

# Local Law Filing

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

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

County     City     Town     Village  
(Select one:)

of Eaton

Local Law No. 4 of the year 2023

(“A Local Law Amending Chapter 120 of the Town of Eaton Code to Regulate Commercial Wind Energy Facilities within the Town of Eaton”)

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

County     City     Town     Village  
(Select one:)

of Eaton as follows:

## TOWN OF EATON LOCAL LAW NO. 4 OF 2023

(“A Local Law Amending Chapter 120 of the Town of Eaton Code to Regulate Commercial Wind Energy Facilities within the Town of Eaton”)

The following resolution was offered by Councilperson Verne, who moved its adoption, seconded by Councilperson Golley, to wit:

**WHEREAS**, pursuant to the provisions of the Municipal Home Rule Law, a proposed local law titled Local Law No. 4 of 2023 amending Chapter 120 of the Town of Eaton Code to regulate commercial wind energy facilities within the Town of Eaton, which will result in the repeal of existing regulations set forth in Article VC of Chapter 120 of the Town Code and the adoption of new regulations which are intended to preserve the health, safety and welfare of the Town while also facilitating the production of renewable energy, was presented and introduced at a regular meeting of the Town Board of the Town of Eaton held on November 14, 2023; and

**WHEREAS**, a public hearing was held on such proposed Local Law on the 12th day of

(If additional space is needed, attach pages the same size as this sheet, and number each.)

December, 2023 by the Town Board of the Town of Eaton and proof of publication of notice of such public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed Local Law having been heard, and said proposed Local Law having been in the possession of the members of the Town Board of the Town of Eaton in its final form in the manner required by Section 20 of the Municipal Home Rule of the State of New York; and

**WHEREAS**, at its November 14, 2023, meeting this Board determined that the enactment of Proposed Local Law No. 4 of 2023 is a Type I action that there are no other involved agencies, that this Board will act as lead agency for this application and further, rendered a negative declaration for purposes of SEQRA; and

**WHEREAS**, a General Municipal Law 239 Referral Notice was duly sent to the Madison County Planning Department (MCPB) and, by referral # 164-23, dated December 11<sup>th</sup>, 2023, the Madison County Planning Department concluded that the referral will have no significant adverse inter-community or county-wide implications, and indicated a determination on the proposed Local Law could be made by the Town of Eaton Town Board on a local basis; and

**WHEREAS**, it is in the public interest to enact said Proposed Local Law No. 4 of 2023.

**NOW, THEREFORE**, it is

**RESOLVED AND DETERMINED**, that proposed Local Law No. 4 of 2023 is hereby enacted as Local Law No. 4 of 2023, as follows:

**“TOWN OF EATON  
LOCAL LAW NO. 4 of 2023**

**A LOCAL LAW AMENDING CHAPTER 120 OF THE TOWN OF EATON CODE TO  
REGULATE COMMERCIAL WIND ENERGY FACILITIES  
WITHIN THE TOWN OF EATON**

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

**SECTION 1. PURPOSE AND INTENT.**

The purpose of this Local Law is to amend the Town of Eaton Land Use Regulations to permit and regulate the construct of wind energy facilities in the Town of Eaton in a manner that preserves the health, safety and welfare of the Town while also facilitating the production of renewable energy.

## **SECTION 2. AUTHORITY.**

The Town Board of the Town of Eaton hereby enacts this Local Law under the authority granted by: Article IX of the New York State Constitution, Section (2)(c) (6) and (10); New York Statute of Local Governments, Section 10(1) and (7); New York Municipal Home Rule Law, Section 10(1)(i) and (ii) and Section 10(1)(a)(6), (11), (12), and (14); New York Town Law Section 130, Subsections(1) (Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7) (Use of Streets and Highway), (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); New York Town Law Sections 64(7-a) (Protection of Aesthetic Interests) and 23 (General Powers); the State Environmental Quality Review Act (“SEQRA”); New York Agricultural and Markets Law; New York Real Property Tax Law; and New York Executive Law.

## **SECTION 3. REPEAL OF ARTICLE VC OF CHAPTER 120 OF THE TOWN OF EATON CODE**

Article VC of Chapter 120 of the Town of Eaton Land Use Law, titled “Commercial Wind Energy Facilities Regulations of the Town of Eaton,” is hereby repealed in its entirety and replaced with the following:

“Article VC Commercial Wind Energy Facilities

Section 120-23.12 Title.

The provisions of this Article shall be referred to as the “Commercial Wind Energy Facilities Regulations of the Town of Eaton.”

Section 120-23.12 Purpose and Intent.

The Town of Eaton recognizes that wind energy is a clean, perpetually available renewable energy source. Development of wind energy facilities offers an energy source that may reduce fossil fuel emissions. The Town of Eaton has determined that comprehensive regulations regarding the development of wind energy facilities are necessary to protect the interests of the Town, its residents, and businesses. This Article is intended to promote the effective and efficient use of wind energy facilities; establish provisions for the placement, design, construction, operation and removal of such facilities in order to uphold the public health, safety, and welfare, allow for the co-location of wind energy facilities within active farming and agricultural lands in a manner that preserves the rural character of the Town of Eaton; to ensure that such facilities will not have a significant adverse impact on the aesthetic qualities and maintain the rural character of the Town. The Town, when appropriate, shall promote the location of smaller wind energy facilities in multiple locations to further mitigate impacts from such larger projects. Further, the Town of Eaton wishes to enhance agricultural viability within the Town and preserve productive agricultural land resources, mitigate the impacts of wind energy facilities on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources. The Town of Eaton through this Article recognizes that such uses in the Town may, in some instances, represent large disturbances of lands, the hosting of complex equipment and the need to assure that such projects and property are removed or disposed of at the time of the discontinuance, while minimizing

impacts to local roads and nearby property values and avoiding financial burdens on taxpayers.

Section 120-23.12 Findings.

- A. The Town hereby finds 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 result from the use of conventional energy sources.
- B. The generation of electricity from properly sited wind turbines supported by governmental subsidies, 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.
- C. 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.
- D. Wind Energy Facilities may present significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects, if not properly sited.
- E. If not properly regulated, installation of Wind Energy Facilities may create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction methods.
- F. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.
- G. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.
- H. Wind Energy Facilities can be a significant source of noise, which, if not regulated, may negatively impact adjoining properties.
- I. Without proper planning, construction of Wind Energy Facilities may create traffic problems and damage local roads.
- J. If improperly sited, Wind Energy Facilities may interfere with various types of communications.
- K. The Town of Eaton is a rural community featuring significant quantities of open land with varying elevation and topography.
- L. The Town of Eaton is an agricultural community supporting varied agricultural, forestry and recreational uses. Town of Eaton residents and visitors enjoy outdoor activities, including hunting, fishing, trapping, hiking, cycling, horseback riding, snowmobiling, skiing, jogging, and other motorized and non-motorized recreational pursuits.
- M. The Town of Eaton has very few tall structures.

