

On February 5, 2014, at the regular Town Board meeting, the Homer Town Board approved this draft Wind Energy Law for additional public comments.

All written comments must be submitted to Anita Jebbett, the Homer Town Clerk, either via email to [townofhomer@yahoo.com](mailto:townofhomer@yahoo.com) or in writing by the end of the Homer Town Board meeting on March 5, 2014. Please call Anita Jebbett at 749-4581 if you have questions.

Spoken public comments will be accepted during the public hearing to be held at the Homer Town Board meeting at 6:00 PM on Wednesday, March 5, 2014.

**PROPOSED**  
**Town of Homer Local Law No. 1 / 2014**  
**Wind Energy Facilities**

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

**Local Law No. 1** of 2014, entitled "**WIND ENERGY FACILITIES**," is hereby adopted to read in its entirety as follows:

**Article I**  
**WIND ENERGY FACILITIES**

**§1 Title.**

This Local Law may be cited as the "Wind Energy Facility Law of the Town of Homer, New York."

**§2 Purpose.**

The Town Board of the Town of Homer 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 will not be jeopardized.

**§3 Authority.**

The Town Board of the Town of Homer 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 §135 and 138.
- F. New York Town Law §64(17-a) (protection of aesthetic interests), (23)(General powers).

**§4 Findings.**

The Town Board of the Town of Homer finds and declares that:

- A. Wind energy is an abundant and renewable 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.
- B. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and existing power distribution systems can be used to transmit electricity produced.
- C. Regulations of the siting and installation of wind turbines are necessary for the purpose of protecting the health, safety, and welfare of participating and non-participating neighboring property owners and the general public.
- D. If not properly sited, Wind Energy Facilities can represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.
- E. 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
- F. If not properly sited, Wind Energy Facilities may present an undue risk to bird, bat and other wildlife populations.
- G. If not properly sited, Wind Energy Facilities could conceivably present the risk of diminution of property values of non-participating or adjoining properties.
- H. Wind Energy Facilities may be significant sources of noise, shadow flicker and vibrations, which can negatively impact the health of non-participating or adjoining property residents.
- I. Without proper planning, regulation, and construction of Wind Energy Facilities can create traffic problems and damage local roads.
- J. If improperly sited, Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.
- K. The installation of Wind Energy Facilities may affect ground water supplies.
- L. Distance of setbacks should take into consideration at a minimum the potential hazards of ice throws, blade breakage, tower collapse, shadow flicker, noise, and vibration.
- M. Wind Energy Facilities may have an effect on future sub-divisions, commercial, residential, or any other development.

**§5 Permits Required; Transfer; Modification.**

- A. No person shall construct any Wind Energy Facility in the Town of Homer unless they have first obtained a permit from the Town Board.
- B. All construction and any restoration or modifications of any Wind Energy Facility, WECS, Small Wind Energy Conversion System, Wind Measurement Tower or part thereof that is located in agricultural areas will be done to the maximum extent practicable according to the New York State Dept. of Agriculture and Market Guidelines for Agricultural Mitigation for Wind Power Projects, subject to landowner approval.
- C. No Wind Measurement Tower greater than 18 feet high shall be constructed, reconstructed, modified, or operated in the Town of Homer except pursuant to a Wind Energy Permit issued pursuant to this local law. No permit shall be issued for such construction, reconstruction, modification or operation except in those areas zoned Agricultural.
- D. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Homer except pursuant to a Wind Energy Permit issued pursuant to this local law. This law shall not govern small Wind Energy Conversion Systems constructed prior to the effective date of this local law unless they are reconstructed or modified.
- E. Exemptions. No permit or other approval shall be required under this Local Law for mechanical non-electrical WECS utilized solely for agricultural operations, provided the Town Board finds such proposed system or structure exempt or otherwise issues a waiver pursuant to provisions of Article V hereof. In considering an exemption, the Town Board shall find that the proposed location and height of such structure/system does not adversely affect the public health, safety and welfare of the adjoining parcels and property owners.
- F. Transfer. No transfer of any Wind Energy Facility, Wind Energy Permit or sale of the entity holding the permit for such facility or the sale of more than 15% of the stock of said Permitted (not counting sales of shares on a public exchange), to a third party, will occur without prior approval of the Town. Said approval shall be granted only upon the Town Board finding that the Transferee has provided a written assumption of all the Transferor obligations under this Local Law of the Wind Energy Permit, including but not limited to the Host Agreement, Pilot Agreement, Cash Deposits and such other agreements relative to the Wind Energy Facility, in a form acceptable to the Town Attorney. No transfer shall reduce the Permittee or any other party's total obligations owed to the Town under this Local Law, except in the manner as provided herein.
- G. Notwithstanding the requirements of this Section, replacement in kind of a Wind Energy Facility requires Town Board approval. All WEF replacements require full review under this local law

## **§6 Definitions.**

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

**AMBIENT SOUND** – Ambient sound encompasses all sound present in a given environment, being usually a composite of sounds from many sources near and far. It includes intermittent noise events, such as, from aircraft flying over, dogs barking, wind gusts, mobile farm or construction machinery, and the occasional vehicle traveling along a nearby road. The ambient also includes insect and other nearby sounds from birds and animals or people. The near-by and transient events are part of the ambient sound environment but are not to be considered part of the long-term background sound.

**ANSI** – refers to or means the AMERICAN NATIONAL STANDARDS INSTITUTE.

**APPLICANT** – The person or entity filing an application and seeking a special permit under this local law.

**BACKGROUND SOUND** – Background Sounds are those heard during lulls in the Ambient Sound environment and represent the quietest 10% of the time, for example the quietest six minutes during a sixty-minute interval

**dBA** – A-Weighted Sound Pressure Level. A measure of over-all sound pressure level designed to reflect the response of the human ear, which does not respond equally to all frequencies. It is used to describe sound in a manner representative of the human ear's response. It reduces the effects of the low frequencies with respect to the frequencies centered around 1000 Hz. The resultant sound level is said to be "Weighted" and the units are "dBA". Sound level meters have an A-weighting network for measuring A-weighted sound levels (dBA) meeting the characteristics and weighting specified in ANSI Specifications for Integrating Averaging Sound Level Meters, 51.43-1997 for Type 1 instruments and be capable of accurate readings (corrections for internal noise and microphone response permitted) at 20 dBA or lower. In this law dBA means LAeq unless specified other wise.

