

TO
WN OF BINGHAMTON
LOCAL LAW NO. ____ OF THE YEAR 2022
CHAPTER 240
ARTICLE IX. SPECIAL USES
240.57.1 WIND ENERGY SYSTEMS LAW

BE IT ENACTED by the Town Board of the Town of Binghamton as follows:

Local Law No. 1 of 2005, entitled "Wind Energy Deriving Towers/Wind Turbines," Article IX Special Uses Section 240.57.1 is hereby repealed and replaced by this Local Law No. ____ of 2022 as follows:

SECTION I. TITLE

Article IX. Special Uses, Section 240.57.1 Wind Energy Law

SECTION II. PURPOSE, INTENT AND FINDINGS

This Article is adopted to advance and protect the public health, safety, and welfare of the Town of Binghamton, including:

- 1) Taking advantage of a safe, abundant, renewable, and low-carbon emitting energy resource;
- 2) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses and farm operations; and
- 3) Increasing employment and business development in the region by furthering the installation and development of renewable energy systems.
- 4) Balancing the need to improve energy sustainability through increased use of renewable energy systems with concerns for preservation of public health, welfare, and safety, as well as environmental quality, visual and aesthetic values, and existing neighborhood social and ecological stability.
- 5) Minimizing any adverse impacts on the character of the neighborhoods, property values, scenic, historic, and environmental resources of the Town.

These wind energy regulations are intended to supplement existing zoning ordinances and land use practices, and ensure these systems are appropriately designed, sited and installed. However, to the extent that a provision of this Local Law conflicts with any other local law or zoning regulation of the Town, the provision of this Local Law shall apply.

SECTION III. DEFINITIONS

ACCESSORY FACILITIES or EQUIPMENT: Any structure other than a wind turbine, including substations, meteorological towers, overhead and underground electrical lines, guy wires,

access roads, operations and maintenance building or other facility related to the use and purpose of deriving energy from such tower.

APPLICANT: Any individual, corporation, municipal corporation, municipal corporation-private entity cooperation, estate, trust-partnership, joint-stock company, association of two or more persons, limited liability company or other entity submitting an application to the Town of Binghamton for a special permit for Wind Energy Conversion System ("WECS"), and its successors and assignees.

APPLICATION: The form approved by the Board, together with all necessary and appropriate documentation that an applicant submits in order to receive a special use permit for WECS.

BOARD: The Planning Board of the Town of Binghamton as stated reviews the special use permit application and makes recommendations to the Town Board who will grant or deny the special use permit.

COMPLETION/FULLY COMPLETED: The WECS project is fully complete when the turbine is running at its stated capacity and feeding metered electricity to the grid, all construction tools and equipment are removed, and all site restoration is finished, all required fencing is complete, site security and signage is in place, and screening vegetation and reforestation (if required) is planted to the satisfaction of the Code Enforcement Officer.

DECOMMISSIONING PLAN: A plan that includes all of the elements set forth in Section VII of this Article.

NACELLE: The portion of the wind turbine that connects the rotor to the support tower, and houses the generator, gearbox, drive train, and braking system.

OPEN SPACE: Open space is any open piece of land that is undeveloped (has no buildings or other built structures) and is accessible to the public. Open space can include parks, community gardens, and cemeteries, and may be private or public.

PARTICIPATING PROPERTY: A parcel of land which is subject to any lease, good neighbor agreement or other contract with the Applicant which authorizes WECS development by the Applicant. Parcels of land not subject to any type of agreement with the Applicant are considered non-participating properties.

RIGHT OF WAY: A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, and other similar uses.

SHADOW FLICKER: Shadow flicker is the effect of the sun (low on the horizon) shining through the rotating blades of a wind turbine, casting a moving shadow. It will be perceived as a "flicker" due to the rotating blades repeatedly casting the shadow. Although in many cases shadow flicker occurs only a few hours in a year, it can potentially create a nuisance for homeowners in close proximity to turbines. Computer models can accurately predict when, where, and to what degree this problem will occur, so wind project developers can mitigate this impact during the site selection process. In addition, many local ordinances incorporate language addressing shadow flicker to minimize any potential impact on neighbors.

SITE: the parcel(s) of land where a WECS, Wind Measurement Tower or Meteorological Tower 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 WECS, Wind Measurement Tower or Meteorological Tower or has entered into an agreement for such, or a setback agreement, shall not be considered off-Site.

SPECIAL USE PERMIT: The official document or permit by which an Applicant is allowed to construct and use a small-scale or large-scale WECS as reviewed by the Planning Board and granted or denied by the Town Board.

TOTAL HEIGHT: The height of the tower and the furthest vertical extension of the WECS or Wind Measurement Tower/MET Tower from ground elevation.

TOWER FACILITY: Site where one or more wind energy-deriving tower(s) or wind turbines will be located, including all accessory facilities or equipment, onsite access road.

TOWN: The Town of Binghamton, New York.

WIND ENERGY-DERIVING TOWER or 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 hub, as well as a nacelle and generator for producing electricity.

