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Town of LaFayette

Local Law No. 1 of the year 2025.

A local law to amend Chapter 290 (Zoning) of the Code of the Town of LaFayette by adding
(Insert Title)
new section 290-25.1 regulating the installation and operation of large wind energy systems

Be it enacted by the Town Board of the

Town of LaFayette as follows:

Section 1. Chapter 290, § 290-25.1 of the Code of the Town of LaFayette entitled “Wind energy systems, large” is hereby amended to read in its entirety as follows:

§ 290-25.1 Wind energy systems, large.

A. Intent. This section is designed to properly regulate and site large wind energy systems and, thus, deal with potential problems they can create, including aesthetic impacts, drainage problems, harm to farm operations, a risk to bird and bat populations, risks to the property values of adjoining properties, significant noise, traffic problems during construction, and electromagnetic interference with various types of communication. Exemption(s):

- (1) The Substantive and procedural provisions of this section shall apply to all large wind energy systems subject to local permitting authority, including but not limited to all projects with a nameplate generating capacity up to 24.9 MW.
- (2) The substantive requirements of this section shall apply to all large wind energy system subject to review and approval by the Office of Renewable Energy Siting, or any other New York State agency empowered to grant government approval for large wind energy systems.

B. Specific definition.

Large Wind Energy System - A wind turbine, or group of wind turbines in a facility, whose purpose is to generate electricity that is fed into a power grid for sale to an electric utility or for use by more than one individual residence or farm. This excludes small systems for residential, agricultural, and small commercial use where the system produces energy exclusively for a single residence or farm which are governed by § 290-25.

C. Use classification and district use limitations.

- (1) A large wind energy system shall be classified as an accessory use at a lot of record.

- (2) Large Wind Energy Systems are a permitted use in the AG (Agricultural) District, and I (Industrial District), subject to the substantive and procedural provisions of this Section.
- (3) Large Wind Energy Systems are prohibited in all other zoning districts, as well as geologically unstable areas (as determined by USGS), critical environmental areas, and areas where the Town's Significant Views (as defined by the Town's Comprehensive Plan) would be impacted. If this prohibition is waived, or not applied, by a body of competent jurisdiction such as the New York State Office of Renewable Energy Siting, then the remaining substantive standards set forth in this Section shall apply.

D. Application Process

- (1) Applicants shall conduct a pre-application meeting with the Town Supervisor and with any consultants retained by the Town to discuss an impending application. Prior to the meeting, applicants shall submit any document submitted to NYS agencies that are part of the applicant's application process, such as but not limited to, wetland delineation, water resource and aquatic ecology delineation reports, NYS threatened or endangered species wildlife characterization report, all phases completed on the archeological resources consultation report.
- (2) Application Sufficiency Review – The Town Board, Code Enforcement Officer, or Town Board designated consultants shall, within 60 days of receipt of an application, or longer if agreed to by the Applicant:
 - (a) Determine if all application requirements under this law are included in the application.
 - (b) No application shall be considered until deemed sufficiently complete by the Code Enforcement Officer.
 - (c) If the application is deemed incomplete, the Code Enforcement Officer or designated reviewer, after consultation with the Town Board, shall provide the Applicant with a written statement listing the missing information. No refund of application fees or escrow payments shall be made, but no additional fees shall be required upon submittal of the additional information, unless the project size is modified.
- (3) Application Review – Upon determination that the Application is complete, the Town Board and any designated consultants will review the application for compliance with all applicable laws and regulations, and conduct any required environmental impact review pursuant to SEQRA. For the purposes of SEQRA, the Town Board shall be designated as lead agency, and shall coordinate the environmental impact review.
- (4). Public Hearing – At any time after the Application is deemed complete, but not earlier than 60 days after the Application is deemed complete, the Town Board shall hold a minimum of one (1) Public Hearings on the application.
 - (a) The Applicant shall provide notice of the Public Hearing by registered mail and provide return receipts to owners of property parcels located wholly or partially within a one-mile radius from a parcel boundary of any parcel within the proposed site and return receipts to the Town, and shall publish a notice in the Town's official newspaper, no less than ten nor more than twenty days before any hearing. Should the hearing be adjourned by the Board to hear additional comments, no further publication or mailing shall be required. The assessment roll of the Town shall be used to determine mailing addresses.
 - (b) The public hearing may be combined with public hearings on any Environmental Impact Statement or any other associated requests for action by the Town.
- (5) County Planning Board Notice – A full statement of the proposed action for the project shall also be given to the County Planning Board, if applicable, per General Municipal law § 239-l and § 239-m.