- N. The Town of Eaton is bound in all directions by towns which share similar agricultural, forested, and rural residential character, with similar topography.
- O. As a matter of public policy, Wind Energy Facilities must be removed and the sites remediated when the facilities are no longer used.

Section 120-23.13 Applicability.

This Article shall apply to all Wind Energy Facilities in the Town of Eaton which are installed or modified after the effective date of this Article, including any Wind Energy Conversion System or Small Wind Energy Conversion System, applied for but not yet approved prior to the date of this Section. All Wind Energy Facilities which are installed or modified after the effective date of this Section shall be in compliance with all of the provisions hereof. Any proposed Wind Energy Facility subject to review by the New York State Board on Electric Generation Siting and the Environment pursuant to Article 10 of the New York State Public Service Law, or the Office of Renewable Energy Siting pursuant to Article 94-c of the New York State Executive Law or any subsequent law, shall be subject to all substantive provisions of this Article 11 and any other applicable provisions of the Town of Eaton Land Use Regulations and applicable local laws.

Section 120-23.14 Definitions.

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

**APPLICANT** – The person or entity filing an application and seeking a special use permit or site plan approval or other approval required by the Town under this Article.

**A-WEIGHTED (dBA)** – The unit of measure for the human response to noise using an electronic filter as specified by ANSI approximating the frequency response of the human ear from 20 Hz to 20 kHz.

**BACKGROUND NOISE** – The noise level represented without the wind turbine(s) operating and when man-made and natural intrusive sounds are at a minimum. The intent of this definition is to exclude noise level contributions from intermittent noises such as traffic and emergency vehicles, and from seasonal natural sounds that are not present year-round.

**BLADE GLINT** – The intermittent reflection of the sun off the surface of the blades of a single or multiple wind turbines.

**BUILDING** – Any structure used or intended for supporting any use or occupancy.

**C-WEIGHTED (dBC)** – An electronic filter with a band-pass frequency response 20Hz to 20 kHz.

**DAYTIME** - Hours from 7:00 a.m. to 7:00 p.m., unless otherwise noted.

**DEBRIS HAZARD** – Hazard owing to the possibility that the parts of a Wind Turbine, or material (ice or other debris) accumulated on its rotating elements, could be dislodged and fall or be thrown some distance onto surrounding property.

**EXCESSIVE NOISE** - Any noise that causes a nuisance or disturbance or degrades health or well-being.

**FAA** – The Federal Aviation Administration.

**FREQUENCY** - The number of occurrences of a repeating event per unit time; in cycles per second, expressed in Hz (Hertz).

**HERTZ (Hz)** - A unit of frequency equal to one cycle per second.

**LDN** – The day/night level is the 24-hour average of continuous “A-weighted” sound energy having a 10-decibel penalty added to the nighttime hours of 10 p.m. to 7 a.m.

**LEQ** – The equivalent continuous sound level that has the same acoustic energy for a constant sound level as for a fluctuating or intermittent level in the same period of time.

**NIGHTTIME** - Hours from 7:00 p.m. to 7:00 a.m., unless otherwise noted.

**NOISE** - Unwanted or any sound that is not part of the natural environment.

**NOISE EMITTER** - Any man-made piece of WECS equipment that is audible beyond the property line of a Participant Landowner.

**NOISE LEVEL** - Energy-equivalent sound pressure level (Leq) over a minimum of a ten-minute interval.

**NON-PARTICIPANT** - Any and all Town of Eaton landowners having no contractual relationship with a wind developer.

**OCTAVE BAND** - A band of sound covering a range of frequencies such that the highest is twice the lowest, as defined in ANSI Standard S1.11.

**ONE-THIRD OCTAVE BAND** - A band of sound covering a range of frequencies such that the highest frequency is the cube root of two times the lowest, as defined in ANSI Standard S1.11.

**PARTICIPANT** - Any and all Town of Eaton landowners having a signed lease, or easement with a wind developer.

**PROJECT BOUNDARY** - A continuous line, which encompasses all Wind Turbines and related equipment to be used in association with a Wind Energy System.

**PROPERTY LINE** - Means the recognized and survey or tax mapped property parcel boundary line.

**PURE TONE** - Sinusoidal sound energy for a single frequency or pitch.

**QUALIFIED INDEPENDENT ACOUSTICAL CONSULTANT** - A person who is qualified by education and experience in acoustics and regularly engaged in community noise testing with demonstrated competence in the specialty of community noise testing who is contracted by the Town for purposes of noise measurement or evaluation of noise analysis or noise complaints. The Qualified Independent Acoustical Consultant can have no financial relationship with the Wind developer or related entity.

**RESIDENCE** - Any dwelling suitable for habitation existing in the Town of Eaton on the date an application is received. For purpose of this definition, “suitable for habitation” shall mean that its primary purpose is for private occupancy.

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

**SETBACKS** - A distance measured from the edge of a rural right-of-way, property lines, wetlands, or closest point of residence foundation to the base of the turbine or measurement tower.

**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).

**SOUND LEVEL** - The weighted sound pressure level obtained by a sound level meter and frequency weighting network, such as A, B, or C as specified in ANSI specifications for sound level meters (ANSI SI.4-1971, or the latest revision).

**SOUND POWER LEVEL** -  $L_w$ . Ten (10) times the logarithm to the base ten of the ratio of the sound power radiated by the source to a reference sound power, expressed in decibels (dB). The reference sound power is 1 picowatt (pW).

**SOUND PRESSURE LEVEL** -  $L_p$ . Twenty (20) times the logarithm to the base ten (10) of the ratio of a given sound pressure to a reference sound pressure of 20 microPascals (uPa), expressed in decibels (dB).

**TOTAL HEIGHT** - The height of the Tower from the finished ground elevation at the base of the Tower 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.

**UN-WEIGHTED (dBL)** - A sound pressure level obtained without a weighting filter.

**USEFUL LIFE** - The period during which an individual Wind Turbine(s) will be presumed to be at the end of its economic life.

