lack of job opportunities (6 people); and people wanting city services/public water (5 people).

§5 Permits Required; Transfer; Modifications

A. Permit Requirements.

1. No Wind Energy Facility shall be constructed or operated in the Town of Howard except in compliance with this Local Law.
2. No WTG shall be constructed or operated in the Town of Howard except with a Wind Energy Facility Permit approved pursuant to this Local Law or as otherwise provided for by State Law.
3. No Wind Measurement Tower shall be constructed in the Town of Howard except pursuant to a Wind Energy Facility Permit issued pursuant to this Local Law.
4. No Small WTG shall be constructed or operated in the Town of Howard except pursuant to a Wind Energy Permit issued pursuant to this Local Law.

B. Applicability. This Local Law shall apply to all areas of the Town of Howard.

C. Agricultural Use Exemption. No permit or other approval shall be required under this Chapter for WTG utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one time its Total Height from a property line and two times its Total Height from any *permanent* structure on property not owned by the applicant, 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 special use permit in accordance with Article II of this Local Law, but shall not require a height variance. Prior to the construction of a WTG 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.

D. Transfer. Transfer of any Wind Energy Facility or Wind Energy Permit to an entity other than the applicant to whom the permit was issued shall require approval of the Town, which approval shall be granted upon written acceptance of a duly qualified transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability neither of an applicant nor of any other party under this Local Law.

E. Facility Modifications. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Planning Board approval, and in accordance with the wind law in place at the time of that the turbine was sited when (i) there will no increase in Total Height; (ii) no change in the location of the WTG; (iii) no additional lighting or change in facility color; and (iv) no increase in noise produced by the WTG.

§6 Definitions

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

AGRICULTURAL OR FARM OPERATIONS means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse boarding operation” as defined in subdivision thirteen of this section and “timber processing” as defined in subdivision fourteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

EAF means the 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.

April 2021 Howard Wind Law Draft from Planning Board Final from 21.03.24

NON-PARTICIPATING (landowner, residence, property, etc.) means a subject that is not “participating”, as defined below.

PARTICIPATING (landowner, residence, property, etc.) means a subject that is bound by, or whose property, residence, etc. is bound by, a relevant agreement between the subject (or subject owner or predecessor in title) and the Applicant.

RESIDENCE means any dwelling suitable for habitation (this may be seasonal habitation as is the case with hunting cabins, etc.) existing in the Town of Howard on the date an application is received. A residence may be part of a multi-dwelling or multipurpose building.

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.

SOUND PRESSURE LEVEL, L_{eq} - The L_{eq} statistical metric is the “Equivalent Continuous Sound Level”. In an environment where sound levels fluctuate, the L_{eq} is the energy-average of the fluctuating sound over a given time interval. The L_{eq} can be used to describe the background sound level. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.

SOUND PRESSURE LEVEL, L_x - L_x means the level which is equaled or exceeded a stated percentage of time. For example, an L_{10} 50 dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The L_{90} is often referred to as the “residual sound” level, or the sound level which exists in the absence of brief, relatively loud noise events. The L_{90} can be used to describe the background sound level.

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

SMALL WIND TURBINE GENERATOR (“Small WTG”) means a wind turbine generator consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce consumption of utility power at that location.

TOTAL HEIGHT means the height of the tower and the furthest vertical extension of the WTG.

WIND TURBINE GENERATOR (“WTG”) means a machine that converts the kinetic energy of the wind into electricity available for use beyond that used by the machine (commonly known as a “wind turbine” or “windmill”).

WIND ENERGY FACILITY means any WTG, Small WTG, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

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

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

§7 Applicability

- A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed after the effective date of this Local Law.
- B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law. Such Wind Energy Facilities shall continue to be governed by the standards applicable prior to the enactment of this law, namely Local Law Number 3 of 2007; provided, however, that no modification or alteration to an existing Wind Energy Facility that results in an increase in WTG height shall be allowed without full compliance with this Local Law.

§8 Reserved for Future Use

§9 Reserved for Future Use

Article II Wind Turbine Generators (WTG)

§10 Applications for Wind Energy Permits for Wind Turbine Generators

- A. Application Contents. An application for a Wind Energy Permit for individual WTG shall be made to the Planning Board and shall include the following:
 - 1. Applicant Information. 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.
 - 2. Property Owner Information and Authorization. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
 - 3. Adjacent Owners. A list of property owners, with their mailing address, within 500 feet of the boundaries of the proposed Site. The applicant may delay submitting this list until the Planning Board calls for a public hearing on the application.
 - 4. Parcel Information. Address, or other property identification, of each proposed tower location, including tax map section, block and lot number.