- (6) Application Decision – Upon receipt of the recommendation of the County Planning Board (if applicable), and after holding a public hearing, and after the completion of the SEQRA review, the Town Board shall, within 60 days after closure of the public hearing approve, approve with conditions, or deny the application.
- (a) In rendering a decision on the application, the Town Board shall consider all substantive and procedural requirements set forth in this law, as well as the standards for review of a special use permit application as set forth in the Town of Lafayette Zoning Ordinance, and any other applicable laws or regulations. Wherever this law and the Town of Lafayette Zoning Ordinance are in conflict, the more stringent or restrictive provision is intended to apply.
- E. Application Contents. In addition to the application requirements for a special use permit from the Town Board pursuant to the criteria set forth in § 290-38(D) of this Code, an application for a large wind energy system shall include the following additional information:
 - (1) Construction plan. A detailed construction plan, including but not limited to a construction schedule, hours of operation; designation of heavy haul routes; a list of material equipment and loads to be transported; identification of temporary facilities intended to be constructed and contact agent in the field with name, email address and telephone number; number of truck loads by type of vehicle and duration of construction in each area of the site.
 - (2) Decommissioning and site restoration plan. A decommissioning and site restoration plan shall be prepared by the applicant and approved by the Town prior to commencement of construction. It shall identify the lot(s) of record it applies to and shall indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to four feet below finish grade; a road repair costs, if any; and all regrading and revegetation necessary to return the site to the condition existing prior to establishment of the commercial large wind energy system. The restoration shall reflect the site-specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.
 - (3) Description. A description of the project, including the number of large wind energy systems, data pertaining to each tower's safety and stability, including safety results from test facilities and certification from the turbine manufacturer that the turbine is manufactured to operate at safe speeds, and, for each large wind energy system, the make, model, a picture, and manufacturing specifications, including noise decibel data and maximum rated capacity.
 - (4) Emergency response plan. A detailed emergency response plan created in consultation with the emergency response agency(ies) having jurisdiction over the site. The proposed plan may include, but is not limited to, the following:
 - (a) Fireproof or fire-resistant building materials.
 - (b) Buffers or fire-retardant landscaping.
 - (c) Availability of water.
 - (d) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment.
 - (e) Provision of training and firefighting equipment for local fire protection personnel.
 - (5) Engineering report. This shall be prepared by a professional engineer and provide information regarding:

- (a) Ice throw. The report shall calculate the maximum distance that ice from the turbine blades could be thrown.
- (b) Blade throw. The report shall calculate the maximum distance that pieces of the turbine blades could be thrown.
- (c) Catastrophic tower failure. The report shall include a statement from the turbine manufacturer detailing the wind speed and conditions that the turbine is designed to withstand.
- (d) Certification that the foundation, tower design and associated buildings are sufficient to withstand wind-loading and snow-loading requirements for structures as established by the Uniform Code.
- (e) Certification that the wind turbine facility will not impact slope stability by increasing precipitation runoff onto slopes that are at a risk for instability or in and of itself increase the risk of slope instability by its placement.
- (6) FAA notification. A copy of written notification to the FAA pertaining to the installation of a large wind energy system.
- (7) Insurance. Proof of insurance, which includes the following requirements, in a sufficient dollar amount to cover potential personal and property damage associated with the construction and operation of the proposed project. The Town shall be named as an additional insured under the general liability policy of the applicant.