**dBC** – C-Weighted Sound Pressure Level. Similar in concept to the A-Weighted sound Level (dBA) but C-weighting does not de-emphasize the frequencies below 1k Hz as A-weighting does. It is used for measurements that must include the contribution of low frequencies in a single number representing the entire frequency spectrum. Sound level meters have a C-weighting network for measuring C-weighted sound levels (dBC) meeting the characteristics and weighting specified in ANSI SI.43-1997 Specifications for Integrating Averaging Sound Level Meters for Type 1 instruments. In this law dBC means L unless specified other wise.  
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**DECIBEL (dB)**: Means a standard unit for measuring the sound pressure level. It is equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to a reference pressure, which is 20 micropascals.

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

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

**PARTICIPANT** – Any and all Homer landowners having any contractual relationship with a wind developer.

**QUALIFIED ACOUSTICAL CONSULTANT** – A person with demonstrated competence in the specialty of community noise testing and evaluation who is contracted by the Town for purposes of noise measurement or evaluation of noise analysis or noise complaints. An example is a person with full membership in the Institute of Noise Control Engineers (INCE) or other specialist who is qualified by education and experience in acoustics and regularly engaged in community noise testing. While such a consultant is preferably also a licensed professional engineer, such licensure does not by itself establish qualification for community noise testing or analysis without further qualification. The Qualified Independent Acoustical Consultant can have no financial relationship with the Wind Energy Facility developer or related entity.

**RESIDENCE** - means any building suitable for habitation existing in the Town of Homer on the date an application is received. A Residence may be part of a multi-dwelling or multipurpose building, but shall not include buildings such as hunting camps, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

**ROTOR DIAMETER** – The diameter of the largest swept area of a rotating turbine blade.

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

**SETBACKS** – a distance measured from the centerline of the road right-of-way, property lines, village limits, edge of wetlands, or closest point of non-participating property line to the base of the WECS or measurement tower.

**SHADOW FLICKER** – the visual effect of viewing the moving shadow of the Wind Energy Conversion System (WECS) rotor blades when they are in a position between the receptor (person viewing them) and the sun and/or the “strobe” lighting effect of this condition as perceived by the receptor whether directly or indirectly (as in a reflection off a light colored wall).

**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 contiguous lots are in the same 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 should not be considered off-site.

**SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS")**-- A wind energy conversion system that consists of a wind turbine, a tower, and associated control or conversion electronics, which is intended to primarily reduce consumption of utility power at that location.

**SOUND LEVEL** - also referred to as Noise Level, means the sound pressure level (SPL) obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute specifications of sound level meters (ANSI SI.4-1971, or the latest approved revision thereof). The unit of measurement is the decibel. If the frequency weighting employed is not indicated, the A-weighting shall apply.

**SOUND PRESSURE LEVEL** -- means the level which is equaled or exceeded a stated percentage of time. An L10 - 50 dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes in an hour. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 6 1400-1 1), or other accepted procedures, utilizing the most current method applicable to wind turbines as determined by either the Town of Homer Town Engineer, or by the Town of Homer Qualified Independent Acoustical Consultant

**TOTAL HEIGHT**-- The height of the tower to the furthest vertical extension of the WECS. This is to be measured from pre-existing original grade.

**TOWER HEIGHT** – The height of the tower from the finished ground elevation at the tower base to the center of the hub forming the attachment point for turbine blades.

**WIND ENERGY CONVERSION SYSTEM (WECS)** - A machine that converts the kinetic energy in the wind into a usable form (commonly known as a wind turbine or windmill), and is intended for commercial use, as opposed to the small WECS

**WIND ENERGY FACILITY (WEF)** -- 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 to such systems.

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

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

**YEAR** - As used in this Local Law, a year shall be measured from the date of permit issue.

## **§7 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, including any wind Energy Facility applied for, but not yet approved, prior to the date of this local law.

B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; 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 a preexisting Wind Energy Facility shall be allowed without full compliance with this Local Law.

### **§8-9 Reserved for Future Use**

## **Article II Wind Energy Conversion Systems**

### **§10 Applications for Wind Energy Permits for Wind Energy Conversion Systems.**

An application for a Wind Energy Permit for individual Wind Energy Conversion System shall include the following:

- A. Name, address, telephone number of the Applicant. If the Applicant is represented by an agent, the application shall include the name, physical address and telephone number of the agent as well as an original signature of the Applicant authorizing the representation.
- B. 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.
- C. Address, or other property identification, of each proposed tower location, including Tax Map section, block and lot number, and coordinates.
- D. A description of the project, including the number and maximum rated capacity (i.e. 1MW, 1.5MW, etc.) of each Wind Energy Conversion System.
- E. A plot plan prepared by a licensed surveyor or engineer drawn 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 properties within five hundred (500) feet of the boundaries of the proposed Wind Energy Conversion System site.
  - c. Location and elevation of each proposed WECS identified by specific I.D. #, to be assigned by the Town
  - d. Location of all above ground utility lines, transformers, power lines, interconnection point with transmission lines and other ancillary facilities or structures on the Site or within 1,500 feet of the Wind Energy Conversion System.
  - e. Location and size of structures above 35 feet within a 1,500-foot radius of a 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 demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower location equal to:
    - i. Two times the Total Height.
    - ii. Five times the Total Height of the proposed WECS.
    - iii. 3,280 feet (1,000 meters).
  - g. Location of all structures on the Site
  - h. Location of all structures within 3,280 feet of the proposed WECS.
  - i. All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
  - j. The names and addresses of all property owners within a one mile radius of each WECS, together with evidence of the current use of all such property.
- F. Vertical drawings of the Wind Energy Conversion System 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 must be submitted for each Wind Energy Conversion System of the same type and total height.
- G. Landscaping Plan to scale depicting existing vegetation and describing any areas to be cleared and the species proposed to be added, identified by species and size of species at installation and their locations.
- H. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the certification by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, the Wind Energy Permit shall require the determination be provided prior to commencement of construction of the WECS.
- I. Decommissioning Plan: The Applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) ensuring that funds will be available for decommissioning and restoration consistent with Section §17 C; 5) acknowledgment that the decommissioning costs shall be re-estimated, by a licensed engineer, every three years, and that the decommissioning cost will be kept current indexed to inflation; 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of 4 feet, restoration of the soil, and restoration of

vegetation (consistent and in substantial compliance with pre-existing conditions and with surrounding vegetation), except any fencing or residual minor improvements requested by the landowner and approved by the Planning Board.

