

TOWN OF FRANKLIN
Local Law #1 of 2007

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

Local Law No. #1 of 2007, entitled “Wind Energy Facilities” is hereby adopted to read in its entirety as follows:

Article 100. WIND ENERGY FACILITIES

Section 101. Title

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

Section 102. Purpose

The Town Board of the Town of Franklin adopts this Local Law to promote the effective and efficient use of the Town’s wind energy resource through Wind Energy Conversion Systems (WECS), and to regulate the placement of such systems so that the public health, safety, and welfare shall not be jeopardized.

Section 103. Authority

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

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

Section 104. Findings

A. The Town of Franklin finds and declares that:

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

2. The generation of electricity from properly sited Wind Energy Facilities, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or energy consumption at that location can be reduced.
3. Regulation of the siting and installation of Wind Energy Facilities is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
4. Wind Energy Facilities represent significant potential aesthetic impacts because of their size, lighting, and shadow flicker effects, if not properly sited.
5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction methods.
6. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.
7. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.
8. Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively impact adjoining properties.
9. Without proper planning, construction of Wind Energy Facilities can create traffic problems and damage local roads.
10. If improperly sited, Wind Energy Facilities can interfere with various types of communications.

Section 105. Applicability

- A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law that produce greater than 1kW or more than 50 volts of electricity.
- B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that:
 1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Local Law prior to recommencing production of energy.

2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.
3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-four (24) months after said effective date, unless a permit for said Wind Measurement Tower is obtained.

Section 106. Permits

- A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Franklin except in compliance with this Local Law.
- B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Franklin except with a Wind Energy Facility Permit approved pursuant to this Local Law.
- C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Franklin except pursuant to a Wind Energy Facility Permit issued pursuant to this Local Law.
- D. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Franklin except pursuant to a Wind Energy Permit issued pursuant to this Local Law.
- E. Exemptions. No permit or other approval shall be required under this Local Law for mechanical, non-electrical WECS utilized solely for agricultural operations.
- F. Transfer. No transfer of any Wind Energy Facility or Wind Energy Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), shall occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability of an applicant nor of any other party under this Local Law.
- G. Notwithstanding the requirements of this Section, replacement in-kind or modification of a Wind Energy Facility may occur without Town/Planning Board approval when (1) there shall 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 noise produced by the WECS.

Section 107. Waivers

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

Section 108. Enforcement and Penalties

- A. The Planning Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than six months, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$350 for each violation and each week 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 local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

Section 109. Severability

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Section 110. Appeals

Any person or persons, jointly or severally aggrieved by the decision of the Town in regard to the administration of this Local Law may apply to the Supreme Court for review under Article 78 of the New York State Civil Practice Laws and Rules.

Section 111. Effective Date

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

Article 200. DEFINITIONS

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

COMMERCIAL WIND ENERGY CONVERSION SYSTEM ("Commercial WECS") - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of more than 100 kW and which is intended to produce power for distribution on the utility grid.

DECIBEL (dB) – A unit for measuring the volume of sound, equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure of the measured sound to a standard pressure of 20 micronewtons per square meter.

EAF - Environmental Assessment Form used in the implementation of the State Environmental Quality Review Act as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

ENVIRONMENTAL IMPACT STATEMENT (EIS) - An EIS is a written "draft" or "final" document prepared in accordance with §617.9 of State Environmental Quality Review Act. An EIS provides a means for agencies, project sponsors, and the public to systematically consider significant adverse environmental impacts, alternatives, and mitigation strategies. An EIS facilitates the weighing of social, economic, and environmental factors in the planning and decision-making process. A draft EIS (DEIS) is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment by all involved and interested agencies before a final EIS (FEIS) is prepared.

FACILITY OWNER - Means the entity or entities having an equity interest in the Wind Energy Conversion System, including their respective successors and assigns.

HUB HEIGHT - Means the distance measured from the surface of the tower foundation to the height of the Wind Turbine hub, to which the blade is attached.