WIND ENERGY CONVERSION SYSTEM (WECS): Shall mean any mechanism including a wind turbine designed for the purpose of converting wind energy into electrical energy and all accessory facilities related thereto. A WECS may be:

a. Large Scale - A WECS that primarily produces energy for off-site sale or consumption, or any WECS that has a capacity of 200 kilowatts or more.

b. Small Scale - A WECS that has a capacity of less than 200 kilowatts and is incidental and subordinate to another use on the same parcel and which primarily produces energy for on-site consumption; provided, however, that if such parcel uses the WECS for net-metering with a utility company, such WECS may be considered non-commercial unless net revenue is produced.

WIND MEASUREMENT TOWER or METEOROLOGICAL TOWER (MET TOWER): A tower used solely for the measure of meteorological data such as temperature, wind speed, and wind direction.

SECTION IV. AUTHORITY

No WECS shall be constructed in the Town except in accordance with this Article unless a building permit, site plan approval and a Special Permit are received. Notwithstanding anything to the contrary, the Planning Board is hereby authorized to approve, approve with conditions, or disapprove WECS Special Use Permit applications in accordance with this Article.

SECTION V. SMALL-SCALE WIND ENERGY CONVERSION SYSTEMS (WECS)

- A. A Small-Scale WECS may be permitted as a customary accessory use in all zoning districts, and without the necessity of site plan review or special permit, subject to Town Code and Uniform Code requirements applicable to accessory uses, to the extent not inconsistent with this Article. In addition to

any other building permit requirements or requirements applicable to accessory uses, the following shall apply to small-scale WECSs:

- (1) If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, receipt of such agency approvals shall be a pre-condition to the building permit.
- (2) All small-scale WECS shall comply with the following minimum setback requirements. If more than one setback applies, the most restrictive setback shall control:
 - a. 3.0 times the Total Height from all adjacent off-Site property lines, rights of way, easements, public ways, power lines (not to include individual residential feed lines), gas wells and State lands;
 - b. 3.0 times the Total Height from all permanent structures located on-Site or off-Site;
 - c. 1,500 feet or 3.0 times the Total Height, whichever is greater, from all schools, hospitals, places of worship, places of public assembly and residential structures located off-Site;
- (3) The maximum height shall be no taller than 120 feet in height from the base of the WECS to the highest vertical blade tip
- (4) The minimum distance between the ground and any part of the rotor blade shall be no less than fifteen (15) feet.
- (5) An emergency telephone number shall be provided to the Town Code Enforcement Officer.
- (6) All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point at least twelve (12) feet above the ground and fenced. Setbacks for any anchor point for guy wires or cables shall be a distance of thirty (30) feet from any adjacent property lines.
- (7) WECS shall be secured so as to prevent access by unauthorized individuals. Fencing is required around the anchor(s) and tower mount(s).
- (8) The color of the WECS shall be a single, non-reflective matte finished color or other industry standard color which minimizes negative visual impact.
- (9) Wind energy-deriving towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Use of nighttime and overcast daytime condition lighting shall satisfy FAA lighting requirements in effect at the time of the project and shall be subject to Planning Board on-site review.
- (10) No commercial communication antennae may be affixed to or made part of any small-scale WECSs. No advertising shall be depicted on any part of any small-scale WECSs
- (11) The Town Code Department will have access to the site for inspection and compliance with Town code purposes.

SECTION VI. LARGE-SCALE WIND ENERGY CONVERSION SYSTEMS (WECS)

- A. A large-scale WECS is permitted where indicated in the Town's zoning regulations, but shall be subject to receipt of site plan approval and a special use permit in accordance with this Section. No

large-scale WECS shall be permitted in residential zoned districts without a use variance being granted by the Zoning Board of Appeals.

B. Special Use Permit Required.

1. All applicants for a special use permit for a large-scale WECS shall, in addition to the other requirements in the Town Code, comply with the procedures set forth in this Section. The Planning Board is the officially designated agency or body of the community that is authorized to review, analyze, evaluate, and make recommendations to the Town Board who will grant or deny special use permits for large-scale WECSs and facilities (except where the application is subject entirely to Section 94C of the Public Service Law).
2. An application for a special use permit for a large-scale WECS shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The Applicant shall provide proof that the landowner, if different than the Applicant, consents to the filing of the Application or the Applicant shall provide a copy of any agreement between the Applicant and the landowner authorizing the Applicant to use the landowner's property as proposed in the application. At the discretion of the Town Board, any false or misleading statement in the application may subject the Applicant to denial of the application without further consideration or opportunity for correction.
3. Application permit fees are as follows: Building permit - \$100 per acre; Planning Board review - \$100 per acre; SWPPP permit - \$500 per acre; erosion inspection - costs to the Town; Zoning Board review - \$100 per acre, and the owner/developer/lessee shall pay an annual fee of \$1,000, or such other amount as the Town Board may, from time to time, determine by resolution to cover the cost of processing and reviewing the annual inspection report and for other such similar administration, inspections and enforcement. Applicant shall be responsible for all fees and costs incurred by the Town in review and approval or denial of the application.
4. Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the Planning Board and/or Town Board.
5. Completed applications for siting large-scale WECS shall be submitted to the Town Code Officer at least ten (10) days prior to the regular meeting of the Planning Board. Applications shall not be deemed "complete" until all requirements herein have been satisfied and a SEQR decision has been issued or a Draft EIS has been accepted and is satisfactory. The Applicant shall attend any Planning Board and/or Town Board meeting where it wishes the application to be considered.
6. The decision of the Town Board on the application shall be filed in the office of the Town Clerk and a copy thereof mailed to the applicant.