- J. Complaint Resolution: The application will include a statement that the operator will adhere to the Homer complaint resolution process.
- K. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:
  - a. A construction schedule describing commencement and completion dates
  - b. Blasting schedule if known at the time of application
  - c. A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
- L. Completed Part I of the Full Environmental Assessment Form (FEAF).
- M. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the WECS application.
- N. For each proposed WECS, include make, model, photograph and manufacturers specifications, including noise decibel data and wind speed specifications. 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.
- O. If the Applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Lead Agency may issue a positive declaration of environmental significance or if a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Facility. In either case, the following studies shall be submitted:
  - (a) Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall accurately 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 or highways and detail measures that will be taken to mitigate or eliminate such interference.
  - (b) Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which shall include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of each 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.

- (c) Fire Protection/Emergency Response Plan: A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Wind Energy Facility to address coordination with local emergency/fire protection providers during any construction or operation phase emergency, hazard or other event.
- (d) Noise Analysis: A noise analysis by a competent acoustical consultant selected by the Town of Homer documenting the estimated noise levels associated with each proposed WECS. The study shall document worst-case estimated noise levels at any point on adjacent non-participating properties. The noise analysis shall be performed according to the International Standard For Acoustic Noise Measurement Techniques For Wind Generators (IEC 61400-11), or other procedure accepted by the Town Planning Board, and shall include both a dBA analysis and dBC analysis. Worst-case noise impact will be estimated at night under stable wind conditions where minimal wind occurs at ground level, but turbines are operating. It shall also include a report prepared by a qualified professional that analyzes the preexisting background noise levels. The report shall describe the project's proposed noise-control features.
- (e) Property Value Analysis: Property value analysis prepared by a licensed appraiser and approved by the Homer Planning Board in accordance with industry standards, regarding the potential impact of the project on values of properties in the Town of Homer. The application must include the Real Estate Property Value Assurance Plan (REPVAP) as outlined in §27 of this Local Law.
- (f) Electromagnetic Interference: An assessment of potential electromagnetic interference with microwave, radio, television, satellite systems, personal communication systems, heart pacemakers, and other wireless communication, weather and other radar shall be prepared.
- (g) Transportation Impacts: An analysis of impacts on local transportation shall be prepared, regarding impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Transportation impacts to be considered shall include, at a minimum, potential damage to local road surfaces, road beds and associated structures; potential traffic tie-ups by haulers of WECS' materials; impacts on school bus routes; impacts of visitors to the WECS' facilities. Local roads shall include all state highways, county highways, town highways, and village streets and highways, which will be or may be used by the applicant.
- (h) Transportation Plan: A transportation plan describing routes to be used in delivery of project components, equipment and building materials, and those to be used to provide access to the Site during and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, and measures to restore damaged/disturbed access routes following construction. Roads shall include all state highways, county highways, town highways, and village streets and highways, which will be or may be used by the applicant.

- (i) Environmental Impacts: An analysis of impacts on local ground water resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of each WECS. An assessment of potential immediate and long-term impacts to local flora and fauna, micro and macro habitats, and ground and surface water related, but not limited to, excavation, blasting, clear-cutting and grading during the Site preparation phase. A geotechnical report shall include: soils engineering and engineering geologic characteristics of the Site based on Site sampling and testing, a depth-to-bedrock profile within one (1) mile of the Site, information on depth of well, average flow rate, and with permission by owner, test of water quality for all wells within 500 feet of the Site, grading criteria for ground preparation, cuts and fills, soil compaction, and a slope stability analysis.
- (j) Cultural, Historical and Archeological Resources Plan: An analysis of impacts on cultural, historical and archeological resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of each WECS. This assessment shall be conducted in accordance with the New York State Office of Parks, recreation and Historic Preservation.
- (k) Wildlife Impacts: An analysis of impacts on local wildlife shall be prepared, regarding impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Wildlife impacts to be considered shall include, at a minimum, anticipated impacts on flying creatures (birds, bats, insects), as well as wild creatures existing at ground level. An assessment of the impact of the proposed development on the local flora and fauna will include migratory and resident avian species, bat species. The scope of such assessment shall be developed in consultation with the New York State Department of Environmental Conservation and the United States Fish and Wildlife Service and must at a minimum consist of pre-construction data of three years, and literature survey for threatened and endangered species that provide relevant information on critical flyways, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to address any impacts, as well as plans for three-year post-installation studies.
- (l) Operation and Maintenance Plan: An operation and maintenance plan providing for regular periodic Wind Energy Facility schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
- (m) Blade Throw and Ice Throw Report: A report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades and pieces of turbine blade may be thrown. (The basis of the calculation and all assumptions must be disclosed.) The incidence of reported ice and blade throws and the conditions at the time of the ice and blade throw must be included.
- (n) Stray Voltage Report: An assessment, pre- and post-installation, of possible stray voltage impacts on the Site and neighboring properties within one (1) mile of the project boundary to show what properties need upgraded wiring and grounding.

- (o) An analysis of the impact of vibration on structures from the WECS on adjacent, adjoining or non-participating properties.
- P. The applicant shall, prior to approval of this project by the Homer Town Board, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner. Applicant shall also provide proof of complying with Public Service Commission power purchase requirements.
- Q. A statement, signed under penalties of perjury that the information contained in the application is true and accurate.
- R. Proof of continuous liability insurance in the amount of \$5,000,000 per occurrence with a total policy minimum of \$20,000,000 per year. This shall be submitted to the Town of Homer indicating coverage for potential damages or injury to landowners.
- S. Disclosure of Financial Interests. For any financial interest held by a Municipal Officer or his or her immediate family in any wind development company or its assets within ten years prior to the date of an application for a permit under this local law, the Applicant shall disclose in a separate section of the application the Municipal Officer or his or her relative, the addresses of all persons included in the disclosure, and the nature and scope of the financial interest of each person. The disclosure shall include all such instances of financial interest of which the Applicant has knowledge, or through the exercise of reasonable diligence should be able to have knowledge, and the format of the submission shall be subject to the approval of the Town Board.
- T. An accurate twelve-month survey of wind speed data obtained from an independently installed wind measurement tower.
- U. Printed and PDF copies of all applications and proposed plans shall be made available to the public within seven days of receipt by the Homer Planning Board and placed in the Town Clerk's office and placed on the Town of Homer web site by the Town Clerk.