NEW YORK INDEPENDENT SYSTEM OPERATOR (NYISO) - NYISO is a not-for-profit organization formed in 1998 as part of the restructuring of New York State's electric power industry. Its mission is to ensure the reliable, safe and efficient operation of the State's major transmission system and to administer an open, competitive and nondiscriminatory wholesale market for electricity in New York State.

RESIDENCE - Any dwelling suitable for habitation existing in the Town of Franklin on the date an application is received. A residence may be part of a multidwelling or multipurpose building, but shall not include buildings such as hotels or motels, hospitals, day care centers, dormitories, sanitariums, nursing homes, municipal buildings, schools or other buildings used for educational purposes, or correctional institutions.

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

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

SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS") - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended primarily to reduce consumption of utility power at that location.

SOUND PRESSURE LEVEL - According to the NYSDEC Program Policy on Assessing and Mitigating Noise Impacts, a measure of sound pressure in the atmosphere which can be determined according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedure. Also, the perceived loudness of a sound as expressed in decibels (db) or A-weighted decibel scale dB(A). For example, an L₁₀ - 30 dBA indicates that in any hour of the day 30 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes.

TRANSMISSION OWNER - Companies which own the electric distribution networks.

UNREASONABLY INTRUSIVE: Any sound which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensitivities under the circumstances.

WIND ENERGY CONVERSION SYSTEM ("WECS") - A machine that converts the kinetic energy in the wind into a usable form such as a "wind turbine" or "windmill."

WIND ENERGY FACILITY - Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

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

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

WIND TURBINE HEIGHT - Means the distance measured from the surface of the tower foundation to the highest point of the turbine rotor plane.

Article 300. COMMERCIAL WIND ENERGY FACILITIES

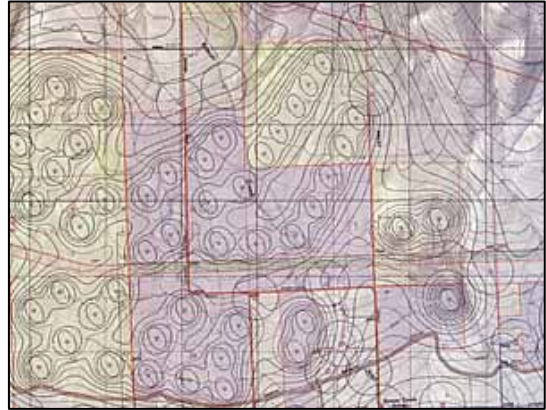
Section 301. Application Requirements

- A. A complete application for a Wind Energy Permit for commercial WECS shall include the following:
1. A copy of an executed Interconnection Agreement with NYISO and the applicable Transmission Owner.
 2. A completed Application for Wind Energy Facilities, obtained from the Code Enforcement Officer.
 3. A site plan prepared by a licensed surveyor or engineer drawn to a scale to be established by the Planning Board consistent with the size of the site and in sufficient detail to clearly describe the following.
 - a) Property lines and physical dimensions of the Site;
 - b) Location, approximate dimensions and types of major existing structures and uses on the Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the proposed WECS Site.
 - c) Location and elevation of each proposed WECS.
 - d) Location of all above and below ground utility lines on the Site as well as transformers, the interconnection point with transmission lines, and other ancillary facilities or structures.
 - e) Location and size of structures above 35 feet within a one and one-half tower radius 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.
 - f) To further demonstrate compliance with the setback requirements of this Local Law, buffers shall be drawn around each proposed tower location in accordance with the requirements set forth in Section 306 (A).
 - g) Location of the nearest residential structure(s) on the Site and located off the Site, and the distance from the proposed WECS.
 - h) All proposed facilities, including access roads, electrical substations, storage or maintenance units, and fencing.
 4. For each proposed WECS, include make, model, picture and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants. 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.