**WIND ENERGY CONVERSION SYSTEMS (WECS)** - An electricity generating facility, with a generating capacity of over 100 kilowatts, consisting of one or more wind turbines, including any substations, cables/wires, and other buildings accessory to such system. Sometimes referred to as a facility.

**WIND ENERGY CONVERSION SYSTEMS, SMALL (SWECS)** - An electricity generating facility, with a generating capacity of up to but not exceeding 100 kilowatts, consisting of one Wind Turbine, including any cables/wires, foundations and other buildings accessory to such system, and designed to produce power primarily for on-site use or consumption.

**WIND SHEAR** - The difference in atmospheric wind speed and direction occurring over relatively small increases in altitude (wind gradient).

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

Section 120-23.15 Wind Energy Conversions Systems (WECS).

A. Permits Required; Transfer; Modifications.

- (1) Districts where allowed. Subject to the issuance of site plan approval and a special use permit and other requirements as set forth herein, WECS shall be a permitted use in all areas of the Town of Eaton except within the Residential District No. 2 (RD-2). WECS are a prohibited use in the Residential District No. 2.
- (2) No WECS shall be constructed, reconstructed, modified, or operated in the Town except in compliance with this Article. In the case of any conflict between this Article and any other Town of Eaton law, rule or regulation, this Article shall supersede any conflicting provision.
- (3) Permits required. No person, firm or corporation, or other entity being the owner, occupant, or lessee of any land or premises within the Town of Eaton shall use or permit the use of land or premises for the construction or installation of a WECS without obtaining a building permit, a special use permit and site plan approval as hereinafter provided. The Planning Board is hereby authorized to review and either approve, approve with conditions, or disapprove applications special permits and site plan approvals for WECS.
- (4) No Wind Measurement Tower a/k/a Met Tower or LIDAR System shall be constructed, reconstructed, modified, or operated in the Town except pursuant to a special use permit pursuant to this Article.
- (5) Exemptions. No permit or other approval shall be required under this Section for mechanical, non-electrical WECS utilized solely for agricultural operations, commonly referred to as "windmills".
- (6) Transfer. No transfer of any WECS or a special use permit granted pursuant to this Article, nor sale of the entity owning such WECS including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), may occur unless the transferee provides to the Town Board written certification that such transferee assumes all obligations of the transferor under any permit issued pursuant to this



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

B. Required Submissions for an Application.

- (1) All applications for WECS are required to provide reports and supporting information based on the studies, evaluations, and analyses set forth herein. All studies, evaluations and analysis shall be submitted to and meet the reasonable requirements of the Planning Board before any application shall be deemed complete.
- (2) An application for a special use permit and site plan approval shall include the following, presented in the following order, unless waived by the Planning Board:
  - (a) Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  - (b) Name, address, and telephone number of the owners of properties on which the WECS will be located. 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 application and (ii) authorizing the submission of the application.
  - (c) Address, or other property identification, of each proposed WECS location, including Tax Map section, block, and lot number.
  - (d) A description of the project, including the number and maximum rated capacity of each WECS.
  - (e) A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
    - i. Property lines and physical dimensions of the project site.
    - ii. Location, approximate dimensions, and types of major existing structures and uses on the project site, public roads, and adjoining properties within the setback distances specified in Section 120-23.15(G) of the boundaries of the proposed WECS Site.

- iii. Location and elevation of each proposed WECS.
  - iv. Location of all above ground utility lines on the project site or within one radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
  - v. Location and size of structures above 35 feet within the setback distances specified in Section 120-23.15(G) of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
  - vi. To demonstrate compliance with the setback requirements, circles drawn around each proposed tower location equal to the setback distances specified in this Article.
  - vii. Location of the nearest residential structure located off the proposed site, and the distance from the proposed WECS.
  - viii. All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
- (f) Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.
- (g) Landscaping Plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.
- (h) Lighting Plan showing any FAA-required lighting 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, no building permit for any lighted facility may be issued until such determination is submitted.
- (i) List of property owners, with their mailing addresses, within 500 feet of the boundaries of the proposed project site. The applicant may delay submitting this list until the Planning Board calls for a public hearing on the application.

- (j) Decommissioning Plan. The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration in compliance with these regulations; 5) the method, such as by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the project site restored, which shall include removal of all structures and debris to a depth of three (3) feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.
- (k) Complaint Resolution. The application will include a complaint resolution process to address potential complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.
- (l) An application shall include information relating to the construction/installation of the WECS as follows:
  - i. A construction schedule describing expected commencement and completion dates; and
  - ii. A description of the anticipated routes to be used by construction and delivery vehicles and the gross weights and heights of those loaded vehicles.
- (m) Completed Part 1 of the Full Environmental Assessment Form.
- (n) Applications for Wind Measurement Towers under Section 120-23.16 may be jointly submitted with the WECS application.
- (o) For each proposed WECS, include make, model, picture, and manufacturers' specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.
- (p) The following studies shall be submitted with the application:
  - i. Shadow Flicker. The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe

measures that shall be taken to eliminate or mitigate the problems.

- ii. Visual Impact. Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed project site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
  - iii. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed project site.
  - iv. Noise Analysis. A noise analysis shall be provided by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the project site (if access to the nearest residence is not available, the Planning Board may modify this requirement). The noise analysis shall include low frequency noise.
  - v. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, and other wireless communication.
  - vi. A soil analysis shall be provided by an independent third-party professional.
- (q) The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable Transmission Owner.
- (r) A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

C. Application Review Process.

- (1) Applicants may request a pre-application meeting with the Planning Board or with any consultants retained by the Planning Board for application review.
- (2) Six (6) copies of the application and a complete digital version shall be submitted to the Town Code Enforcement Officer. Payment of all application fees and other fees including engineering, legal and other professional fees shall be made at the time of application submission. In addition, the applicant shall provide the Planning Board with a reasonable number of additional copies necessary to coordinate review with involved agencies and interested parties, pursuant to SEQRA.
- (3) Upon submission of a complete application, the Town Code Enforcement Officer shall transmit the application to the Planning Board. The Planning Board shall hold at least one public hearing on the application. Notice shall be provided by first-class mail to property owners within one (1) mile of a turbine, and published in the Town's official newspaper, no less than five (5) days before any hearing, but where any hearing is adjourned by the Planning Board to hear additional comments, no further publications or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Planning Board and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- (4) Referral shall also be made, when applicable, to the Madison County Planning Department, pursuant to General Municipal Law Sections 239-l and 239-m.
- (5) SEQRA review. Applications for WECS shall be deemed Type 1 projects under SEQRA.
- (6) The Planning Board shall be responsible for the review of the proposed project under SEQRA, and shall where appropriate, act as lead agency under SEQRA, and shall coordinate its review with all other involved agencies having discretionary approval over any aspect of the proposed project.
- (7) The Planning Board shall require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.
- (8) Upon receipt of the recommendations of the Madison County Planning Department (where applicable), the holding of a public hearing, and the completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the application, in accordance with the standards in this Article and applicable Town Laws.
- (9) If approved, the Town Planning Board will issue, to the applicant only, a special use permit/site plan approval 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 to issue a permit for each WECS, upon compliance with any conditions of this Article or approval by the Planning Board.