### **§11 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.
- B. Ten copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any waiver of any provision of this Article is requested then an application for a waiver and fee shall be submitted, together with the application for a WECS. The waiver application shall comply with Article V and provide in detail the requirement that is being requested to be waived and address the factors in Article V. All waiver requests shall be publicly noticed and shall be heard and may be considered with, prior to or concurrently with the Application for a Wind Energy Permit. Applicant may submit a combined application for WECS and associated WEF

- C. Town Clerk shall forward notice of the Application to the Planning Board. The Planning Board shall designate a Consultant to review the Application and direct the Clerk to forward a copy of the application to the Consultant. The Consultant shall, within 45 days of receipt review the application to determine if all information required under this local law has been provided. With the written consent of the Planning Board, this period may be extended no more than an additional 90 days. If the application is found not to comply the Consultant shall provide the Planning Board a written statement detailing the missing information. The applicant shall pay the fees of the Consultant.
- D. If the application is incomplete, the Planning Board shall provide the Applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional application fee shall be required upon submittal of the additional information unless the number of WECS proposed is increased or the application is substantially changed, for the purpose of this provision adding additional properties to the WECS Site shall be deemed a substantial change. Upon a resubmission, the application shall be returned to the Consultant for their determination as provided in subparagraph 11 (C) hereof, any additional fees for review by the Consultant shall be paid by the Applicant.
- E. Upon receipt of a notice from its Consultant that the application is complete, the Town Clerk shall transmit the application to the Planning Board to schedule a hearing as required hereunder. No application shall be Noticed for Hearing until it has been found to comply with the provisions of this Article. The Consultant's finding that the application complies with the filing requirement of this Article shall not be a finding on the merits or sufficiency of the content in the application or otherwise preclude a review of the EAF or DEIS for the SEQR process on the application, nor shall it restrict the need for further information for said SEQR process determination.
- F. The Planning Board shall hold at least one public hearing on the Application, and the applicant is required to attend. The public hearing shall be held only after the Town Clerk has advised the Planning Board that the application complies with filing requirements of this article and the Planning Board accepts the application. Notice of the application being found compliant, together with a summary of the application shall be given by first class mail to all property owners within one mile of the boundaries of any property where a WECS is proposed (Site), and published in the Town's official newspaper, no less than ten nor more than twenty days before any public hearing. Where any public hearing is adjourned by the Planning Board to hear additional comments, no further publication or mailing shall be required, but in the discretion of the Planning Board such additional notice may be directed. The Applicant shall mail the Notice of Public Hearing to all property owners within one mile of the Site, and shall submit an affidavit of service indicating all persons and entities to whom mailed. The assessment roll of the Town shall be used to determine mailing addresses. The Town shall publish the Notice. Failure of any addressee to receive the notice shall not in any manner affect the validity of the proceedings taken thereon. The Planning Board shall make written recommendations to the Town Board, which shall not be binding on the Town Board.

- G. If approved during the SEQR process, the Town Board shall act as Lead Agency for purpose of SEQR Review.
- H. The public hearing for an Application hereunder may be combined with public hearings on any Environmental Impact Statement, other SEQR Process or requested waivers (see Article V).
- I. SEQRA reviews. Applications for WECS are deemed a Type I project under SEQRA.
- J. The Town shall require an escrow agreement and deposit from the applicant for the engineering, legal, and all reasonable costs related to the review of the application and any environmental impact statements before commencing its review. The Town Board shall determine the amount of such deposit.
- K. 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 application.
- L. Once the Town Board has accepted the application, held a public hearing, and completed the SEQRA process, the Town Board may then approve, approve with conditions, or deny the application, in accordance with the standards in this Article.

### **§12 Standards for WECS.**

- A. The following standards shall apply to all Wind Energy Conversion Systems, unless specifically waived by the Town 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 unless a variance is granted where it is impossible to bury underground or where actual duress can be shown.
  - 2. No television, radio or other communication antennas may be affixed or otherwise made part of any Wind Energy Conversion System, except pursuant to the Town Code. Applications may be jointly submitted for Wind Energy Conversion System and telecommunications facilities.
  - 3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
  - 4. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan. All such lighting required for the project shall be dark sky compliant. The application shall include a commitment to retrofit the project with a radar-activated system within two years of being notified by the Town Board. It is understood that these systems are not currently available, but may be in the future.

5. The Applicant shall use measures to reduce the visual impact of Wind Energy Conversion System to the extent possible. The Wind Energy Conversion System shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finish color or a camouflage scheme. Wind Energy Conversion Systems within a multiple Wind Energy Conversion System 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. If a signal transmission or reception problem occurs with any existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems, it shall be the WECS' operators responsibility to prove that the WECS is not the cause of the problem or else shut down the WECS until the problem is otherwise resolved. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific Wind Energy Conversion System or the entire site causing the interference.
8. All solid waste, hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all applicable local, New York State, and federal rules and regulations. Any environmental hazard created must be cleaned up to the maximum extent possible, restoring the area to its pre-existing condition.
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. The use of previously developed areas will be given priority wherever possible. All topsoil disturbed during construction, reconstruction or modification of each WECS will be stockpiled and returned to the site upon completion of the activity, which disturbed the soil. Compliance with the current New York State Department of Agriculture and Markets Guidelines for Agricultural Mitigation for Wind Power Projects is required.
10. Wind Energy Conversion Systems shall be located in a manner that minimizes significant negative impacts on rare, threatened or endangered 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 wetland laws and regulations.
12. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable Local, State and Federal laws and regulations.
13. The maximum Total Height of any Wind Energy Conversion System shall not exceed 500 feet from existing/original grade.



14. If it is determined that a WECS is causing stray voltage issues, the operator shall take the necessary corrective action to eliminate these problems including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for revocation of the approval for the specific WECS causing the problems.