C. Special Use Permit Requirements.

A plan for the proposed development of a large-scale WECS shall be submitted with the application and such plan shall show and include:

1. Name and address of the Applicant, name of project, boundary lines of parcel that project will be located on, a location map showing proposed site's location, date, north arrow, and scale of the plan.
2. Application permit fees as follows: Building permit - \$100 per acre; Planning Board review - \$100 per acre; SWPPP permit - \$500 per acre; erosion inspection - costs to the Town; Zoning Board review -

\$100 per acre, and the owner/developer/lessee shall pay an annual fee of \$1,000, or such other amount as the Town Board may, from time to time, determine by resolution to cover the cost of processing and reviewing the annual inspection report and for other such similar administration, inspections and enforcement.

3. Name and address of all owners of record of abutting parcels and those within fifteen hundred (1,500) feet of the property lines of parcel where development is proposed.
4. A description of the project, including the number and maximum rated capacity of each WECS
5. A set of preliminary plans prepared by a licensed surveyor and professional engineer drawn in sufficient detail to clearly describe the following:
 - a) Physical dimensions of the Site and property lines, easements and rights of way located within the Site boundaries;
 - b) Existing and proposed topography of the Site at five-foot contour intervals;
 - c) Location, approximate dimensions and types of existing structures and uses on Site, public roads and adjoining parcels within two thousand (2,000) feet of any proposed WECS;
 - d) Location of all proposed facilities, including WECS, guy wires, access roads, electrical lines, substations, other utility systems, storage or maintenance units, other accessory facilities and fencing;
 - e) Location of all aboveground and belowground utility lines on the Site, and all related transformers, power lines, interconnection points with transmission lines, and other ancillary facilities or structures
 - f) To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed WECS location equal to:
 - a. 3.0 times the Total Height
 - b. 1,500-feet or 3.0 times the Total Height, whichever is greater
 - g) Elevation drawing showing each WECS height and design including a cross-section of the structure and components of the nacelle; each wind turbine's compliance with applicable structural standards; and the WECS' nameplate capacity. A copy of all manufacturers' specifications for the WECSs to be installed shall be included.
 - h) A landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features including size and type of plant material and erosion control measures.
 - i) A Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the FAA to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, the application shall so state and such determination shall be submitted prior to final approval.
 - j) Study of the ambient daytime and nighttime noise levels.
6. Documentation of the proposed intent as well as a justification for the height of any wind energy-deriving tower and justification for any clearing required.
7. A complaint resolution plan for the Applicant to address and resolve complaints regarding the WECS from local residents. The plan may utilize 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 within a reasonable period of time.

8. Decommissioning Plan as described in Section VII of this Article.
9. Completed State Environmental Quality Review Act (SEQRA) Full Environmental Assessment Form (FEAF) and Broome County General Municipal Law § 239 referral form, or reference to Public Service Law Article 10 for projects over 25 MW.
10. 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 WECS or Tower Facility. Otherwise, the following information shall be submitted to the Board for its use in reviewing the application:
 - a) Surrounding topography in relation to the capabilities for generation of electricity by wind;
 - b) A plan detailing proposed haul routes to be used in delivery of project components, equipment and building materials, and those to be used to provide access to the Site during and after construction. Such plan shall also describe anticipated improvements to existing state, county or town roads, bridges or other infrastructure within the public's right of way or located on land controlled by the Town of Binghamton needed for construction, maintenance and decommissioning of the WECS or Tower Facility;
 - c) Highway use permit subject to the provisions of the Highway Preservation Act Local Law No. 171 and all other highway use permit regulations in the county or New York State.
 - d) Soil logs, soil profile analyses and stormwater runoff calculations for the area(s) being disturbed and Stormwater Pollution Prevention Plan prepared and certified by a professional engineer in accordance with the NYS DEC rules and regulations in effect at the time the project is approved.
 - e) A shadow flicker study, identifying 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 will be taken to eliminate or mitigate impacts of the flicker. Adequate mitigation measures, include, but are not limited to, temporary turbine shutdowns during periods that produce flicker, and shadow flicker for non-participating residences that submit complaints for exposures that exceed the annual limit as described in Section D.1.f of this Article.
 - f) A visual impact study, which shall include a computerized photographic simulation demonstrating any visual impacts from strategic vantage points. Color photographs assessing the visibility from key viewpoints, existing tree lines, and proposed elevations shall also be submitted. All photographs shall be digitally enhanced to simulate the appearance of the as-built aboveground site facilities as they would appear from distances within a ten (10) mile radius of such wind turbines. Photographs from specific locations may be required by the Board and all photographs shall be no smaller than 5" x 7" and be provided in color, hard copy format and digitally. The visual analysis shall also indicate the color treatment of the WECSs and related components, and any visual screening incorporated into the project that is intended to lessen the WECSs visual prominence.
 - g) A noise analysis prepared by a qualified acoustical consultant documenting the noise levels associated with each proposed WECS in accordance with Section D.1.e of this Article. The

study shall document noise levels at the property line of any non-participating property. The noise analysis shall provide pre-existing ambient noise levels and include low frequency noise.