5. Project Description. A description of the project, including the number and maximum rated capacity of each WTG.

6. Plot Plans. A set of plot plans containing sufficient detail to clearly describe the following:

- (a) Property lines and physical dimensions of the Site;
- (b) Locations of all proposed facilities, including WTG, access roads, electrical lines, substations, storage or maintenance units, and fencing.
- (c) Locations of Residences and other major existing structures on the Site and within two thousand (2,000) feet of the Site boundaries.
- (d) Locations of parcels adjoining the Site.
- (e) Locations of public roads on the Site.
- (f) Locations of all utility lines on the Site.
- (g) To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed WTG location equal to the physical setbacks listed in Section 15 of this law.

7. Wind Turbine Information. One drawing or other set of information may be submitted for each WTG of the same type and Total Height. For each type of WTG proposed, the application shall include:

- (a) A vertical drawing of the WTG showing Total Height, turbine dimensions, tower and turbine colors, distance between ground and lowest point of any blade, location of climbing pegs, and access doors.
- (b) Make, model, picture and manufacturer's specifications, including information on noise levels during WTG operation.
- (c) 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.

8. Landscaping Plan. A plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added.

9. Lighting Plan. A plan showing any FAA-required lighting and other proposed lighting.

10. Decommissioning Plan. The applicant shall submit a decommissioning plan, which shall include: (i) the anticipated life of the WTG; (ii) the estimated decommissioning costs in current dollars; (iii) how said estimate was determined; (iv) the method of ensuring that funds will be available for decommissioning and restoration; (v) the method that the decommissioning cost will be kept current; and (vi) the manner in which the WTG will be decommissioned and the Site restored.

11. Complaint Resolution Plan. The application will include a complaint resolution process and procedure that is agreed to by the Town in order to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint.

The applicant shall make every reasonable effort to resolve any complaint. Protocols for the following shall also be present in the complaint resolution plan, which protocols shall be acceptable to the Town:

- (a) Registering a complaint;
- (b) Notifying the public of the complaint procedures;
- (c) Responding to and resolving complaints in a timely, consistent, and respectful manner;
- (d) Logging and tracking of all complaints received and resolutions achieved; those logs shall then be transmitted to the Town in a monthly report;
- (e) Reporting to the Town any complaints not resolved within 30 days of receipt;
- (f) Arbitrating complaints not resolved within 60 days; and
- (g) Providing annual reports of complaint resolution to the Town.

Further, if the complaint resolution process determines that the applicant's project has resulted in impacts to existing off-air television or radio coverage, the applicant shall address each problem by investigating methods of improving reception at the location. Should this prove ineffective, cable television or satellite television or radio shall be offered to the complainant to resolve the issue.

12. Construction Information. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:

- (a) A construction schedule describing commencement and completion dates; and
- (b) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.

13. EAF. Completed Part 1 of the Full EAF as required by SEQRA.

14. Signed Statement. A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

B. Positive Declaration. If the applicant agrees in writing in the application that the proposed WTG may have a significant adverse impact on the environment, the Planning Board may issue a positive declaration of environmental significance.

C. Environmental Studies. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted to the Planning Board for its use in reviewing the application:

1. Visual Impact Assessment. A visual impact assessment (VIA) of the proposed WTG as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. The VIA shall include: (i) color photographs of the proposed Site from at least two locations accurately depicting the existing and proposed conditions, and (ii) a map showing locations where proposed WTG could be visible. Visual impact assessments should also exhibit the manner in which the Town's visually sensitive resources of local significance are impacted.

2. Noise Study. A noise analysis documenting the noise levels associated with the proposed WTG.
3. Shadow Study. A study on potential shadows from the WTG. The study shall identify locations where shadows could be caused by the WTG and the expected durations of the shadows at these locations.
4. Communications Impacts. An assessment of potential interference of the proposed WTG with microwave, radio, television, personal communication systems and other wireless communication.
5. Fire Protection Plan. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Site.