### **§13 Required Safety Measures.**

- A. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- B. Fencing: A ten-foot-high (10') fence with a locking portal shall be required to enclose each substation and each tower or group of towers, unless the applicant demonstrates in its Application that the Tower(s) is non-climbable and otherwise safe. 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. A sign shall be posted on the entry area of any 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 Town may require additional signs based on safety needs.
- D. No climbing pegs or tower ladders shall be located closer than twenty (20) feet above ground level at the base of the structure.
- E. The minimum distance between the ground and any part of the rotor or blade system shall be fifty feet, provided it complies with all other provisions of this law.
- F. Wind Energy Conversion Systems 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.
- G. WECS shall be set back from residences a sufficient distance, based on a flicker study, to demonstrate that shadow flicker does not adversely affect residences, whether such residences are in or outside of the Town of Homer.

### **§14 Traffic Routes.**

- A. Construction of WECSs 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 or the associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1)

minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Wind Energy Permit conditions may limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public. No land can be taken by eminent domain to create any route.

- B. Roads shall remain in existing condition status throughout construction and the Applicant shall insure that such roads shall be usable by the general public during construction. The applicant shall respond within 48 hours to requests to fix any damage to the roadways as required by the Town.

### §15 Setbacks and Noise Standards for Wind Energy Conversion System

A. Requirements:

- a. The equivalent noise level (LEQ), for any ten-minute period of the day, generated by a noise source shall not exceed the limits listed in Table below when measured at any point on adjacent non-participating properties.

	<b>Daytime 7 a.m. to 7 p.m.</b>	<b>Evening 7 p.m. to 10 p.m.</b>	<b>Nighttime 10 p.m to 7 a.m.</b>
<b>A-weighted (dB)</b>	45	40	35
<b>C-weighted (dB)</b>	63	58	53

- b. In all cases, the corresponding C-weighted limit shall be the operable A-weighted limit (from Table above) plus 18 dB.
- c. In the event audible noise is due to any operation that contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in Table above shall be reduced by five (5) dB; for impulsive noises the standards in Table above shall be reduced by 7 dB; and the standards shall be reduced by 12 dB for highly impulsive noise (ANSI S12.9 Pt. 4).
- d. The greater setback distance between the maximum permitted noise levels generated by a Wind Energy Conversion System at the non-participating property lines and the minimum permitted distance setback from the non-participating property lines shall apply.
- e. The Town shall allow a 5db increase in the existing noise levels at the property line of a non-participating landowner where the ambient noise levels already exceed the proposed noise level thresholds.

B. Estimating Noise Impacts:

At the discretion of the Planning Board or Town Board and at applicant's expense, an application will require certification by an independent acoustical engineer as to the estimated maximum A- and C-weighted sound levels at potentially impacted residential property lines. The firm with which the engineer is associated shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental noise, and the independent acoustical engineer shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA. The predicted noise levels shall then be reviewed by the Town's consulting engineer, or their agent, to establish the validity of the predicted impacts.

C. Enforcement:

- a. Enforcement shall be by measurement. The Town, using the services of the Town's Code Enforcement Officer and a consulting engineer, shall be responsible for and may contract for any enforcement measurements. The Town's engineering contractor shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental noise, and the consultant's project leader shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA. The following protocol may be modified as certain situations may require by the acoustical engineer as long as modifications are in general conformance with the procedure described below.
- b. Initially a preliminary study shall be conducted for 30 consecutive minutes during the period of highest expected noise level exposure. During the thirty- (30) minute period, the equivalent level (LEQ) generated by the noise source shall be measured. The measurement location shall be on complainant's property line, nearest the noise source. Measurements shall be entirely within the appropriate time period, e.g., during nighttime for nighttime enforcement, and the noise source shall operate continuously (if normal operation) during the thirty- (30) minute measurement.
- c. If the noise source is intermittent or if the noise is not present at the time of the preliminary enforcement survey, a more extensive and detailed survey shall be undertaken to monitor noise levels over a longer period. The applicant shall fully cooperate with Town officials and their agents to ensure accurate measurements, including turning on and off as required.
- d. For both types of surveys, the microphone shall be situated between 4 and 4.5 feet above the ground. Measurements shall be conducted within the general provisions of ANSI S1.13-2005, and using a meter that meets at least the Type 2 requirements of ANSI S1.4 and S1.4A-1985 (R2006). The instrument noise floor shall be at least 10 dB below the lowest level measured.
- e. A calibrator shall be used as recommended by the manufacturer of the sound-level meter. The fundamental level of the calibrator and the sensitivity of the sound-level meter shall be verified annually by a laboratory using procedures traceable to the National Institute of Standards and Technology.
- f. A windscreen shall be used as recommended by the sound-level meter manufacturer.

- g. An anemometer shall be used to document wind speed and shall have a range of at least 5 to 15 miles per hour (2.2 to 6.7 meters per second) and an accuracy of at least  $\pm 2$  miles per hour ( $\pm 0.9$  meters per second).
- h. For the detailed, long-term study a compass shall be used to measure wind direction to at least an 8-point resolution: N, NE, E, SE, S, SW, W, NW. Measurements shall be A-weighted, or, alternatively, in one-third-octave bands. For A-weighted measurements, the uncertainty (tolerance) of measurements shall be 1 dB for a type 1 meter and 2 dB for a type 2 meter. For one-third-octave-band measurements, the meter shall meet the type 1 requirements of ANSI S12.4 and S12.4a-1985 (R2006), and the uncertainty of measurements shall be less than 5 dB in each and every one-third-octave band.
- i. For all measurements, the surface wind speed, measured at a 1.5- m height, shall be less than 5 m/s.
- j. The report shall include a sketch of the site showing distances to the structure(s), to the property line, etc., and several photographs showing the structure(s), the property, and the acoustical instrumentation. All instrumentation shall be listed by manufacturer, model, and serial number. This instrumentation listing shall also include the A-weighted and C-weighted noise floor due to weather or other natural phenomena and the one-third octave band noise floors, if utilized, for each sound-level meter used.