General Liability: Occurrence Basis

	Per Project Aggregate	\$2,000,000
	Each Occurrence	\$1,000,000
Automobile Liability:	Combined Single Limit	\$1,000,000
	Coverage for all Owned OR Non-Owned and Hired	
	Bodily Injury Per Person	\$1,000,000
Vehicles	Bodily Injury Per Accident	\$1,000,000
	Property Damage	\$1,000,000
Umbrella Liability:	Each Occurrence	\$5,000,000
	Aggregate	\$5,000,000
Workers Compensation:	NYS Statutory Coverage	
Employer's Liability	Each Accident	\$1,000,000
	Each Disease Policy Limit	\$1,000,000
	Each Disease Each Employee	\$1,000,000
Disability Benefits:	NYS Statutory Coverage	

Professional Liability:	Aggregate	\$4,000,000
<i>(if applicable)</i>	Each Claim	\$1,000,000
Environmental Liability:	Aggregate	\$2,000,000
<i>(if applicable)</i>	Each Occurrence	\$1,000,000
Cyber:	Aggregate	\$2,000,000
<i>(if applicable)</i>	Each Occurrence	\$1,000,000
UAS/Drone Liability:	Aggregate	\$2,000,000
<i>(if applicable)</i>	Each Occurrence	\$1,000,000

ADDITIONAL INSURED: TOWN OF LAFAYETTE. ALL POLICIES ARE PRIMARY AND NON-CONTRIBUTORY OVER ANY OTHER INSURANCE OR SELF INSURANCE. WAIVER OF SUBROGATION IN FAVOR OF TOWN OF LAFAYETTE APPLIES TO ALL POLICIES. **COPIES OF APPLICABLE ENDORSEMENTS MUST BE PROVIDED.**

SHOULD ANY OF THE ABOVE-DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEROF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH POLICY PROVISIONS.

- (8) Landscaping plan. A landscaping plan prepared and sealed by a registered design professional showing the current vegetation, describing the area to be cleared, listing the specimens proposed to be added, and detailing regrading and restoration measures to be taken after construction according to NYSDAM and NYSDEC guidelines. The plan should also include details pertaining to erosion and sediment control as well as stormwater management pursuant to any applicable regulation of the NYSDEC.
- (9) NYSERDA. Evidence from NYSERDA that the site is feasible for commercial wind energy generation.
- (10) Site plan. A site plan prepared and sealed by a licensed land surveyor or registered design professional drawn in sufficient detail to clearly show the following:
 - (a) Lot lines, physical dimensions of the site, and the location, dimensions and types of existing structures and uses on the site.
 - (b) Roads, whether private or public.
 - (c) Adjoining properties within 1,000 feet of each tower's property line, including zoning designations, residences, schools, churches, hospitals, and libraries.
 - (d) The proposed location, elevation, and total height (to blade tip) of each large wind energy system.
 - (e) Aboveground and underground utility lines within a radius of 2 times the total height of the large wind energy system.
 - (f) Setback lines.
 - (g) All other proposed facilities on the site, including transformers, electrical lines, substations, storage or maintenance units, ancillary equipment or structures, transmission lines, and fencing.
 - (h) Federal, state, county or local parks, recognized historic or heritage sites, state and federal identified

wetlands, or important bird and bat areas within a radius of 10 miles, as identified in federal, state, county, local or New York Audubon's GIS databases or as determined in consultations with NYSDEC or US Fish & Wildlife Services.

- (i) In granting site plan approval, the Planning Board may impose other conditions and restrictions deemed necessary for the maintenance and safety of such towers and/or to preserve and protect the character of the neighborhood and health, safety, and welfare of the community.
- (11) Studies. Studies prepared by a qualified person on:
- (a) Agricultural mitigation. An analysis detailing the agricultural mitigation needed to restore a farm operation disturbed by a large wind energy system. The primary goals of the mitigation plan are long-term protection of soil health and farming feasibility within the project area. An emphasis should be placed on minimizing the area of project disturbance and limiting impact to surface and subsurface drainage, during both construction and decommissioning. The applicant shall solicit input from the NYSDEC on such studies and shall follow any pertinent protocols established, adopted, or promulgated by such state department.
 - (b) Avian impact. An analysis of bird and bat migration, nesting, and habitat that would be affected by the proposal. The applicant shall solicit input from the NYSDEC and US Fish & Wildlife on such studies and shall follow any pertinent protocols established, adopted, or promulgated by such state department and federal agency.
 - (c) Cultural resources. An analysis describing the potential impacts of the project upon cultural resources as identified by NYSOPRHP. Such study shall be approved by such state office and include any follow-up study or assessment recommended by NYSOPRHP.
 - (d) Electromagnetic interference. An analysis of the potential for electromagnetic interference with microwave, radio, television, personal communication systems, 911, weather radar, and other wireless communication. A copy of the written notification to all communication operators within three miles of the project shall be attached to such study.
 - (e) Fiscal and economic impact. A property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact on the value of lots within a 2-mile radius of the project site.
 - (f) Geotechnical impact. An analysis of soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing, foundation design criteria for all proposed structures, slope stability analysis, grading criteria for ground preparation, cuts and fills, and soil compaction.
 - (g) Land use and water impacts. An analysis detailing potentially impacted wetlands, surface water and groundwater resources, stormwater runoff, and the geology and land use of the site.
 - (h) Noise. A noise analysis that shall include a description and map of the project's noise-producing features and the noise-sensitive environment, including the range of noise levels and the tonal and frequency characteristics expected at the nearest property lines surrounding the proposed project. The noise analysis shall extend geographically until the noise impact from modeled turbine operation is at pre-project night-time background sound levels. The analysis shall compare expected project noise levels to the maximum sound levels specified under (E)(9). The applicant shall solicit input from the NYSDEC on such studies and shall follow any pertinent protocols established, adopted, or promulgated by such state department.
 - (i) Shadow flicker. An analysis that shall identify locations where shadow flicker may interfere with residences and roadways and the expected duration of the flicker. The study shall identify measures that