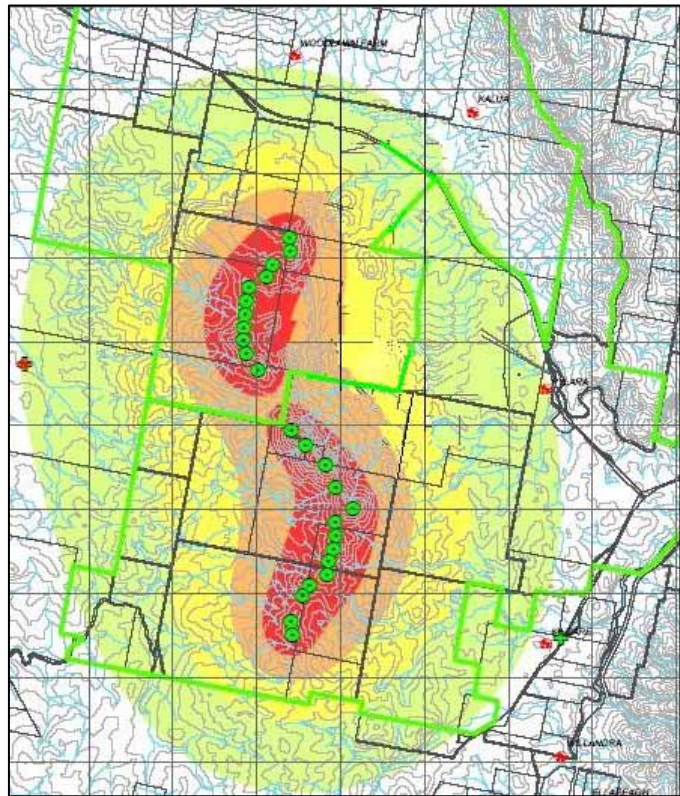
5. Landscaping Plan depicting existing vegetation and describing any areas to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations. The plan must be drawn to a scale established by the Planning Board consistent with the size of the site and in sufficient detail to clearly describe the existing and proposed vegetation.
6. 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.
7. Erosion and sediment control plan prepared to NYSDEC Phase II or NYCDEP stormwater requirements, as appropriate.
8. A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
9. The applicant shall submit an operations and maintenance plan for the proposed facility which shall include:
 - a) a regular periodic maintenance schedule;
 - b) any special maintenance requirements;
 - c) procedures and notification requirements for restarts during icing events
10. Decommissioning Plan. The applicant shall submit a decommissioning plan, which shall include:
 - a) the anticipated life of the WECS;
 - b) the estimated decommissioning costs in current dollars;
 - c) how said estimate was determined;
 - d) the method of ensuring that funds shall be available for decommissioning and restoration;
 - e) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost shall be kept current; and
 - f) the manner in which the WECS shall be decommissioned and the site restored, which shall include removal of all structures and debris to a depth of 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.
11. List of property owners, with their mailing address, within 500 feet of the outer boundaries of the proposed Site.

12. Complaint Resolution: the application shall include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.
13. Completed Part 1, 2 & 3 of the Full EAF along with a Visual EAF Addendum.
14. If a positive declaration is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:
 - a) Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall include a graphic to 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 potential impacts on any residences.
 - b) Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, digital elevation models, and the like, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed 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. The NYSDEC Program Policy Assessing and Mitigation Visual Impacts must be referenced by the applicant when completing the visual impact study.
 - c) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed site, as well as the Delaware County Department of Emergency Services.

- d) Noise Analysis: a noise analysis that includes the low frequency of turbines and other noises generated shall be prepared by a competent acoustical consultant. The analysis shall include an assessment of ambient sound surveys at the site property lines and nearby residences to document environmental sound levels before the turbines are installed for comparison to similar measurements



after the project is operational. The noise analysis shall also include a projection of noise levels generated from each WECS using noise contours in increments of 10 decibels (dBA) out to a level of 30 dBA. Noise level contours from one or more proposed turbines should be laid over an aerial photograph or topographic map [as illustrated to the right] of the site vicinity in order to visualize the cumulative noise impacts from the entire wind farm on surrounding properties. All residences surrounding the proposed site vicinity should be clearly shown. Since the turbines only produce noise



- under windy conditions the noise modeling shall take into account the direction and speed of winds because this also affects sound propagation. The applicant shall also submit a design for post-development noise monitoring.
- e) Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring WECS Sites.
- f) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.