- (10) If construction of any approved WECS is not substantially commenced within one year of issuance of the permit, the permit shall expire.

D. Standards for WECS.

In addition to all other applicable criteria, the following criteria are hereby established for purposes of granting a special use permit and site plan approval for a WECS:

- (1) All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
- (2) No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECS and telecommunications facilities.
- (3) To minimize any visual impacts associated with WECS, no advertising signs are allowed on any part of the WECS, including fencing and support structures.
- (4) Lighting of tower. No tower shall be lit except to comply with FAA requirements.
- (5) Minimum downward directed security lighting for ground level facilities shall be allowed as approved on the site plan.
- (6) All applicants shall use measures to reduce the visual impact of WECS to the extent possible. WECS shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished white or gray in color. WECS within multiple WECS project shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the project, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
- (7) The use of guy wires is permitted in connection with small WECS and wind measurement towers only.
- (8) All solid waste and hazardous waste and construction debris shall be removed from the project site and managed in a manner consistent with all appropriate rules and regulations.
- (9) Sign-off from First Responders/Emergency Medical Service providers shall be provided.
- (10) WECS shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be

avoided when feasible. The use of previously developed areas will be given priority wherever possible.

- (11) WECS 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 and those listed as threatened, endangered, and species of concern by the NYS officials.
- (12) Wind energy conversion systems shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations. A plan for clearing and/or grading of the site and a stormwater pollution prevention plan (SWPPP) for the site. The SWPPP shall be filed and recorded in the Madison County Clerk's Office (indexed against the property) by the applicant following Planning Board approval (prior to commencement of construction) and shall provide for access to the Town of Eaton in the event of a default of the operator's obligations under the SWPPP. The SWPPP shall include a security amount approved by the Town's Consulting Engineer and shall remain in place until decommissioning is complete.
- (13) Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
- (14) The maximum Total Height of any WECS shall be 680 feet. However, in all instances, the applicant shall be required to demonstrate that the requested height of the WECS is necessary to achieve the project's objectives.
- (15) Any substation used in conjunction with a WECS shall be sited in a manner that will have the least intrusive impact upon adjacent residences and shall be sheltered and/or screened with a physical barrier and/or vegetation in a manner to eliminate its views from such residences. The Planning Board shall assess such siting in accordance with the requirements of this Section and the Town's Comprehensive Plan.
- (16) Construction of the WECS shall be limited to the hours of 7 AM to 7 PM, Monday through Friday.
- (17) In processing any application for a WECS or in reviewing such project under SEQRA, the Planning Board may consider any applicable policy or guidelines issued by the New York State DEC (i.e., visual impacts, noise impact).
- (18) Following construction/installation of the WECS, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low level vegetation capable of preventing soil erosion and airborne dust and demonstrating

established growth. The applicant shall provide an Operations and Maintenance Plan which shall include provisions for reseeding and established growth.

(19) Post-construction/installation certification. Following the construction/installation of the WECS, the applicant shall provide a post-construction/installation certification from a professional engineer registered in New York State that the project complies with any and all applicable codes and industry practices and has been constructed and operating according to the drawings and development plan(s) submitted to the Town.

(20) Any WECS project shall meet and comply with the latest version of the National Electric Code for the life of the project. If it is determined that a WECS is causing stray voltage issues, the operator shall immediately take the necessary corrective action to eliminate these problems 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 revocation of the special use permit for the specific WECS causing the problems. Fines for non-compliance will be set by the Town Board and assessed accordingly.

(21) To the greatest extent possible WECS, together with all above ground facilities, underground cables and wires, and all permanent access roads shall be positioned along existing fence lines, hedge rows or tree rows and/or as near the edge of any fields as possible to minimize the disruption to pastureland or tillable land unless, otherwise allowed by the property owner(s). Following construction, the site shall be graded and seeded and restored to its preconstruction condition or better unless, otherwise allowed by the property owner(s). During construction, the developer shall be required to act consistent with Agricultural Consistency Review under Agriculture and Markets Law, and best agricultural and forestry practices to ensure construction integrity of the site.

E. Required Safety Measures.

- (1) 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.
- (2) Appropriate warning signs shall be posted. At least one sign shall be posted at least 100 feet from the base of the tower on the tower access road/route warning of electrical shock or high voltage. A sign shall be posted on the entry area fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information. The Planning Board may require additional signage based on safety needs.
- (3) No climbing pegs or tower ladders shall be located closer than 12 feet to the ground level at the base of the structure for freestanding single pole or guyed towers.



- (4) The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.
- (5) WECS 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.
- (6) Existing snowmobile and/or ATV trails shall be posted, where reasonably necessary, to warn of potential ice throw dangers from the WECS.

F. Traffic Routes.

- (1) Construction of WECS pose potential risks because of the large size construction vehicles, hauled materials along with their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and for associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include:
  - (a) minimizing traffic impacts from construction and delivery vehicles, including impacts on local residential areas;
  - (b) minimizing WECS related traffic during times of school bus activity;
  - (c) minimizing wear and tear on local roads;
  - (d) minimizing impacts on local business operations; and
  - (e) Special use permit conditions may limit WECS-related traffic to specific routes and include a plan for disseminating traffic route information to the public.
- (2) The applicant is responsible for the repair of all damage to Town roads occurring during the construction or maintenance of a WECS to be addressed in a Road Use Agreement, which shall be a condition precedent to issuance of any WECS permit. A cash security (as determined by the Town Board) shall be posted prior to the issuance of any WECS permit in an amount determined by the Planning Board, sufficient to compensate the Town for any damage to local roads.

G. Setbacks and Noise Standards for WECS.

- (1) Setback Requirements. No WECS shall be allowed within the following setbacks. If more than one setback applies, the most restrictive setback shall prevail.
  - (a) From property lines. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any non-participant's property line, excluding adjoining lot lines of the project participants.
  - (b) From public road and highways. A minimum distance of 2.0 times the Total Height of turbine (including blades), from any public road and highway.