- h) A report detailing the potential impacts of ice-throw and blade-throw on structures and property within the Town, including proposed safety measures to mitigate such impacts.
 - i) A structural safety report, including proposed safety measures to mitigate wind energy-deriving tower structural failure.
 - j) A property value analysis regarding the potential impact of values of non-participating properties in the Town of Binghamton. The analysis should include a proposed means of protecting property owners from the potential decrease in property values caused by the establishment and operation of the proposed WECS or Tower Facility.
 - k) A fire protection and emergency response plan created in consultation with the fire companies having jurisdiction over the proposed Site.
 - l) An assessment of potential electromagnetic interference with microwave, radio, television, personal, official or emergency communication systems and other wireless communication.
 - m) A report including a description of the geologic and/or geotechnical conditions of the Site, a narrative of soil identification and classification throughout the Site, and engineering recommendations based on borings and laboratory testing pertinent to the design of tower foundations and other project components. and a Stormwater Pollution Prevention Plan by a professional engineer in accordance with the NYS DEC rules and regulations in effect at the time the project is approved may be required.
 - n) Plans to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive runoff, and flooding of other properties, as applicable. The plans should include pre-construction and post-construction drainage calculations for the site completed by a certified engineer. The plans must show no increase in runoff from the site, or how such runoff shall be sufficiently mitigated and may require a Stormwater Pollution Prevention Plan by a professional engineer in accordance with the NYS DEC rules and regulations in effect at the time the project is approved.
 - o) Proposed mitigation measures for each and every anticipated adverse visual/aesthetic, environmental, or health/safety impacts of the WECS.
11. A description of the general geographic areas that would be acceptable for wind projects within the Town of Binghamton; furthermore, demonstration that the proposed site is the most appropriate site within the immediate area for the location of the WECS.
12. If the WECS is a "major electric generating facility" subject to Article 94C of the Public Services Law and its accompanying regulations, the Applicant shall provide all documents and information required to be provided to the Town, as well as any document or information provided to the Public Service Commission or other public agency which is specifically requested by the Town.
13. Insurance certificates in compliance with Section K. (2) of this Article.

14. If the property of the proposed project is to be leased, legal consent between all parties, including copies of lease documents, specifying the use(s) of the land for the duration of the project, including lease agreements, easements and other agreements, shall be submitted.
15. Demonstrated compliance with, or inapplicability of, any Town road maintenance or road use local laws, which may include, but shall not be limited to, a proposed road use agreement.
16. If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, the Applicant shall notify the Planning Board of such requirement and the Planning Board shall coordinate the review as deemed appropriate. A copy of any such license, approval, permit, certificate or registration shall be provided to the Town Board prior to approval of any special use permit.
17. The Town Code Department shall be granted access to the project site prior to construction, during construction, during operation and during and following any abandonment and decommissioning of the project.

D. Standards for Design.

Every Large-Scale WECS shall be subject to the following requirements.

1. Location – Applicants for a WECS special use permit shall locate, erect, and site wind energy-deriving towers in accordance with the following requirements:
 - a. WECS shall be located in a manner that produces no additional negative impacts on existing microwave communications links. No WECS shall be installed in any location along the major axis of an existing microwave communications link where, when considering any mitigation strategies of Applicant, its operation is still likely to produce significant electromagnetic interference in the links operation.
 - b. WECS shall be located in a manner that minimizes significant negative impacts on existing fixed broadcast, or reception antennae (including residential reception antennae) for radio (including amateur short wave radio), television, or wireless phone or other personal communications systems. No WECS shall be installed in any location where, when considering any mitigation strategies of Applicant, its proximity with existing fixed broadcast, or reception antennae (including residential reception antennae) for radio (including amateur short wave radio), television, or wireless phone or other personal communication systems is likely to produce electromagnetic interference with signal transmission or reception.
 - c. WECS shall be located in a manner that minimizes negative impacts on bird and bat species. No WECS shall be installed in any location where, when considering any mitigation strategies of Applicant, there are still likely to be negative impacts on birds or bats. The Applicant shall present and implement a plan for such mitigation, which plan shall be approved by all relevant state and federal regulatory agencies, with consideration of input from local agencies with relevant expertise.
 - d. All large-scale WECS shall comply with the following minimum setback requirements. If more than one setback applies, the most restrictive setback shall control:
 - a. 3.0 times the Total Height from all adjacent non-participating property lines, rights of way, easements, public ways, power lines (not to include individual residential feed lines), gas wells and State lands;
 - b. 3.0 times the Total Height from all permanent structures located on participating and non-participating properties;