§11 Application Review Process

- A. Pre-Application Meeting. Applicants may request a pre-application meeting with the Planning Board or with any consultants retained by the Planning Board for application review. Meetings with the Planning Board shall be conducted in accordance with the Open Meetings Law.
- B. Escrow Agreement. The Town may require the applicant to fund an escrow agreement to cover the amount by which the Town's cost to review the applicant's applications exceed the application fees paid by the applicant.
- C. Application Submittal. Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission.
- D. Application Completeness Review. Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application.
 1. Unless the Planning Board waives any application requirement, no application shall be considered until deemed complete.
 2. If the application is deemed incomplete, the Planning Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WTG proposed is increased.
- E. Board Receipt of Applications. Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Town Clerk shall transmit the application to the Planning Board.
- F. Public Hearing. The Planning Board shall hold at least one public hearing on the application.
 1. Notice of the public hearing shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed WTG by the applicant, and a notice of public hearing shall be posted and published in the Town's official newspaper no less than ten nor more than twenty days before any hearing. Where any hearing is adjourned by the Planning Board to hear additional comments there shall be further posting of notice and news release of such adjournment. The applicant shall prepare and submit to the Board such notices and mail the Notice of Public Hearing as approved by the Board, and shall submit a combined affidavit of service listing each mailing. An affidavit of publication is to be provided by the official newspaper for the Town. The assessment roll of the Town shall be used to determine mailing addresses.

2. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers.
- G. County Planning Board Notice. Notice of the project shall also be given, when applicable, to the Steuben County Planning Board, if required by General Municipal Law §§239-l and 239-m.
- H. SEQRA Review. WTG applications shall be deemed Type I projects under SEQRA. The Town may conduct the SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Town's proceedings.
- I. SEQRA Findings. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement is prepared, there shall be issued a Statement of Findings, which Statement may also serve as the Town's decision on the applications if adopted as so by the Town.
- J. Application Decision. Upon receipt of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

§12 Standards for Wind Energy Facilities

The following standards shall apply to all Wind Energy Facilities, unless specifically waived by the Planning Board as part of a Wind Energy Permit.

- A. Transmission Lines. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
- B. WTG Height. The maximum Total Height of any WTG shall be 650 feet.
- C. Antennae Co-Location. No television, radio or other communication antennas may be affixed or otherwise made part of any WTG, except pursuant to the Town Code. Applications may be jointly submitted for WTG and telecommunications facilities.
- D. Advertising. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- E. WTG Lighting. WTG Lighting shall comply with the following standards:
 1. No WTG shall be lit except to comply with FAA requirements.
 2. Subject to subsection three below, an aircraft detection/lighting system (e.g., radar activated lighting) must be used, provided that it is allowed by the FAA.
 3. In the event that either (a) aircraft detection lighting is not allowed by the FAA or (b) in the event that the Planning Board votes in favor of dimmable lighting rather than radar activated lighting because of evidence that dimmable lighting would be a better minimizer of the visual lighting impacts of the turbine lights, then dimmable lighting acceptable to the Planning Board must be used for the turbine lights.
 4. Any assertion by the Applicant that aircraft detection lighting and/or dimmable lightning is not allowed by the FAA must be substantiated by evidence showing all of the communication and documentation (trade secrets excepted) showing the FAA's determination and the rationale for its determination.

F. Visual Impact Mitigation. Applicants shall use measures to reduce the visual impact of WTG to the extent possible.

1. WTG shall use tubular towers.
2. WTG shall be finished in a single, non-reflective matte finished color.
3. WTG within a multiple WTG project shall be constructed using WTG whose appearance, with respect to one another, is similar within and throughout the project, to provide reasonable uniformity in overall size, geometry, and rotational speeds.
4. No WTG shall be installed in any location that would substantially detract from, substantially impinge upon, or substantially block the view of a portion of a scenic viewshed, as viewed from a public right of way or publicly owned land within the Town.
5. In siting WTGs, the applicant shall utilize state-recognized avoidance and mitigation techniques to reasonably mitigate the visual impact, including but not limited to: screening, relocation (e.g., to alternate sites); and downsizing.
6. In the event that visual impacts that are not able to be mitigated, the applicant shall implement offsets to existing aesthetic problems within the Town in order to partially offset the visual impact caused by the WTGs.

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

H. Microwave Links. No WTG shall be installed in any location along the major axis of an existing microwave or other communications link where its operation is likely to interfere in the link's operation. If it is determined that a WTG is interfering with a microwave or other communications path, the WTG operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy interference with existing microwave or other communications links is grounds for revocation of the Wind Energy Permit for the specific WTG causing the interference.