- (c) From public above-ground transmission lines. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any above-ground transmission line greater than 12 kilovolts.
- (d) From another WECS turbine. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any other turbine. All power transmission lines from the tower to any building or other structure shall be located underground.

(2) Noise Level Limits and Measurement.

- (a) The statistical sound pressure level generated by a WECS shall not exceed L10 - 50 dBA measured at the nearest residence located off the site. Sites can include more than one parcel of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus five (5) dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- (b) In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth herein shall be reduced by five (5) dBA. A Pure Tone is defined to exist if the 1/3 octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous 1/3 octave bands by five (5) dBA for center frequencies of 500 Hz and above, by eight (8) dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.
- (c) In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed 30 mph at the ambient noise measurement location.
- (d) Any noise level falling between two (2) whole decibels shall be the lower of the two (2).

H. Issuance of Special Use Permit and Site Plan.

- (1) Upon completion of the review process, the Planning Board shall, upon consideration of the standards in this Article, the Town's Comprehensive Plan, and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- (2) If any approved WECS is not substantially commenced within one (1) year of issuance of the special use permit, the special use permit shall expire.

I. Decommissioning.

- (1) If any WECS remains non-functional or inoperative for a continuous period of one (1) year, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense as per paragraph (3) below. This provision shall not apply if the applicant demonstrates to the reasonable satisfaction of the Town Board that it has been making good faith efforts to restore the WECS to an operable condition. 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, NYSEDA or by lack of income generation. The applicant shall make available to a designee (i.e., town engineer, project manager, etc.) appointed by the Town Board, all reports from the purchaser of energy from individual WECS, if requested to prove the WECS is functioning. This designee may also request periodic documentation reporting the power output generated by the WECS.
- (3) Decommissioning and Site Restoration Plan and Requirements. An application for a WECS permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this Article.
  - (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 36 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 or forest land 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 abandonment of the WECS. The WECS shall be deemed abandoned if its operation is ceased for 12 consecutive months. The operator of the facility shall provide a report no later than the 31<sup>st</sup> day of January each year providing a summary report of the operation of the facility during the prior calendar year and its operational status as the immediately preceding 31<sup>st</sup> day of December.

- (c) The Plan shall include: (a) the estimated decommissioning cost in current dollars (such amount being subject to the approval of the Town Board); (b) how said estimate was determined; (c) the method of ensuring that funds will be available for decommissioning and restoration; (d) the method that will be used to keep the decommissioning costs current. The Town Board shall make arrangements to ensure the fund amount is adjusted annually based on a suitable index such as the "Engineering News Report Construction Costs Index" unless the wind developer supplies evidence to the reasonable satisfaction of the Town Board that market conditions have changed.
- (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 payable to the Town of Eaton, in a form approved by the Town Attorney, and 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 150% of the cost of full decommissioning (including salvage value) and restoration in the form of cash on deposit with the Town or cash held in escrow in a New York licensed-financial institution, pursuant to an agreement acceptable to the Town. All decommissioning funding requirements shall be met prior to commencement of construction.
- (e) The plan shall include written authorization from the WECS Permittee and all owners of all Project Parcels for the Town to access the Project Parcels and implement the decommissioning and site restoration plan, in the event the WECS Permittee fails to implement the plan. The written authorization shall be in a form approved by the Town.
- (f) Use of Decommissioning Fund
- i. Any non-functional or inoperative WECS, or any WECS for which the Permit has been revoked, shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration plan within 120 days of the date on which the facility becomes non-functional or inoperative, as defined above, and weather permitting, or of the revocation of the permit.
  - ii. If removal of the WECS is required and the applicant, permittee, or successor 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. Insurance.

(1) Insurance. The applicant, owner, lessee or assignee shall at all times during construction and operation maintain a current insurance policy which will cover installation and operation of the commercial Wind project and shall be increased annually per industry standards. Said policy shall provide a minimum of \$5,000,000 property and personal liability coverage. Proof of such policy shall be provided to the Town on an annual basis. Notwithstanding any terms, conditions, or provisions in any other writing between the parties, the applicant shall agree to effectuate the naming of the Town as an additional insured on the applicant's insurance policies, with the exception of workers' compensation and NYS disability insurance. The policy naming the Town as an additional insured shall:

- (a) Be an insurance policy from an A.M. Best rated "secured" or better insurer, authorized to conduct business in New York State. A New York State licensed insurer is preferred.
- (b) State that the applicant's insurance coverage shall be primary and noncontributory coverage for the Town, its Board, employees, agents, and volunteers.
- (c) Additional insured status shall be provided by standard or other endorsements that extend coverage to the Town for both on-going and completed operations. A completed copy of the endorsements shall be attached to the certificate of insurance.
- (d) The applicant shall provide a copy of the declaration page of the liability policies with a list of endorsements and forms. If so requested, the applicant will provide a copy of the policy endorsements and forms.
- (e) The certificate of insurance shall contain a provision that coverage afforded under the applicable policy shall not be cancelled or terminated until at least 30 days' prior notice has been provided to the Town. In the event of a termination, cancellation, or lapse of the required insurance coverage, the special use permit to operate the wind energy system shall be immediately suspended and operation of the system shall cease. Upon restoration of the required insurance coverage, to the satisfaction of the Town, permission to operate the commercial wind project may be restored.

K. Limitations on Approvals.

(1) Nothing in this Section 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 Conversion System. It shall be the sole responsibility of the

Facility operator, or owner, to acquire any necessary wind flow or turbulence easements, or right to remove vegetation.

L. Permit Revocation.

- (1) Testing fund. A permit shall contain a requirement that the applicant fund periodic noise testing by qualified independent third-party acoustical measurement consultant, which permittee shall include in the annual Operation Maintenance and Compliance report required by this Section. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Permit and this Section and shall include an evaluation of any complaints received by the Town. A non-compliant WECS shall be shut down immediately. The applicant shall have 90 days after written notice from the Code Enforcement Officer to cure any deficiency. An extension of the 90-day period may be considered by the Code Enforcement Officer, but the total period may not exceed 180 days.
- (2) Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational conditions include meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, it shall be shut down immediately. The owner or operator shall remedy the situation within 90 days after written notice from the Town Code Enforcement Officer. The applicant shall have 90 days after written notice from the Town Code Enforcement Officer to cure any deficiency. The Planning Board may extend the 90-day cure period for good cause shown.
- (3) Notwithstanding any other abatement 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 meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the special use permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommissioning Plan to remove the WECS.