D. Setback distances:

Each WECS shall be setback from Site boundaries, measured from the center of the WECS:

1. 3,280 feet from the nearest site boundary property line.
2. Five times the total height of the proposed WECS from the nearest public road.
3. 3,280 feet from the Village of Homer.
4. Five times the total height of the proposed WECS from any non-WECS structure or above-ground utilities.
5. Two times the total height of the proposed WECS from state and federal regulated wetlands.
6. Five thousand feet from the property lines of a school, hospital, community center, or church (not to include church-owned cemetery).
7. Notwithstanding the foregoing, in the event of a difference in setback requirements herein and those recommended by the manufacturer of the equipment to be installed, the larger setback shall apply.

8. From all Site Boundary lines the first 100 feet shall be a green buffer zone to provide natural screening. For the purpose of this law a green buffer zone shall be defined as an area without structures and left naturally vegetated or in an agricultural use. Cutting and clearing within the green buffer zone is prohibited except in connection with agricultural uses or as necessary to construct and maintain WEF access roads and electric lines.

#### **§16 Issuance of Wind Energy Permits.**

- A. Upon completion of the review process, the Town Board shall, upon consideration of the standard in this Local Law issue a written decision with its findings in support of its approval, approval with conditions or disapproval.
- B. If approved, the Town Board will issue a Wind Energy Permit upon satisfaction of all conditions for said Permit and completion of the SEQRA process, and upon Applicant demonstrating compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this Local Law.
- C. The decision of the Town Board shall be filed within 5 days in the office of the Town Clerk and a copy mailed to the Applicant by registered mail, return receipt requested.
- D. If any approved Wind Energy Facility has not commenced construction within one year of issuance of the Wind Energy Permit, the Wind Energy Permit shall expire. Upon written request of the Owner, the Wind Energy Permit may be extended for one year so long as the project is unchanged.

#### **§17 Abatement.**

- A. The Applicant will supply an annual report of electrical production by turbine. If any WECS fails to generate electricity for a continuous period of one year the Town Board may determine that it is "non-functional or inoperative", and require the Owner (for the purpose of this Section 17 an Owner is the holder of the Wind Energy Permit) to remove said WECS at its own expense. Removal of the WECS shall include at least the entire above ground structure and connected facilities down to 4 feet below grade, including transmission equipment and fencing and such other associated parts as the Town Board may direct. This provision shall not apply if the Town finds that the Owner has been making good faith efforts to restore the Wind Energy Conversion System to an operable condition, or if the non-functional or inoperative condition is the result of a force majeure event beyond the Owner's control. Nothing in this provision shall limit the Town's ability to order a remedial action plan after hearing. The Town shall provide Owner with at least 15 days notice of the hearing. The Owner may present evidence at the hearing on the functioning or operation of the system, or explanation for delay in repair during such period. At such hearing, in order to warrant decommissioning of the system or any part thereof, the Town must first find by a preponderance of the evidence submitted and presented, that the WECS or any part thereof has been non-functional or inoperative continuously for 12 months. The Town after such hearing may order the removal of the WECS system or any part thereof (down to 4 feet

below *grade*) that it finds has been non-functional or inoperative. Upon direction by the Town Board to the Owner of a WECS to remove any system or part thereof and the failure of the Owner to comply with such directive or to substantially commence such removal within 30 days of the directive, then the Town may proceed against the cash deposit as established hereinafter in compliance with paragraph 17(C) hereof.

- B. Generation of electricity (or lack thereof) by a WECS may be proven by reports or documents provided to the Public Service Commission, NYSERDA, New York Independent System Operator, or other reporting agencies or by lack of generation of revenues from the sale of energy. The Owner shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from the Wind Energy Conversion Systems, if requested, and such other reports it finds necessary to prove the WECS is functioning. All such reports submitted by the Owner may be redacted as necessary to protect proprietary information. Failure to provide such information as requested shall be the basis for the revocation of any operating permit.
- C. Decommissioning Fund: The Owners shall continuously maintain a cash deposit, in a form and from a Provider approved by the Town, for payment in full for the removal of nonfunctional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility, This cash deposit shall be adjusted every three years for changes in costs of decommissioning and restoration as well as adjusted for inflation. The cash deposit shall be maintained in a bank licensed and authorized to do business in the State of New York, or such other financial institution so authorized and approved by the Town Board. All costs of the financial security shall be borne by the Owner. The cash deposit shall be fully in place before commencement of construction of any portion of Wind Energy Conversion System. Any Wind Energy Permit issued shall restrict construction until the deposit has been approved and accepted by the Town Board.

### **§18 Limitations on Approvals; Easements on Town Property**

- A. 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 Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

### **§19 Permit Revocation.**

- A. Testing fund: A Wind Energy Permit shall contain a requirement that the Owner fund periodic noise testing by a qualified independent third-party acoustical measurement consultant approved by the Town Board, which may be required every two years, or more

frequently upon request of the Town 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 Owner shall have 15 days after written notice from the Town Board, to cure any deficiency. An extension of the 15-day period may be considered by the Town Board. The complainant shall be notified of any request for such extension. The Town Board has the right to shut down the WEF immediately if the Town Board determines that an emergency has occurred.

- B. Operation: A Wind Energy Conversion System 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 Wind Energy Conversion System become inoperable, or should any part of the Wind Energy Conversion System be damaged, or should a Wind Energy Conversion System violate a permit condition, the owner shall remedy the situation within 15 days after written notice from the Town Board. The Owner shall have 15 days after written notice from the Town Board, to cure any deficiency. An extension of the 90-day period may be considered by the Town Board.
- C. Notwithstanding any other abatement provision under this Local Law, and consistent with §19(A), if the Wind Energy Conversion System is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance: (1) order either remedial action within a particular time frame, or (2) order revocation of the Wind Energy Permit for the Wind Energy Conversion System and require the removal of the Wind Energy Conservation System within 90 days. If the Wind Energy Conservation System is not removed, the Town Board shall have the right to use part or all of the cash deposit to remove the Wind Energy Conversion System.

### **Article III Wind Measurement Towers**

#### **§20 Wind Site Assessment.**

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

#### **§21 Applications for Wind Measurement Towers.**

- A. An application for a Wind Measurement Tower shall include:
1. Name, physical address, telephone number of the Applicant, and the names and addresses of principals of 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. Coordinates of each proposed tower location, including Tax Map section, block and lot number.
4. Proposed Development Plan and Map.
5. Decommissioning Plan, including a cash deposit for removal.