I. Waste Removal. Solid waste, hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.

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

K. Wildlife. WTG shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species. Further, to the extent that mitigation efforts are undertaken in order to provide net benefits for species (e.g., bats, eagles, etc.) or resources that are potentially harmed by the project, then (to the extent reasonably practicable) those net benefits shall be performed in the Town or otherwise as close to the Town as possible. Cost and overall benefit relative to the negative impact(s) are nonexclusive factors that may be taken into account when determining whether it is unreasonably impracticable to undertake mitigation or net conservation benefit efforts in the Town or in close proximity thereto.

L. Wetlands. Wind Energy Facilities shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.

- M. Stormwater. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
- N. Construction Times. Construction of the Wind Energy Facilities shall be limited to the hours of 7 a.m. to sunset, not to exceed 9 p.m. except for certain activities that require cooler temperatures than possible during the day, for which activities special hours may be granted upon the approval from the Planning Board and/or Code Enforcement Officer.
- O. Shadow Flicker.
 - 1. General Standards. Non-participating residences shall not be subject to more than 30 hours of shadow flicker annually.
 - 2. Mitigation. Where flicker exceeds or is reasonably expected to exceed the above-standards, the applicant shall either curtail turbines such that the standards will not be exceeded or, if agreed to by the landowner, mitigate with either window treatments or vegetative buffers or other measures.

§13 Required Safety Measures

- A. Controls. Each WTG shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- B. Minimum Blade Height. The minimum distance between the ground and any part of the rotor or blade system shall be twenty (20) feet.
- C. Signs. 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. The Planning Board may require additional signs based on safety needs.
- D. Climbing Pegs. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
- E. Access Control. WTG shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

§14 Roads and Traffic

- A. Traffic Routes. Construction and delivery vehicles for WTG and Wind Energy Facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (i) minimizing traffic impacts from construction and delivery vehicles; (ii) minimizing WTG related traffic during times of school bus activity; (iii) minimizing wear and tear on local roads; and (iv) minimizing impacts on local business operations. Wind Energy Permit conditions may limit WTG-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.
- B. Road Remediation. The applicant shall enter into a road use agreement with the Town prior to construction and decommissioning, which agreement shall require (1) that the applicant ensures roads are sufficient to withstand project construction traffic prior to construction; (2) the applicant to repair or reconstruct all roads such that they are in at least as good of a condition at the end of the project as they were at the beginning of the project; (3) that the public's safe travels are not

jeopardized due to the project; and (4) that appropriate financial security insuring that the applicant's promises will be performed be posted prior to commencement of construction.

§15 Sound Levels and WTG Setbacks

- A. Sound Levels. Sound levels from all sound sources from the Wind Generating Facility, related facilities, and ancillary equipment shall comply with the following maximum noise limit standards:
1. 45 dBA Leq (8-hour) equivalent continuous average sound level from the Facility outside any existing non-participating residence.
 2. 55 dBA Leq (8-hour) equivalent continuous average sound level from the Facility outside any existing participating residence and uninhabited structures.
- B. Setbacks. Each WTG shall be located with the following minimum setbacks, as measured from the center of the WTG:
1. 1.2 times the WTG Total Height from the exterior of a participating residence.
 2. 4 times the WTG Total Height from the exterior of a non-participating residence for WTGs the total height of which are 500 feet or less.
 3. 6 times the WTG Total Height from the exterior of a non-participating residence for WTGs the total height of which are greater than 500 feet.
 4. 1.5 times the WTG Total Height from the nearest non-participating property line.
 5. 1.1 times the WTG Total Height from the right of way of all public roads.
 6. 1.1 times the WTG Total Height from above-ground utilities, unless waived by the utility companies.
 7. 2 times the WTG Total Height from non-participating permanent structures (structures that are not residences that humans use from time to time; e.g., barns, garages, commercial buildings, etc.).
 8. 100 feet from state-identified wetlands as measured from any part of the base or foundation.

§16 Noise and Setback Easements

- A. In the event a Wind Energy Facility does not meet a setback requirement or exceeds noise or other criteria established in this Local Law as it existed at the time the Wind Energy Permit is granted, a waiver may be granted from such requirement by the Planning Board in the following circumstances:
1. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (i) allow noise levels to exceed the maximum limits otherwise allowed or (ii) setbacks less than required; and
 2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Planning Board, which consent shall be granted upon either the completion of

the decommissioning of the benefited WTG in accordance with this Article, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WTG.