M. Miscellaneous.

- (1) WECS Escrow Account. The applicant shall pay to the Town a nonrefundable Application Fee as set by resolution of the Town Board, and shall further establish an Escrow Account. The Town Board and Planning Board reserve the right to obtain engineering, economic impact, environmental impact, or reasonable charges of other reasonable professional services to aid it in the review of any submitted WECS application. These costs are solely the responsibility of the applicant and (and other expenses incurred by the Town) are reimbursable only from the Escrow Account, not the Application Fee.
  - (a) The applicant shall reimburse the Town for all reasonable oversight expenses incurred relating to the WECS, from application through decommissioning.

- (b) WECS-related reasonable oversight expenses include, but are not limited to, amounts required for Building Permits, Licensing, Re-Licensing, and Decommissioning, *e.g.*, administration, engineering, expert health and wildlife evaluations, handling complaints, legal, etc. "Legal" expenses include reasonable attorney fees for the Town if the Town has to pursue legal action against the applicant.
  - (c) An Escrow Account will be established at the time of the WECS Application. This Escrow Account will be maintained at a financial institution approved by the Town, solely in the name of the Town, to be managed by the Town Board (or designee). The applicant shall make an initial deposit of \$35,000.00. A WECS Application will not be processed until the deposit is complete. A WECS Application determination will not be made until all costs incurred by the Town to date have been reimbursed by the applicant.
  - (d) If the WECS Application is denied or withdrawn, all Escrow Account funds shall be returned to the applicant, less related expenses incurred by the Town. The funds shall be returned, along with a statement as of the costs incurred, within 30 days of the Application being formally denied, or receipt of a Letter of Withdrawal. Application and Permit Fees are non-refundable.
  - (e) The Escrow Account shall be funded during the life of the WECS by the Applicant/Owner/Operator. The Applicant/Owner/Operator shall replenish any Escrow funds used by the Town within 14 days of being sent written notification, with explanation, of authorized withdrawals. Failure to maintain the Escrow Account at \$35,000.00 within 30 days of notice shall be cause for revocation (or denial of renewal) of the WECS Permit.
  - (f) Once the Applicant/ Owner/ Operator believes that the decommissioning conditions, as set forth herein, have been satisfactorily complied with the decommissioning conditions, they shall send the Town written notification. The Town then has 90 days to verify that all of the decommissioning conditions have been satisfied. If there is material noncompliance, the Town shall notify the Applicant/ Owner/ Operator and the process will start over. Otherwise, the Town shall return all Escrow Account funds to the Applicant/ Owner/ Operator, less related expenses incurred by the Town, along with explanatory statements/invoices.
- (2) Road remediation. The applicant shall be responsible for the remediation of any public roads or other public property damaged during the construction of and/or completion of the installation (or removal) of any WECS projects approved pursuant to this Article. The Code Enforcement Officer is hereby authorized and directed to ensure a public improvement (road repairs) bond, subject to the same bond ratings and financial surety requirements as the decommissioning bond, be posted prior to the issuance of any building permit in an amount sufficient to compensate the Town for any damage to local roads that is not corrected by the applicant. The Highway Superintendent or Town Engineer is authorized to consult with any necessary professional to determine or confirm the bond amount at the sole cost and expense

of the applicant. The applicant shall, upon authorization by the Town Code Enforcement Officer, file and record the original performance bond in the Town Clerk's Office.

N. Application Fee, Professional Fees, PILOT and Host Community Benefit Agreement.

(1) Non-refundable Application Fees shall be established and amended by resolution of the Town Board.

(2) Special Use Permits and Site Plan. The review of permits for WECS require expertise and shall require the Town to engage the services of professional consultants such as attorneys and engineers, the expenses for which cannot be accurately established in advance. Therefore, in addition to the above, the applicant shall be responsible for all of the Town's reasonable expenses incurred in the permit review process including the review required by SEQRA, and the costs of decommissioning the WECS and such expenses may include, but are not limited to, all administrative costs, attorneys' fees and engineering fees, and the applicant shall be required to enter into an escrow agreement with the Town in advance of such review to provide for the payment of such costs and expenses of review as agreed by the parties.

(3) In every instance of a WECS application, the applicant shall be required to propose a Payment in Lieu of Tax ("PILOT") Agreement. The applicant shall also comply with the notice requirements of NYS Real Property Tax Law Section 487. The applicant shall contact the Town's legal counsel to negotiate the terms of said Agreement.

(4) In addition to a PILOT Agreement, the applicant shall propose to the Town, on WECS projects involving one (1) megawatt and above of rated energy output capacity, a Host Community Agreement benefit package for consideration by the Town Board as part of the approval process. Once the application package materials are deemed complete and while the Planning Board is completing its review, the project/application shall be referred to the Town Board to decide on the completion and terms of a Host Community Agreement. This Agreement shall be in addition to a PILOT Agreement.

O. Inspections.

(1) WECS shall not begin operation until all approvals required under this Article have been obtained and all required certifications are provided.

(2) Following the issuance of any approval required under this Article, the Planning Board or its designee shall have the right to enter onto the site upon which a WECS has been placed, at reasonable times to inspect such facility and its compliance with this Article and any approval and included conditions.



(3) After undertaking such inspection, the Planning Board or its designated representative shall provide notice of any non-compliance with the terms of this Article or the conditions of approval of any permit issued hereunder, and shall provide the Applicant/ Owner/ Operator with a reasonable time frame to cure such violation, such timeframe to be determined based upon the seriousness of the violation, its impact upon public safety, and the impact of the violation upon residents of the Town.

P. Construction Related Damage.

The owner of every WECS constructed pursuant to this Article shall repair or replace all real or personal property, public or private, damaged during the construction of such facility attributable to the applicant or its designee, employee, or agent.

Q. Fiscal Responsibility.

No transfer of any WECS or permit, or sale of the entity owning such facility, including the sale of more than 30% of the stock of such entity (not counting the sale of shares on a public exchange) shall occur without written acceptance by such entity of the obligations of the permittee under this Section and the terms of the permit. Any such transfer shall not eliminate the liability of any entity for any act occurring during its ownership or status as permittee.

R. Certification.

Prior to the operation of any approved and constructed WECS, the applicant must provide a certification that the project complies with applicable codes, industry practices and conditions of approval, where applicable.

S. Made in America Requirements.

All WECS shall be required to use components and materials made and manufactured in the United States of America.