## **§22 Standards for Wind Measurement Towers.**

- A. The distance between a Wind Measurement Tower and the property line of the Site shall be at least one and a half times the Total Height of the tower. The tower shall not be located nearer than one and half times the Total Height of the tower to any Residence. Site can include more than one piece of property. Exceptions for neighboring properties are also allowed with the written consent of those property owners.
- B. Wind Energy Permits for Wind Measurement Towers may be issued for a period of up to two years. Permits shall be renewable upon application to the Town Board in accordance with the procedure of §16(D).

## **Article IV Small Wind Energy Conversion Systems**

### **§23 Small Wind Energy Conversion systems (SWECS).**

Intent. This section regulates and provides standards for small wind energy conversion systems (SWECS) designed for on-site home and farm use, and that are primary used to reduce on-site consumption of public-utility-generated and distributed electricity. The intent of this section is to encourage the development of small wind energy systems and to protect the public health, safety and community welfare.

- A. Permit required.
  1. No WECS shall be constructed, reconstructed, or modified in the Town of Homer except in compliance with this section.



2. No wind measurements tower shall be constructed except in conjunction with and as part of an application for a small WECS.
3. No transfer of real property on which a small WECS is situated shall eliminate the liability of the owner of such property from compliance with this section and the conditions of the conditional permit issued for such WECS.
4. Notwithstanding the requirements of this section, replacement in kind of a small WECS may occur without Town approval when:
  - (a) There will be no increase in total height;
  - (b) No change in location;
  - (c) No additional lighting or change of facility color;
  - (d) No increase in noise produced by the WECS.

B. Permitted areas:

Agricultural District on lots greater than two acres.

R-1 District on lots greater than two acres.

C. Height limitations.

Agricultural District: 100 feet.

R-1 District on lots less than three acres: 40 feet.

R-1 District on lots greater than three acres: 60 feet when documentation shows a need for a height greater than 40 feet.

D. Setback. All SWECS shall be set back from all property lines a minimum of 1.5 times the total height of the SWECS.

E. Application. A permit from the Town Board is required for all SWECS. The Planning Board shall hold a public hearing with notification of all property owners adjacent to the proposed tower site or within one mile of the proposed tower site. The Planning Board shall make written recommendations to the Town Board, which shall not be binding on the Town Board. Once the Town Board has accepted the application, held a public hearing, and completed the SEQRA process, the Town Board may then approve, approve with conditions, or deny the application, in accordance with the standards in this Article.

F. Standards.

1. Only one small SWECS per lot shall be allowed. More than one may be permitted as long as each has the required minimum lot size and the applicant demonstrates that the electric needs of the user exceed the power generation capability of one SWECS.
2. The height allowed shall be reduced if necessary to comply with Federal Aviation Administration requirements.
3. The maximum turbine power output is limited to 10 KW unless the applicant demonstrates to the Town Planning Board that a larger turbine is necessary to meet the historical or projected energy needs of the applicant.
4. The system tower and components shall be painted a non-reflective, unobtrusive color that blends the system and components into the surrounding landscape.
5. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails) and from adjacent properties.
6. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
7. All on-site electric wires associated with the system shall be installed underground except for "tie-ins" to a utility company and public utility transmission poles, towers and lines. The Planning Board may modify this standard if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
8. The system shall be operated such that no electromagnetic interference is caused. If it has been demonstrated to the Planning Board that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
9. 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 therefrom. No brand names, logo or advertising shall be placed or painted on the tower or components where it would be visible from the ground, except that a system or tower manufacturer's logo may be displayed on a system housing in an unobtrusive manner.
10. 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-climbing device installed on the tower.
  - (c) A locked, protective fence at least six feet in height that encloses the tower.

11. 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 aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet in height or sheathed in bright orange or yellow covering from three feet to eight feet above the ground.
  12. The minimum height above the ground of the lowest part of the wind turbine blade shall be at least 15 feet.
  13. The level of noise produced during WECS operation shall follow the levels established in Section §15A, measured at the boundaries of the closest parcel to the WECS site.
  14. All small WECS tower structures shall be designed and constructed to be in compliance with applicable provisions of the New York State Uniform Fire Prevention Building Code, and generally accepted engineering practices.
  15. All WECS shall be equipped with manual and automatic overspeed controls. The manufacturer shall certify the conformance of rotor overspeed control design and fabrication, with good engineering practices.
  16. No WECS shall be constructed or operated so as to create artificial habitat for raptor prey. Electrical boxes, perching opportunities, etc., shall to the maximum extent possible be minimized.
  17. No experimental, home built, or prototype wind turbine shall be allowed without documentation by the applicant of their maximum probable blade throw distance in the event of failure and determination by the Planning Board of appropriate setback distances on the basis of that documentation.
  18. A WECS shall be set back at least 1,000 feet from any important bird area as identified by The New York Audubon Society and from state-regulated wetlands.
  19. All WECS shall be maintained in good condition and in accordance with all requirements of this section
- G. Abandonment of use. A small WECS which is not used to produce electricity for 12 successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner within nine months after notice from the Town Planning Board.

## **Article V Waivers**

### **§24 Waivers.**

- A. The Town 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 and the Application), grant a waiver only under conditions of duress or absolute hardship, except as otherwise expressly prohibited herein, from the strict application of the provisions of this Local Law if, in the opinion of the Town Board, the grant of said waiver is in the best interests of the Town.
- B. The Town Board in making its determination on a waiver request shall consider the benefit to the Owner if the waiver is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the waiver; (2) whether the benefit sought by the Owner can be achieved by some method, feasible for the Owner to pursue, other than waiver; (3) whether the proposed waiver will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and the scope of the request.
- C. The Town Board, in the granting of waivers, shall grant the minimum waiver that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- D. The Town Board may attach such conditions, as it deems appropriate to waiver approvals as it deems necessary to minimize the impact of the waiver.

## **Article VI Miscellaneous**

### **§25 Fees.**

- A. Non-refundable Fees shall be established by the Town Board
- B. Wind Energy Permits; review, inspection, and approval fees. The Town believes the review of applications for Wind Energy Facilities and compliance monitoring of issued Wind Energy Permit requires specific third party expertise. In addition to the permit fees for the WECS system as provided in 25(E) above, the Owner of the WECS shall pay the costs of such review as follows:
- C. An outside consultant, approved by the Town, to review the plans submitted by the Applicant or its representative for compliance with this regulation and inspection of work, together with monitoring compliance with any issued permit for any WECS. All such expense shall be made by the Applicant, or Holder of such issued permit, if different, providing a cash advance payment to the Town Clerk prior to issuing such permit or such other form of advance payment as the Town Board may direct and approve.