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

§17 Issuance of Wind Energy Permits

- A. Upon completion of the review process, the Planning Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- B. If approved, the Planning Board will direct the Town Clerk to issue a Wind Energy Permit upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this Local Law.
- C. The decision of the Planning Board shall be filed within five (5) days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

§18 Limitations on Approvals; Easements on Town Property

- A. Wind Flow. Nothing in this Local Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Local Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.
- B. Easements on Town Property. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

§19 Permit Revocation; Abatement

- A. Operation. A WTG 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.
- B. Violations of Permit Conditions. Should a WTG violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Planning Board. The applicant shall have 90 days after written notice from the Planning Board to cure any deficiency, and the Planning Board may grant extensions of the 90 day cure period.
- C. Public Hearing and Remedial Action. Notwithstanding any other abatement provision under this Local Law, if the WTG is not brought into permit compliance after said notice from the Planning Board, the Town Board may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (i) order either remedial action within a particular timeframe, or (ii) order revocation of the Wind Energy

Permit for the WTG and require the removal of the WTG within 90 days. If the WTG is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Fund to remove the WTG.

§20 Decommissioning

1. Inoperative WTG. If any WTG remains non-functional or inoperative for a continuous period of one (1) year, the applicant agrees that, without any further action by the Town or any other agency, etc., the applicant shall remove said WTG.

(a) This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WTG to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.

(b) WTG non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. Upon request of the Town, the applicant shall make available (subject to a non-disclosure agreement) to the Town all reports to and from the purchaser of energy from individual WTG necessary to prove the WTG is functioning, which reports may be redacted as necessary to protect proprietary information.

2. WTG Removal and Remediation. WTG removal shall include removal of all aboveground equipment; removal of foundations to a minimum depth of three (3.0) feet below grade in all lands, and four (4.0) feet in agricultural lands; restoration of soil conditions; and restoration of vegetation to be consistent and compatible with surrounding vegetation.

3. Decommissioning Security. The applicant, or successors, shall continuously maintain security for the benefit of the Town only, held by the Town, in a form approved by the Town for the removal of inoperative WTGs, in an amount to be determined by the Town, and for the period of the life of the facility. This security may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning fund requirements shall be fully funded before a building permit is issued. The following criteria shall also be met for the decommissioning security:

(a) The security amount shall be subject to review by a qualified Professional Engineer every five years in order to adjust the amount to meet changing conditions;

(b) Decommissioning Security shall be in place prior to commencement of construction;

(c) The security shall be irrevocable; and

(d) Estimated salvage value of recyclable materials shall not be taken into account in the determination of the decommissioning security.

§21 Environmental Monitoring.

The applicant shall establish funding for an independent, third-party environmental monitor and an independent agricultural monitor (although one monitor may suffice if the environmental monitor is qualified to also be an agricultural monitor) to oversee compliance with environmental permit requirements. The Certificate Holder will solicit input from the designated representative of the Town with respect to the selection of the Environmental Monitor. When soliciting input from the Town, the

Certificate Holder shall identify one or more candidates and provide qualifications and contact information for the Environmental Monitor. The monitors shall inspect construction sites and issue regular reports to the Town. The environmental monitor shall have stop-work authority over all aspects of the project. The environmental monitor shall communicate freely with any designated representatives from the Town when contacted by such representative(s).

Article III Wind Measurement Towers

§22 Wind Site Assessment

The Town Board acknowledges that prior to construction of a WTG, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of Wind Measurement Towers, also known as meteorological (“Met”) towers, shall be permitted on the issuance of a Wind Energy Permit in accordance with this Article.

§23 Applications for Wind Measurement Towers

A. Applications. An application for a Wind Measurement Tower shall include

1. Applicant Information. 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.

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

3. Site Information. Address of each proposed tower location, including tax map section, block and lot number.

4. Map. A map showing proposed location of the Wind Measurement Tower and any roads, parcel boundaries or structures within one times the height of the wind measurement tower.

§24 Standards for Wind Measurement Towers

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

B. Permit Duration. Wind Energy Permits for Wind Measurement Towers may be issued for a period of up to two years. Permits shall be renewable upon application to the Planning Board.