- g) An assessment of the impact of the proposed development on the local flora and fauna, including migratory and resident avian species.
- h) An assessment of the impact of the proposed development on area federal and state-listed historic resources.

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

Section 302. Application Review Process

- A. Applicants may request a pre-application meeting with the Planning Board or with any consultants retained by the Planning Board for application review. Meetings with the Planning Board shall be conducted in accordance with the Open Meetings Law.
- B. Ten (10) copies of the complete application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission.
- C. Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Planning Board waives any application requirement, no application shall be considered until deemed complete.
- D. If the application is deemed incomplete, the Planning Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Planning Board, the Town Clerk shall transmit the application to the Planning Board.
- F. The Planning Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within **1,000** feet of the boundaries of the proposed WECSs, and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Planning Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.

- G. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers.
- H. Notice of the project shall also be given, if applicable, to the Delaware County Planning Board, as required by General Municipal Law §239-l and 239-m.
- I. SEQRA review. Applications for WECS are deemed Type I projects under SEQRA. As a result, the Town must conduct a coordinated review. The Town Planning Board should seek lead agency status for the coordinated review.
- J. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings, which Statement may also serve as the Town's decision on the applications.
- K. Upon receipt of the recommendation of the County Planning Board (if applicable), the holding of the public hearing, and the completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the WECS application, in accordance with the standards in this Local Law.

Section 303. Physical Standards for Commercial Wind Energy Facilities

- A. The following standards shall apply to commercial WECS, unless specifically waived by the Planning Board as part of a Wind Energy Permit.
 - 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. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
 - 4. Lighting of tower. No tower shall be lit except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan.
 - 5. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. WECSs within a 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.

6. The use of guy wires is prohibited.
7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the interference.
8. All solid waste and hazardous waste and construction debris shall be removed from the site and managed in a manner consistent with all appropriate rules and regulations.
9. WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas shall be given priority wherever possible. To the extent practicable, development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Windpower Projects published by the State Department of Agriculture and Markets.
10. WECSs shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.
11. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
12. Stormwater run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
13. Construction of the WECS shall be limited to the hours of 7 a.m. to 7 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town.
14. No shadow flicker shall be permitted in any off-site residences.

Section 304. Required Site Safety Measures

- A. All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
- B. Unless the property owner submits a written request that no fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.
- C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage and the hazard of falling ice. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information. The Planning Board may require additional signs based on safety needs.
- D. No climbing pegs or tower ladders shall be located closer than fifteen (15) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
- E. The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet.
- F. WECSs 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.

Section 305. Traffic Routes and Road Maintenance

- A. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECSs and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include minimizing:
 - 1) traffic impacts from construction and delivery vehicles
 - 2) WECS-related traffic during times of school bus activity
 - 3) wear and tear on local roads
 - 4) impacts on local business operations

Wind Energy Permit conditions shall limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.

- B. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to local roads. The Applicant must consult with the Town Highway Superintendent and Delaware County Department of Public Works to obtain a written recommendation for bonding form and amount, which form and amount shall be approved by the Planning Board.
- C. The Applicant shall provide photographic evidence of the condition of the roads and other public infrastructure along the proposed route.