- D. Permit Year Annual Report. The Owner shall file annually a report of the condition and all maintenance and repair work to the WECS system, detailing any improvements, alterations or changes to any WECS or other structure of the system or any of its components, together with a review fee established by the Town Board for each WECS. The report shall be certified by a licensed engineer that such work has not changed any permit condition. The Town, upon notice to the Owner, may refer the report to consultant if it reasonably believes that any work may change or adversely impact a permit condition. The Owner shall be responsible for any costs of any outside consultant, if necessary, to review the report.
- E. Any costs associated with reviewing materials submitted by the Owner or the review of any condition of a permit, including, but not limited to, ensuring the system continues to be safe and compliant with the terms of such permit issued shall be the expense of the owner of the system. Such expense shall be paid by the Applicant/Owner. Prior to incurring such costs, the Town agrees to provide the Applicant/Owner of the system with notice of such costs and reason for the same. The Applicant/owner may protest the costs by filing a protest with the Town Clerk within ten days of such notice. Said protest shall contain a statement of what is protested, and if a cost item is protested then an estimate from an independent person for the costs protested shall be included. Notwithstanding a protest the Town may engage a consultant to review any submission by the Applicant/Owner of the system prior to approving the submission and all such expense and costs shall be an expense of the project (Applicant/Owner of the system). If any such expense shall not be paid the same shall constitute a violation of the permit and be deemed an expense in decommissioning the system or any part thereof in question.
1. The permit fee for Town Board approval for cutting or clearing in a green buffer area within a Site shall be established by the Town Board, no permit fee is necessary for maintaining agricultural uses within a green buffer zone.
  2. Applications for approval of Transfer of ownership or control pursuant to section 5(G) shall be submitted to the Town Board together with information explaining the proposed change of control or the transfer. Such information shall include the names and addresses of the parties whose interest is being changed or transferred together with their percentage of ownership being transferred and the names and addresses of each person, shareholder, member, partner or individual receiving such interest, together with a fee established by the Town Board and such consultant fees as the Town Board finds necessary to review any financial information submitted therewith. The Town Board reserves the right to request such other information it may reasonably request and finds necessary to complete its review of such application.
- F. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into Host Community Agreements with any Applicant to compensate the town for expenses or impacts on the community. The Town shall require any Applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA. Notwithstanding anything to the contrary provided herein, any and all Town agreements or permit conditions pertaining to a Wind Energy Conversion System shall be filed with the Town and in place prior to the issuance of the Wind Energy Permit, unless the approval for such Wind Energy Conversion System permit expressly provides otherwise,

including Host Community Agreement, Decommission Plan and proof of Funds or escrow accounts, if required, related to the Wind Energy Conversion System.

### **§26 Tax Exemption.**

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

### **§27 Reserved for Future Use**

### **§28 Complaint Resolution Process.**

- A. All complaints shall be directed to the Town Code Enforcement Officer who will respond to the complainant within five (5) business days after receipt of such complaint. The Town Code Enforcement Officer shall keep a log of any such complaints received.
- B. Any complaints which cannot be resolved during the initial response shall be subsequently directed to the Town Counsel for investigation, and any such investigation shall be undertaken with the full cooperation of the person/ applicant/ operator and in accordance with §29, Enforcement.
- C. If the complaint includes the character or quality of noise, then any subsequent investigation shall use best practices to evaluate the overall level, tonal, and/or temporal nature of the noise prompting the complaint. As outlined in Section §29, Enforcement, the noise source will be shut down as may be needed to properly assess noise impacts.
- D. Testing shall commence within ten (10) business days of the report of the initial investigation, but ultimately testing will be predicated upon conditions that facilitate adequate measurement of the noise source. Testing shall compare actual noise measurements at complainant's property line with and without noise source to confirm operation complies with established noise limits. If sound levels of the noise source exceed sound levels with noise source off by more than 5dB, then the noise shall be deemed out of compliance with this regulation.

### **§29 Enforcement; Penalties and remedies for violations.**

- A. The Town Board shall appoint such Town staff as it sees fit to enforce this Local Law.
- B. Any person owning or operating a Wind Energy Facility shall be responsible for the continued compliance of such facility with this local law and the terms and conditions of the Wind Energy Permit issued for such facility.

- C. A violation of this local law or any provision of the Wind Energy Permit shall subject the Owner or Operator of the facility to a civil penalty of One Thousand (\$1,000.00) Dollars, payable within 10 days of the notice of the violation. In lieu of proceeding with enforcement of this law as an offense the Town may institute a civil proceeding to collect civil penalties in the amount of \$1,000.00 for each violation. Each days continued violation shall constitute and be deemed a separate additional violation
- D. Revocation of Wind Energy Permit; Upon a finding of three separate violations by a court of competent jurisdiction by an Owner or Operator of the facility of a material provision of this Local Law in any one year period, the Town Board may hold a hearing for a revocation of any Wind Energy Permit issued by such Board.
- E. In lieu of a civil proceeding for enforcement of this local law, the Town Board may elect to proceed to charge any Owner or Operator who violates any material provision of this Local Law or be in noncompliance with any material term or condition of any permit issued pursuant to this Local Law, or any order of the enforcement officer with an offense. Each days continued violation shall constitute and be deemed a separate additional violation. Each such offense shall be punishable by a fine not exceeding three hundred fifty dollars or imprisonment for a period not to exceed six months, 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 not less than three hundred fifty dollars nor more than seven hundred dollars or imprisonment for a period not to exceed six months, 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 not less than seven hundred dollars nor more than one thousand dollars or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations.
- F. 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.

### **§30 Severability.**

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Homer hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

**§31 Supersession.**

This Local Law shall supercede all prior local laws, ordinances, rules and regulations relative to the construction of Wind Energy Facilities within the Town of Homer and they shall be, upon the effectiveness of this Local Law, null and void.

**§32 Effective Date.**

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