§25 Preemption. To the extent that any of these provisions have been preempted by state or federal law (or rule, regulation, etc.), the intent herein is for so much of this law as is compatible with the preempting authority to remain valid and for this law to further serve as a substantive guide for siting of wind projects by any preempting entity in the Town of Howard.

Article III Small WTG

§26 Purpose and Intent

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

§27 Applications

A. Applications for Small WTG Wind Energy permits shall include:

1. Applicant Information. 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.
2. Property Owner Information and Authorization. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Site Information. Address of each proposed tower location, including tax map section, block and lot number.
4. Height Information. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
5. Electrical Drawing. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.
6. Electric Use. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
7. Utility Notice. 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.
8. Visual Analysis. A visual analysis of the Small WTG 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.

§28 Development Standards

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

- A. Lot Size. 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. Number. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Article.
- C. Use. Small Wind energy systems shall be used primarily to reduce the on-site consumption of electricity.
- D. Height. Tower heights may be allowed as follows:
 - (a) 65 feet or less on parcels between one and five acres.
 - (b) 80 feet or less on parcels of five or more acres.
 - (c) 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. Output. The maximum turbine power output is limited to 10 KW.
- F. Color. 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. Visual Impact. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
- H. Lighting. 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. Electric Lines. 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. Electromagnetic Interference. 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. Signs. 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. Access Control. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
 - (a) Tower-climbing apparatus located no closer than 12 feet from the ground.
 - (b) A locked anti-climb device installed on the tower.
 - (c) A locked, protective fence at least six feet in height that encloses the tower.
- M. Anchors. 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. Access Roads. 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. Code Compliance. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.
- P. Controls. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacture.

§29 Standards

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

- A. Setbacks. A Small WTG shall not be located closer to a property line than 1.1 times the Total Height of the Small WTG and 1.5 times to the nearest off site permanent structure.
- B. Noise. Except during short-term events including utility outages and severe wind storms, a Small WTG shall be designed, installed, and operated so that noise generated by the system shall not exceed 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

§30 Abatement

- A. Operation. All Small WTG shall be maintained in good condition and in accordance with all requirements of this section.
- B. Removal. Small WTG which is not used for a continuous period of one (1) year 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.

**Article IV
Waivers**

§31 Waivers

- A. The Planning Board may, after a public hearing (which may be combined with other public hearings on Wind Energy Facilities, so long as the waiver request is detailed in the public notice), grant a waiver from the strict application of the provisions of this Local Law if, in the opinion of the Planning Board, the grant of said waiver is in the best interests of the Town. The Planning Board may consider as reasonable factors in evaluating the request, which may include, when applicable, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives, and the scope of the request.
- B. The Planning Board may attach such conditions as it deems appropriate to waiver approvals as it deems necessary to minimize the impact of the waiver.

**Article V
Miscellaneous**

§32 Fees

- A. Wind Energy Permits. Non-refundable application fees shall be as follows:
 - 1. WTG Wind Energy Permit: \$100 per megawatt of rated maximum capacity
 - 2. Wind Measurement Towers Wind Energy Permit: \$400 per tower
 - 3. Small WTG Wind Energy Permit: \$150 per WTG
 - 4. Wind Measurement Tower Wind Energy Permit renewals: \$100 per tower.
- B. Building Permits. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be \$50 per permit request for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties.
- C. Host Community Agreements. 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.

§33 Enforcement; Penalties and Remedies for Violations

- A. Staff. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.
- B. Penalties. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall knowingly assist in so doing, shall be guilty of an offense and subject to a fine of not more than **\$500** per week per violation up to four weeks, and then if continuing, up to **\$1000** per week per violation. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. In addition to fines, the Town may institute a civil proceeding to collect civil penalties in the amount of **\$500** for each violation and each week said violation continues shall be deemed a separate violation.
- C. Other Remedies. In case of any violation or threatened violation of any of the provisions of this Local Law, including the terms and conditions imposed by any permit issued pursuant to this Local Law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

SECTION 2: Severability

Should any provision of this Local Law be deemed unconstitutional invalid, or superseded, 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. It is recognized, for example, that State Law has superseded local permitting/procedural authority (e.g., Public Service Law Article 10 or Executive Law 94-C) of certain energy projects. The Town's intent herein is to control procedurally where allowed by law, and to otherwise set substantive standards for how such projects must be sited.

SECTION 3: Effective Date

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