Section 120-23.16 Wind Measurement Towers.

A. Wind Site Assessments. As a wind site assessment is typically conducted to determine the wind speeds and the feasibility of using particular sites, installation of Wind Measurement Towers, also known as anemometer ("Met") towers, shall be permitted in accordance with this Section and the provisions of Section 120-23.15, subject to approval by the Planning Board.

B. Applications for Wind Measurement Towers. An application for a Wind Measurement Tower shall include, unless waived by the Planning Board, the following:

(1) Name, address, and 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) Name, address, and telephone number of the property owner.
- (3) If the property owner is not the applicant, the application shall include written permission signed by the property owner confirming that the property owner is familiar with the proposed application and authorizing the submission of the application.
- (4) Address of each proposed tower location, including Tax Map section, block, and lot number.
- (5) Proposed Development Plan and Map.
- (6) Decommissioning Plan, including cash security for removal and restoration.

C. Standards for Wind Measurement Towers.

- (1) The distance between a Wind Measurement Tower and the property line shall be at least one point five (1.5) times the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- (2) Special use permits for Wind Measurement Towers may be issued for a period of up to two (2) years. Permits shall be renewable upon application to the Planning Board in accordance with the procedure of this Article.

Section 120-23.17 Small Wind Energy Conversion Systems.

- A. Purpose and Intent. The purpose of this Section is to provide standards for small wind energy conversion systems (hereinafter referred to as "SWECS") designed to produce electrical power for home, farm, and small commercial use on the same parcel the SWECS is installed on, and that are primarily used to reduce consumption of utility power at that location. Such SWECS shall have a generated capacity of up to but not exceeding 100 kilowatts. The intent of this Section is to provide for the development of small wind energy systems while also protecting the public health, safety, and community welfare.
- B. Permits Required. No person, firm or corporation, or other entity being the owner or occupant of any land or premises within the Town of Eaton shall use or permit the use of land or premises for the construction of a SWECS without obtaining a special use permit issued by the Planning Board as hereinafter provided.
- C. Districts Where Allowed. Subject to the issuance of a special use permit and a building permit, SWECS are allowed in all zoning districts in the Town except within the Residential District No. 2 (RD-2).
- D. Applications. Applications for Small WECS Permits shall include, unless waived by the Planning Board, the following:

- (1) Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
  - (2) Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include written permission signed by the property owner confirming that the property owner is familiar with the proposed applications and authorizing the submission of the application.
  - (3) A description of the project, including the address of each proposed tower location, including Tax Map section, block, and lot number, and the maximum rated capacity of each SWECS.
  - (4) Documentation from the manufacturer that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
  - (5) 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 Building Code of the State of New York and sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
  - (6) A site plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe and depict the SWECS components relative to all other existing and proposed structures and property lines.
  - (7) 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 so plan and states such in the application, to connect the system to the electricity grid.
  - (8) A visual analysis of the SWECS 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.
- E. Development Standards. All SWECS shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other provisions of this Article that are not in conflict with the requirements contained in this Section.
- (1) Only one (1) small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which case their joint lots shall be treated as one lot for the purposes of this Section.
  - (2) SWECS shall be used primarily to reduce the on-site consumption of electricity.

- (3) Tower heights may be allowed as follows:
  - (a) 65 feet or less on parcels between one (1) and five (5) acres,
  - (b) 80 feet or less on parcels of five (5) or more acres.
- (4) The maximum turbine power output is limited to 100 KW.
- (5) 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 nonreflective surfaces to minimize any visual disruption.
- (6) The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
- (7) Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- (8) 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 Planning Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
- (9) The system shall be operated such that no disruptive electromagnetic interference is caused.
- (10) 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.
- (11) At least one sign shall be posted on the tower at a height of five (5) 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 vain where it would be visible from the ground, except that a system or motor's manufacturer's logo may be displayed on the system generator housing in an unobtrusive manner.
- (12) 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 (6) feet in height that encloses the tower.

- (13) 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 (6) feet high or sheathed in bright orange or yellow covering from three (3) to eight (8) feet above the ground.
- (14) Construction of on-site access roadways shall be minimized. Temporary access roads used for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after installation is complete.
- (15) To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250-foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
- (16) 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.
- (17) All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer. The applicant shall post an emergency telephone number so that the appropriate entities may be contacted should the SWECS need immediate repair or attention. This telephone number should be clearly visible on a permanent structure or post located outside of the fall zone of the tower. Location should be convenient and readily noticeable to someone likely to detect a problem.
- (18) Ownership of the SWECS must be the same as the owner of the fee interest in the real property upon which it is situated. In the event of transfer of ownership of the premises, the ownership of the wind energy conversion system must also be transferred to the same owner, or the tower must be decommissioned.
- (19) Setback requirements. A SWECS shall not be located closer to a property line, dwelling, or structure occupied by humans or animals, than one point five (1.5) times the Total Height of the facility.
- (20) Noise. Except during short-term events including utility outages and severe windstorms, a SWECS shall be designed, installed, and operated so that noise generated by the system shall not exceed ambient noise levels (exclusive of the development proposed) by more than six (6) dBA at the nearest property line to any proposed SWECS. Sites can include more than one piece of property and the

requirement shall apply to the combined properties. In the event the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus a maximum of five (5) dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

- F. Inspections. The Code Enforcement Officer and/or Town Engineer shall have the right at any reasonable time to enter, in the company of the owner or their agent, the premises on which a wind energy conversion system is being or is constructed, to inspect all parts of said wind energy conversion system installation and require that repairs or alterations be made if in their judgment, there exists a deficiency in the operation or the structural stability of the system. If necessary, the Code Enforcement Officer or Town Engineer may order the system secured or to otherwise cease operation. It shall not be required that the owner or agent be present in the event of an emergency situation involving danger to life, limb, or property.
- G. Insurance. The applicant, owner, lessee or assignee shall maintain a current insurance policy which shall cover installation and operation of the on-site use wind energy conversion system at all times. Said policy shall provide a minimum of \$2,000,000.00 property and personal liability coverage.
- H. Fees. Fees for applications and permits under this Section shall be established by resolution of the Town Board of the Town of Eaton. It shall be the applicant's responsibility to reimburse the Town for any and all reasonable and necessary legal, engineering and other professional fees incurred by the Town in reviewing and administering an application under this Section.
- I. Abandonment of Use.
  - (1) A SWECS which is not used for 12 successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Planning Board. If not removed within 90 days from revocation, weather permitting, the Town shall have the right to remove the SWECS at the owner's expense. A decommissioning bond in a form acceptable to the Town shall be filed with the Town Clerk to cover the costs of the complete removal of the SWECS and shall not be allowed to lapse or terminate. Such bond shall be in place prior to the issuance of a building permit.
  - (2) All SWECS shall be maintained in good condition and in accordance with all requirements of this Section.