- c. 1,500 feet or 3.0 times the Total Height, whichever is greater, from all schools, hospitals, places of worship, places of public assembly and residential structures located on non-participating properties;
- e. The level of noise produced during WECS operation shall not:
 - a. Exceed 45 (dBA) L_{eq} (8-hour) measured from the property line of any non-participating property.
 - b. Exceed 40 (dBA) L (night-outside), annual equivalent continuous average nighttime sound level from the WECS or Tower Facility outside measured from the property line of any non-participating property.
 - c. Produce any audible prominent tones, as defined under ANSI S12.9 part 4-2005 Annex C at the property line of any non-participating property.
 - d. Produce human perceptible vibrations inside any residential structure located on a non-participating property that exceed the limits for residential use recommended in ANSI Standard S2.71-1983 (August 6, 2012) "Guide of evaluation of human exposure to vibration in Buildings."
 - e. Exceed a maximum noise limit of 45 dBA L_{eq} at the full octave frequency of 16, 31.5 and 63 Hertz outside any existing non-participating residence in accordance with Annex D of ANSI standard S12.9 – 2005/Part 4 Section D.2(1) (Sounds with strong low-frequency content)
 - f. Exceed a limit of 45 dBA L_{eq} (1-hour) at the property line of any non-participating property from any collector substation equipment.
- f. Shadow flicker caused by WECS operations shall be limited to a maximum of 30 minutes per day, not to exceed 30 hours annually at the property line of any non-participating property, subject to verification using shadow detection and operational controls at appropriate WECSs.
- g. With respect to the potential negative impacts described in this Section IV, Applicant shall present and implement a plan for mitigation subject to approval by the Planning Board.
- h. Applicant, at Applicant's sole expense, must have noise testing done every six months by a qualified acoustical consultant over the life span of the WECS and provide the results of all such noise testing to the Town Code Officer and Town Board.

E. Construction, Notice and Safety Considerations

- (1) An emergency telephone number shall be provided to the Town Code Officer, Office of Emergency Services, posted at the operations and maintenance building and on the project website, if any, so that the appropriate people may be contacted should any WECS need immediate attention.
- (2) The Applicant's complaint resolution plan to address and resolve complaints regarding any WECS shall be provided to the Board and Code Officer, posted on the project website, if any, and provided to any resident upon request.
- (3) All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point at least twelve (12) feet above the ground and fenced. Setbacks for any anchor point for guy wires or cables shall be a distance of fifty (50) feet from any non-participant. The anchor points shall be secured by fencing.
- (4) A caution sign shall be placed at the primary entrance of each parcel where a WECS is located. Signs shall be four (4) to six (6) feet high, i.e., at eye level. Said signs shall be a minimum of one-foot square and no larger than two square feet in size and shall have the words "CAUTION: WIND TURBINES IN USE" printed thereon. In addition, the owner's and operator's name, address, and telephone number shall be printed thereon.

- (5) WECS and site shall be sufficiently secure so as to prevent access by unauthorized individuals.
- (6) Each WECS shall conform to the following specifications:
 - (a) WECS shall use tubular towers
 - (b) The color of all WECS shall be a non-reflective matte finished color or other industry standard color(s) which minimizes negative visual impact.
 - (c) Each wind turbine within a WECS shall be generally uniform in size and geometry.
- (7) All WECS shall be equipped with manual and automatic overspeed controls, whose design and fabrication, together with the design and fabrication of its rotors, shall conform to industry standard engineering practices as certified by its manufacturer. Such controls shall be designed to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
- (8) All WECS shall be located in a manner that minimizes the risk to public health and safety posed by ice-throw and blade-throw. All WECS shall be equipped with a nacelle-mounted ice sensor, a shaft vibration sensor or other available technology capable of directly or indirectly detecting blade ice formation. Such sensor(s) or technology shall cause the automatic shutdown of a WECS when blade ice buildup is detected at levels that pose a substantial risk to public health and safety.
- (9) No chemical deicing agent of any kind shall be applied to any part of a WECS for the purpose of reducing blade ice buildup or for any other reason.
- (10) No commercial communication antennae may be affixed to or made part of any large-scale WECSs. No advertising shall be depicted on any part of any large-scale WECSs.

F. Lighting. WECS and MET Towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Use of nighttime and overcast daytime condition lighting to satisfy FAA lighting requirements shall be reviewed with specific respect to Section VI.5.C.i of this Article.

G. Utility Service. All collection lines from the wind generation electricity generation facilities to on-site collection substations shall be underground to the maximum extent practicable given topography and other constraints.

H. Height

- (1) The minimum distance between the ground and any part of the rotor blade shall be no less than thirty (30) feet.
- (2) Any WECS (large-scale) shall be no taller than 390 feet in height from the base of the WECS to the highest vertical blade tip.
- (3) Any MET Tower shall be no taller than 190 feet.

I. Environmental Impact.

- (1) Visual Impact – Each of the WECS shall be of substantially the same design, construction materials, finishing and color treatment as described in Section V.A.7, above. Visual screening intended to lessen the WECSs visual prominence shall be incorporated to the maximum extent possible.
- (2) Access Roads - Whenever possible, existing roadways shall be used for access to the WECS site. In the case of constructing roadways, they shall be constructed in a manner so that they are not conspicuous to the surrounding environment and mitigate any increased runoff and meets the requirements of the New York State building code. A Stormwater Pollution Prevention

Plan by a professional engineer in accordance with the NYS DEC rules and regulations in effect at the time the project is approved may be required.

(3) Accessory Structures / Facilities – Transmission facilities or buildings shall be located behind ridges or vegetation, where feasible, to screen from visibility.