Section 306. Setbacks

- A. Each WECS shall be set back:
 - 1. One and one-half times the Wind Turbine Height of the largest proposed WECS from the nearest Site boundary line or public road.
 - 2. Five times the Wind Turbine Height from the nearest off-site residence, measured from the exterior of such residence. Notwithstanding any other provision of this Local Law regarding waivers or setback easements, no WECS shall be within 1,750 feet of an off-site residence, whether or not said residence is located in the Town of Franklin.
 - 3. Seven times the Wind Turbine Height from the nearest off-site hotel or motel, hospital, day care center, dormitory, sanitarium, nursing home, municipal building, school or other building used for educational purposes, or correctional institution, measured from that building.
 - 4. One and one-half times the Wind Turbine Height of the largest proposed WECS from any non-WECS structure or any above-ground utilities, unless waived by the utility companies.
- B. The statistical sound pressure level generated by a WECS shall not exceed $L_{10} - 30$ dBA measured at the nearest residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 30 dBA, the standard shall be ambient dBA plus 5 dBA. Independent verification by an acoustical engineer certified with the Institute of Noise Control Engineering shall be provided before and after construction demonstrating compliance with this requirement.
- C. In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph (B) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (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 one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to 125 Hz.

- D. 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 six (6) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public buildings. 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 thirty (30) mph at the ambient noise measurement location.

Section 307. Noise and Setback Easements

- A. In the event a Wind Energy Facility does not meet a setback requirement or exceeds noise or other criteria established in this Local Law as it existed at the time the Wind Energy Permit is granted, a waiver shall be granted from such requirement by the Planning Board in the following circumstances:
1. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) setbacks less than required; and
 2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Planning Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Local Law, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.
 3. Waivers granted under this Section differ from waiver requests under Section 107 of this Local Law in that no Section 107 waiver is required if a waiver is given under this Section, and a Section 107 waiver must be sought rather than a waiver under this Section if the adjoining property owner shall not grant an easement pursuant to this Section.

Section 308. Issuance of Wind Energy Permits

- A. Upon completion of the review process, the Planning Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- B. If approved, the Planning Board shall direct the Town Clerk to issue a Wind Energy Permit upon satisfaction of all conditions for said Permit, and direct the building inspector/code enforcement officer to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this Local Law.
- C. The decision of the Planning Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- D. If any approved Wind Energy Facility is not substantially commenced within one year of issuance of the Wind Energy Permit, the Wind Energy Permit shall expire.

Section 309. Abatement

- A. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Planning Board, the applicant shall remove said system at its own expense following the requirements of the Decommissioning Plan. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.
- B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Planning Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.
- C. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of non-functional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully described in the Decommissioning Plan.

Section 310. Limitations on Approvals; Easements on Town Property

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

Section 311. Permit Revocation

- A. Testing fund. A Wind Energy Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as biannually, or more frequently upon request of the Planning Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Wind Energy Permit and this Local Law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Planning Board, to cure any deficiency. An extension of the 90 day period may be considered by the Planning Board, but the total period may not exceed 180 days.
- B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Planning Board. The applicant shall have 90 days after written notice from the Planning Board, to cure any deficiency. An extension of the 90 day period may be considered by the Planning Board, but the total period may not exceed 180 days.
- C. Notwithstanding any other abatement provision under this Local Law and consistent with §310 and §311(B), 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 Wind Energy Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Planning Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

Article 400. WIND MEASUREMENT TOWERS

Section 401. Site Assessment

The Planning Board acknowledges that prior to construction of a WECS, a wind site assessment must be 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 on the issuance of a Wind Energy Permit in accordance with this Article.

Section 402. Application Requirements

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

1. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address of each proposed tower location, including Tax Map section, block and lot number.
4. Proposed Development Plan and Map.
5. Decommissioning Plan, including a security bond for removal.

Section 403. Standards

- A. The distance between a Wind Measurement Tower and the property line shall be at least 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.
- B. Wind Energy Permits for Wind Measurement Towers shall be issued for a period of two years and shall be renewable upon application to the Planning Board.

Article 500. SMALL WIND ENERGY FACILITIES

Section 501. Purpose and Intent

The purpose of this Article is to provide standards for small wind energy conversion systems (small WECS) designed for residential, farm, institutional and business use on the same parcel, and that are primarily used to reduce consumption of utility power at a single location. The intent of this Article is to encourage the development of small WECS and to protect the public health, safety, and community welfare.

Section 502. Authority

The Planning Board is hereby authorized to approve, approve with conditions, or disapprove small wind energy conversion system applications in accordance with this Local Law. The Planning Board may hire a professional engineer or consultant to assist in the review of an application at the applicant's expense.