- A. The Town Board, Town Code Enforcement Officer and such Town staff or outside consultants as appointed by the Town Board shall administer and enforce this Article.
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Article or in noncompliance with the terms and conditions of any permit issued pursuant to this Article, or any order of the Code Enforcement Officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$250.00. Every such person shall be deemed guilty of a separate offense for each day such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$250.00 for each violation and each day said violation continues shall be deemed a separate violation.
- C. In case of any violation, or threatened violation, of any of the provisions of this Article, including the terms and conditions imposed by any permit issued pursuant to this Article, 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.
- D. An Applicant/Owner/Operator not responding to the following condition in the manner specified shall be considered to be in violation of this Article.
  - (1) Unsafe Operation/ Condition. If a Wind Turbine, or WECS/SWECS, presents an imminent physical threat of damage to life or significant threat to property, as determined by the Code Enforcement Officer, Town Board, or one of their designated agents, it shall be deemed unsafe and immediately shut down and repaired or otherwise made safe and certified so by a New York licensed Professional Engineer approved by the Town Board prior to resumption of operation. The Code Enforcement Officer, or their agent/designee, shall have the right to access the WECS/SWECS to verify conditions and/or progress of repair.
  - (2) Serious Violations. The Applicant/Owner/Operator of the WECS/SWECS is responsible for mitigating any serious violations of standards within ten (10) business days upon receipt of written notification of determination of any cause attributed to operation of the WECS/SWECS. A serious violation is defined as any of the following:
    - (a) Any measured Noise Level which exceeds the standard specified herein or an approval where the Wind Turbine(s) or ancillary facility is the dominant and controlling source.

- (b) The occurrence of Shadow Flicker, Tower Shadowing or Blade Glint exceeds the standards specified in this Article or an approval.
  - (c) Degradation or contamination exceeding US Environmental Protection Agency standards of any surface or subsurface water resource. In the case of degradation or contamination of a well, the obligation for mitigation shall be deemed satisfied if the Applicant/Owner/Operator immediately provides the affected well owner with a potable emergency water supply and within 30 days commences implementation of corrective measures to the satisfaction of the well owner and subject to the approval of the Planning Board.
  - (d) Any hazardous substance spill.
  - (e) Communication/electromagnetic interference (other than emergency communication).
- (3) Emergency Communications. Interference with communications must be mitigated within 24 hours.
- (4) Other Violations. If the Code Enforcement Officer or Town Board determines that a violation of this Article has occurred, and the violation is determined neither to be unsafe, nor a serious violation, nor interferes with emergency communication, the Officer or Town Board shall provide written notice to the Applicant/ Owner/ Operator, and the Applicant/ Owner/Operator is responsible for mitigating the problem within 30 days.
- E. An Applicant/Owner/Operator not in compliance with any provision of this Article by failing to resolve a violation may be subject to:
- (1) Revocation of WECS/SWECS permits, shut down and removal of any Wind Turbines;
  - (2) Fines pursuant to this Section;
  - (3) Any other remedies the Town Board deems necessary to assure the safe operation of the WECS/SWECS and protection of residents; and
  - (4) Reimbursement to the Town for expenses incurred in obtaining relief, including, but not limited to, court costs and reasonable attorney fees."

## **SECTION 5. SEVERABILITY**

If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this Local Law shall be judged invalid by a court of competent jurisdiction, such order of



judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision, or clause of this Local Law.

**SECTION 6. EFFECTIVE DATE.**

This Local Law shall be effective upon filing with the Office of the Secretary of State.”

The question of the adoption of the foregoing resolution was duly put to a vote and upon roll call, the vote was as follows:

<b>David Verne</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Jean Hilts</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Stephen Dickerson</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Jeff Golley</b>	<b>Councilor</b>	<b>Voted</b>	<b>Yes</b>
<b>Joseph Wicks</b>	<b>Supervisor</b>	<b>Voted</b>	<b>Yes</b>

The foregoing resolution was thereupon declared duly adopted.

**DATED: December 12<sup>th</sup>, 2023**

**CERTIFICATE**

STATE OF NEW YORK   )  
COUNTY OF MADISON   )

I, the undersigned Clerk of the Town of Eaton, Madison County, New York, **DO HEREBY CERTIFY:**

That I have compared the foregoing Resolution with the original thereof on file in the Office of the Town Clerk of the Town of Eaton, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

**I FURTHER CERTIFY** that all members of said Board had due notice of said meeting and that, pursuant to Section 103 of the Public Officers Law, said meeting was open to the general public.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of said Town on December 12<sup>th</sup>, 2023.

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

I hereby certify that the local law annexed hereto, designated as local law No. **4** of **2023** of the **Town of Eaton** was duly passed by the **Town Board** on **December 12<sup>th</sup>, 2023**, in accordance with the applicable provisions of law.

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

~~I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 20\_\_ of the **Town of Eaton** was duly passed by the **Town Board** on \_\_\_\_\_, **20\_\_**, and was (approved/not approved/ repassed after disapproval) by the **Town Board** and was deemed duly adopted on \_\_\_\_\_, **20\_\_**, in accordance with the applicable provisions of law.~~

**3. ~~(Final adoption by referendum.)~~**

~~I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 20\_\_ of the **Town of Eaton** was duly passed by the **Town Board** on \_\_\_\_\_, **20\_\_**, and was (approved/not approved/ repassed after disapproval) by the **Town Board** on \_\_\_\_\_, **20\_\_**.~~

~~Such local law was submitted to the people by reason of a (mandatory/permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general/special/annual) election held on \_\_\_\_\_, **20\_\_**, in accordance with the applicable provisions of law.~~

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

**requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_ of 20\_\_ of the ~~Town of Eaton~~ was duly passed by the ~~Town Board~~ on \_\_\_\_\_, 20\_\_, and was (approved/not approved/ repassed after disapproval) by the ~~Town Board~~ on \_\_\_\_\_, 20\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_, 20\_\_, in accordance with the applicable provisions of law.

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

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

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

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

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

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

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**Hon. Dean Curtis, Town Clerk  
Town of Eaton**

(Seal)

Date: **December 13<sup>th</sup>, 2023**