(4) Wildlife – All potential impacts to local wildlife, especially threatened/endangered species, resulting from the design and siting of all WECS must be reviewed and approved by all relevant state and federal regulatory agencies, with consideration of input from local agencies with relevant expertise. The Applicant must obtain all necessary state and federal wildlife permissions and permits, including, but not limited to incidental take permits prior to the commencement of construction of the WECS or Tower Facility.

(5) Open Space – All 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.

(6) DEFORESTATION - DEFORESTATION/CLEAR CUTTING: Any deforestation or clear-cutting (removal of all or the vast majority of trees) shall be forbidden. Excluding roadways, clear cutting trees in any area equal to one square acre or more will require the permission of the Planning Board and Town Board. The Planning and/or Town Board may, at their discretion, require reforestation using a mix of red maple and white pine (or other species as recommended by a certified forester, and approved by the Planning Board and Town Board) nursery stock of no less than four feet in height. Planting will take place before the project is considered complete. The contractor will remain responsible for maintaining healthy trees for one year after planting.

(7) Must hold all necessary state and federal permits.

J. Operating Considerations.

(1) Building and Grounds Maintenance – Upon completion of installation the site shall be returned as close as possible to its natural state. Any damaged, spare or unused parts, maintenance equipment, oil and all similar materials shall be removed from the premises within thirty (30) days or kept in a covered and enclosed, on-site storage facility. Code Enforcement shall be granted access to the site for inspections.

(2) Roadways -All roadways and pathways shall be maintained year round for emergency access.

(3) Ownership Changes – If the ownership of a WECS operating under a special use permit changes, subject to the requirements of Section VI, the special use permit shall remain in force and all conditions of the special use permit will continue to be obligations of succeeding owners. The Town Clerk shall be notified and the ownership change registered with the Town. All new owners must submit to the Town Clerk a letter of credit, decommissioning plan and plan for resolution of complaints acceptable to the Town under the terms of Section VII.A. at the time the notification of ownership change is submitted. Failure to submit these items at the time of ownership change will result in revocation of the special use permit. All signs required under provisions of this Article shall be changed accordingly.

(4) Modifications – Any and all substantial modifications, additions, or changes to a WECS authorized to operate under this Article, whether structural or not, shall be made by application to the Planning Board except where modification is required for routine maintenance and repairs which become necessary in the normal course of use of such WECS or become necessary as a result of natural forces, such as wind or ice. Additionally, any modification resulting in significant modifications to the public health, safety, welfare, environment, of the Town or the visual or sound impacts of the project, must be reviewed and approved by the Planning Board.

K. Certifications.

(1) Post-Installation - A post-installation field report identifying the facilities generation of electricity and any unanticipated impacts upon the environment shall be submitted to the Town Code Officer and Town Board within sixty (60) days of completion of installation.

(2) Insurance / Liability - Prior to the commencement of construction of the WECS or Met Tower, the Applicant shall provide the Town Board proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of commercial liability insurance and public liability insurance, of a level to be determined by the Town Board in consultation with the Town's insurer, to cover damage or injury which might result from the failure of a tower or towers or any other part(s) of the generation or transmission facility. The commercial liability insurance policy shall provide coverage of at least \$2,000,000 per occurrence / \$4,000,000 aggregate (\$5,000,000 and \$10,000,000, respectively, for WECS subject to Article 94C of the Public Service Law).

(3) National and State Standards - The applicant shall show that all applicable manufacturers, New York State and U.S. standards for the construction, operation, and maintenance of the proposed wind turbine have been met or are being complied with. Wind turbines shall be built, operated, and maintained to applicable industry standards of the Institute of Electrical and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI). The applicant shall furnish evidence, over the signature of a professional engineer licensed to practice in the State of New York, that such wind turbine is in compliance with such standards.

(4) Lightning Strike / Grounding - The applicant shall show that all applicable manufacturers specifications, New York State and U.S. standards for the construction, operation, and maintenance of the WECS have been met or are being complied with and a certification is required by a professional electrical inspector licensed by the State of New York.

(5) Wind Speed / Wind Load - Certification is required by a registered professional engineer or manufacturer's certification that the tower design is sufficient to withstand wind-load requirements for structures as established by the Building Code of New York State.

(6) Continuing Obligations - All requirements detailed in this Section shall remain in force for the life of the special use permit.

L. Public Hearing. Upon a majority vote of the Planning Board and/or Town Board, the Planning Board and/or Town Board may hold a public hearing on the large-scale WECS application, if one is not otherwise required.

SECTION VII. ABANDONMENT OF USE.

A. All permit applications for a large-scale WECS or a Wind Measurement Tower shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the WECS or Met Tower. Prior to issuance of a building permit, the owner or operator of the WECS or Met Tower shall post a letter of credit in a face amount of not less than 120% of the estimated cost of complete decommissioning and removal to ensure proper, safe removal of the WECS or Met Tower and accessory facilities in accordance with the decommissioning plan described below prepared and submitted by a professional engineer licensed in the State of New York. The amount of the letter of credit shall be reviewed by the Applicant and the Town Board every five years and may be changed based upon majority vote of the Town Board. Applicant shall submit a revised estimate of costs to decommission prepared and certified by a professional engineer licensed by the State of New York to be approved by the Town Board. The form of the letter of credit must be reviewed and approved by the Town Attorney, and the letter of credit must remain in effect until the system is fully removed and final inspection is completed by the Code Enforcement Officer. Any new owner must submit a letter of credit, under the same terms and conditions as the prior owner, for review and approval immediately upon change of ownership. Prior to removal of a WECS or Met Tower, a demolition permit for removal activities shall be obtained from the Town of Binghamton.