Section 503. Procedure

- A. Completed applications for siting small WECS shall be submitted to the Town Clerk at least ten (10) days prior to the regular meeting of the Planning Board. Applications may be made by the owner of the property or his/her duly authorized representative, who shall attend the meeting of the Planning Board to discuss the application.
- B. Within sixty-two (62) days after the Planning Board meeting where the complete application is submitted, a public hearing shall be held. Notice of such public hearing shall be published in the official newspaper of the Town at least ten (10) days prior to the date thereof. The applicant shall give notice in writing by certified mail to all property owners of the land immediately adjacent to the proposed parcel where site is proposed. The applicant shall mail these notices at least ten (10) days in advance of the hearing and furnish the Planning Board with Post Office receipts as proof of notification.
- C. Within sixty-two (62) days of the public hearing, the Planning Board may approve, conditionally approve, or disapprove the application. The time in which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board. The decision of the Planning Board on the application shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered and a copy thereof mailed to the applicant.

Section 504. Application Requirements

A. Applications for small WECS permits shall include:

1. Property owner's contact information. If the applicant shall be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
2. Site plan map of the proposed tower, at a scale to be established by the Planning Board consistent with the size of the site, including Tax Map section, block and lot number.
3. Manufacturer's drawings and specifications of the proposed system as indicated in Section 301(A)(4).
4. Engineering drawings of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the New York State Uniform Fire Prevention and Building Code.
5. The applicant must provide a written statement demonstrating that the system shall be used primarily to reduce consumption of electricity at that location.
6. Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and states so in the application, to connect the system to the electricity grid.
7. A visual analysis of the small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

Section 505. Standards

A. All small WECS shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Local Law that are not in conflict with the requirements contained in this Article.

1. A system shall be located on a lot a minimum of one acre in size; however, this requirement can be met by multiple owners submitting a joint application.
2. Only one small WECS per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one site for purposes of this Article.

3. Small WECS shall be used primarily to reduce the on-site consumption of electricity.
4. Total heights may be allowed as follows:
 - a) 65-100+/- feet or less on parcels between one and five acres.
 - b) 130-160+/- feet or less on parcels of five or more acres.
 - c) The allowed height shall be reduced if necessary to comply with all applicable Federal aviation requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
5. The maximum turbine power output is limited to 100 kW.
6. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
7. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
9. 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.
10. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
11. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.

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 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 feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.
14. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.
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 shall not jeopardize the safety of the wind turbine structure.
16. All small WECS structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.
17. All small WECS 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.

Section 506. Setbacks

- A. Small WECS shall comply with the following standards:
 1. Setback requirements. A small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.
 2. Noise. Except during short-term events including utility outages and severe wind storms, a small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed the 30 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

Section 507. Abandonment

- A. A small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town.
- B. All small WECS shall be maintained in good condition and in accordance with all requirements of this section.

Article 600. MISCELLANEOUS

Section 601. Fees

A. Permit Fees

- 1. Commercial WECS Permit: \$100 per megawatt of rated maximum capacity
- 2. Wind Measurement Towers Permit: \$200 per tower (\$50 for a renewal)
- 3. Small WECS Permit: \$150 per WECS

B. Retention of Expert Assistance and Reimbursement by Applicant

- 1. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including but not limited to site inspections, the construction and modification of the site, once permitted, and any requests for recertification.
- 2. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of the application.
 - a) The initial deposit shall be \$8,500.00 and shall be placed with the Town preceding the pre-application meeting.
 - b) The Town shall maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for their services in reviewing the application including the modification of the site, once permitted.
 - c) If at any time during the process this escrow account has a balance less than \$2,500.00, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Town before any

further action or consideration is taken on the application.

d) In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.

3. The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

C. Host Agreements

Nothing in this Local Law shall limit the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on the community.

Section 602. Tax Exemption

The Town hereby exercises its right to opt out of the tax exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by paragraph 8 of that law.