(1) The applicant shall submit a decommissioning plan that ensures that the site will be restored to a useful, nonhazardous condition, which plan shall be implemented without delay if (1) the Applicant ceases operation of the WECS or Met Tower for a period of 18 months, (2) begins

but does not complete construction of the project within 18 months after receiving special use permit approval, or (3) the special use permit for the WECS or Met Tower expires or is not renewed. The plan shall include but not limited to the following:

(a) WECS or Met Tower removal shall include removal of all above ground equipment, and removal of foundations to a depth of four (4.0) feet below grade. Below ground accessory facilities, such as collection lines, are required to be removed. In addition, access roads may be left in place if written consent is received by the Town from the landowner. All WECS equipment or materials or accessory facilities installed underground must be fully removed and the land reclaimed where such equipment or materials will (i) interfere with or prevent continued compliance by the landowner with any Environmental Laws, (ii) give rise to any liability to the Town or the landowner under any Environmental Laws, or (iii) form the basis of any claim, action, suit, proceeding, hearing or investigation under any Environmental Laws. "Environmental Laws" shall mean any applicable law (including common law), statute, regulation, ordinance, order, code, guidance standard recognized by regulatory authorities, or other legal requirement relating to protection of the environment, Hazardous Material(s) and/or worker health and safety adopted by any applicable federal, state, or local governmental authority. "Hazardous Material" means any pollutant, contaminant, hazardous or toxic substance, waste, and any other material (a) subject to regulation or governed by any Environmental Law; and (b) the presence, or discharge of, or exposure to which could result in liability as a result of its impact or potential impact on human health or the environment; and including asbestos and asbestos containing material; petroleum, petroleum products and waste oil; any flammable explosives, radioactive materials, or toxic mold.

(b) Restoration of the surface grade and soil after removal of equipment.

(c) Revegetation of restored soil areas with native seed mixes, excluding any invasive species.

(d) The timeframe for the completion of site restoration work is not to exceed twelve (12) months from the start of decommissioning.

(2) In the event that construction of the WECS or Met Tower has been started but is not completed and functioning within 12 months of the issuance of the final site plan approval, the Town may notify the Applicant to complete construction and installation of the facility within 90 days. If the Applicant fails to perform, the Town may notify the owner and/or operator to implement the decommissioning plan. The decommissioning must be fully completed within 180 days of such notification by the Town.

(3) Upon cessation of activity of a fully constructed WECS or Met Tower for a period of 12 months, the Town may notify the owner and/or operator of the facility to implement the decommissioning plan. Within 90 days of notice being served, the owner and/or operator can either restore operation equal to 50% of approved capacity or implement the decommissioning which must then be fully complete within 180 days of the beginning of its implementation.

(4) Upon revocation, termination or non-renewal of the special use permit for a WECS or Met Tower, the applicant, owner and/or operator must fully complete the decommissioning plan.

(5) If the owner and/or operator fails to fully implement the decommissioning plan within the 12 month time period and restore the site as required, the Town may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and shall, in accordance with the law, recover all expenses incurred for such activities from the letter of credit or other financial guarantee and from the defaulted owner and/or operator. Any cost incurred by the Town which has not been fully paid by the owner and/or operator shall be assessed against the property, shall (in addition to any other available remedies) become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes. The decommissioning plan shall provide for the ability of the Town, or its assignee or designee, to access the property owners' land until decommissioning is fully completed.

- (6) All current and future landowner(s) and project owner(s) will enter into a decommissioning agreement with the Town prior to commencement of the project.

SECTION VIII. WIND MEASUREMENT TOWERS.

A. Wind Site Assessment. As a wind site assessment is typically conducted to determine the wind speeds and the feasibility of using particular sites, installation of Wind Measurement Towers shall be permitted in accordance with this Section.

B. Applications for Wind Measurement Towers. A MET Tower shall be permitted as a customary accessory use in the agricultural zoning district and with the necessity of site plan review, subject to Town Code and Uniform Code requirements applicable to accessory uses, to the extent not inconsistent with this Article. A special use permit application for a Wind Measurement Tower shall include:

1. Building permit application, including all materials required thereby.
2. Name, address, telephone number and email address of the applicant and all related companies. 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.
3. Name, address, telephone number and email address of the property owner. If the property owner is not the applicant, the application shall include a letter agreement or other written permission signed by the property owner and notarized:
 - i. confirming that the property owner is fully understands and approves the proposed application(s) and provides copies of any lease agreements between the property owner and the applicant.
 - ii. authorizing the submission of the application.
4. Address of each proposed wind measurement tower location, including Tax Map section, block and lot number.
5. Proposed development plan and map, including a site plan for the property as described in Section B.1. above.
6. Decommissioning Plan, including a letter of credit for removal in a face amount of not less than 120% of the estimated cost of complete decommissioning and removal to ensure proper, safe removal of the MET Tower and accessory facilities in accordance with the decommissioning plan described below prepared and certified by a professional engineer licensed in the State of New York. The amount of the letter of credit shall be reviewed by the Applicant and the Town Board every five years and may be changed based upon majority vote of the Town Board. Applicant shall submit a revised estimate of costs to decommission prepared and certified by a professional engineer licensed by the State of New York to be approved by the Town Board. The form of the letter of credit must be reviewed and approved by the Town Attorney, and the letter of credit must remain in effect until the system is fully removed and final inspection is completed by the Code Enforcement Officer. Any new owner must submit a letter of credit, under the same terms and conditions as the prior owner, for review and approval immediately upon change of ownership. Prior to removal of a WECS MET Tower, a demolition permit for removal activities shall be obtained from the Town of Binghamton.
7. If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, the Applicant shall notify the Planning Board of such requirement and the Planning Board shall coordinate the review as deemed appropriate. A copy of any such license, approval, permit, certificate or registration shall be provided to the Planning Board prior to approval.

C. Standards for Wind Measurement Towers.

1. All MET towers shall have a maximum height of 190 feet.
2. All MET towers shall comply with the following minimum setback requirements. If more than one setback applies, the most restrictive setback shall control:
 - a. 3.0 times the Total Height from all adjacent off-Site property lines, rights of way, easements, public ways, power lines (not to include individual residential feed lines), gas wells and State lands;
 - b. 3.0 times the Total Height from all permanent structures located on-Site;
 - c. 1,500 feet or 3.0 times the Total Height, whichever is greater, from all permanent structures located off-Site;
2. All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point at least twelve (12) feet above the ground and fenced. Setbacks for any anchor point for guy wires or cables shall be a distance of fifty (50) feet from any Non-Participant.
3. Wind Measurement Towers shall be sufficiently secure so as to prevent access by unauthorized individuals.
4. Wind Measurement Towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Use of nighttime and overcast daytime condition lighting to satisfy FAA lighting requirements shall be subject to Planning Board on-site review to determine visual impact on adjacent parcels.
5. Special use permits for Wind Measurement Towers shall be issued for a period of up to eighteen (18) months. Permits may be renewable upon application to the Planning Board.
6. Upon expiration of the special use permit, the Wind Measurement Tower shall be fully removed and the land reclaimed in accordance with the Decommissioning Plan.
7. There shall be no more than three (3) Wind Measurement Towers permitted in the Town at any given time.

SECTION IX. PENALTIES

Penalties for Violations

1. In the event of a violation of this chapter or any WECS or MET system issued pursuant to this chapter, the Board may impose and collect, and the holder of the site plan approval for WECS or MET systems shall pay to the Town, fines or penalties as set forth below.
2. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$1,000 or imprisonment for a period not to exceed ten (10) days, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine of \$1,500 or imprisonment for a period not to exceed ten (10) days, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine of \$2,000 or imprisonment for a period not to exceed ten (10) days, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or such ordinance or regulation shall be deemed misdemeanors and, for such purpose only, all provisions of relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

3. Notwithstanding anything in this chapter, the owner/operator of a WECS or MET system may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the owner/operator of the WECS or MET system to termination and revocation of certificate of compliance, certificate of occupancy and/or building permit. The Town may also seek injunctive relief to prevent the continued violation of this chapter, without limiting other remedies available to the Town.
4. Penalty for failure to maintain insurance shall include revocation of building and certificate of occupancy or compliance.

SECTION X. APPEALS.

1. Any applicant desiring relief or exemption from any aspect or requirement of this chapter may request such from the Planning Board in the form of a formal written application with full supporting data and documentation, which application must be filed with the Planning Board within thirty (30) days of a pre-application meeting, unless the relief or exemption is contained in the original application for site plan review or, in the case of an existing or previously granted site plan approval, a written request for modification of its facilities has been filed. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Planning Board and approved by the Town Board. However, the burden of proving the need for the requested relief or exemption is solely on the applicant to prove the same to the satisfaction of the Planning Board. The applicant shall bear all costs of the Planning Board or the Town in considering the request, and the relief or exemption, if any, and to the extent granted, shall not be transferable to a new or different owner/operator of WECS or MET Tower without the specific written permission of the Planning Board. Such permission shall not be unreasonably withheld or delayed based on good cause shown. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers.
2. If a permit for a WECS or MET Tower is denied because of a conflict with other laws, including zoning laws of the Town, the applicant may appeal to (or apply for relief or variance from) the Zoning Board of Appeals, which shall regard wind energy as a factor to be considered, weighed and balanced along with other factors, including the statutory factors for variances.

SECTION XI. SEPARABILITY.

The provisions of this local law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words, or parts of this local law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this local law would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and as if such person or circumstance, to which the local law or part thereof is held inapplicable, had been specifically exempt therefrom.

SECTION XII. REPEALER.

All Ordinances, Local Laws and parts thereof inconsistent with this Local Law are hereby

repealed.

SECTION XIII. CONFLICT WITH OTHER LAWS

Where this Law differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, the more restrictive or protective law of the Town and the public shall apply.

SECTION XIV. EFFECTIVE DATE.

This local law shall take effective immediately upon filing with the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.