shall be taken to eliminate or mitigate the problem, which may include ceasing operation during periods when shadow flicker effects are at their greatest.

- (j) Visual impact. A visual impact analysis (“VIA”) is required, and shall include computerized photographic simulations showing the visual impact of the fully developed wind turbines, in both leaf on and leaf off conditions, and demonstrating any visual impacts from key observation points (KOPs). KOPs are points located on public or private property within a three-mile radius, where wind turbines are anticipated to materially alter the viewshed and where at least one turbine is anticipated to be visible throughout the year. KOPs will be selected in consultation with and approval of the Planning Board or Town Board.

In addition, the VIA shall demonstrate all locations where turbines will be visible in Town, where an observer’s eyes are assumed to be 5 feet above the ground.

To the greatest extent possible, the VIA shall also use the methodology described in the following scientific literature: James F. Palmer, *Deconstructing viewshed analysis makes it possible to construct a useful visual impact map for wind projects*, Landscape and Urban Planning, Volume 225, 2022, 104423, ISSN 0169-2046, <https://doi.org/10.1016/j.landurbplan.2022.104423>.

- (12) Transportation plan. A preliminary transportation plan describing ingress and egress to the proposed project site to deliver equipment and provide access during and after construction. Such plan shall describe any anticipated improvements to existing roads, bridges, or other infrastructure, as well as measures which will be taken to restore damaged or disturbed access routes following construction. A copy of the written notification to all local, state and/or federal transportation agencies shall be included in such plan.
- (13) Large wind energy system drawings. Vertical drawings of all large wind energy systems, showing total height, turbine dimensions, tower and turbine colors, ladders, distance between the ground and the lowest point of any blade, and the location of climbing pegs and access doors. One drawing may be submitted for each large wind energy system of the same type and total height.
- (14) Operation and maintenance plan. The Owner/Operator shall submit an operation and maintenance plan including all necessary services, frequency of service, preventative maintenance measures, and monitoring. The operation and maintenance plan should include at a minimum:
- (a) Preventative maintenance practices and schedules for all on-site equipment including but not limited to: inverters, equipment pads, transformers, access entrances, internal roads, gates, fencing, security systems, grounding equipment and stormwater management installations
 - (b) Schedule of all other monthly, annual, or semiannual reporting requirements for other submittals including: agricultural impact mitigation plan and decommissioning plan.
 - (c) Issue resolution protocols. Contact information for responsible party to address issues that may arise (damaged equipment, excessive noise, or other similar issues).
 - (d) Disposal/recycling plan for damaged or obsolete facility equipment or hazardous waste. No storage of inoperable, damaged or otherwise obsolete equipment shall be allowed to remain on property within the approved project site. The current operator and all successor operators shall be responsible for debris cleanup, removal and property restoration to all participating, and non- participating property, resulting from natural disaster, severe weather event, mechanical failure, fire or act of vandalism to any project property and equipment. A debris cleanup and property restoration effort shall not be considered complete until receiving Town Board approval.
 - (e) Chemicals and solvents. During operation of the proposed installation, all chemicals or solvents used for

the cleaning, de-icing or general operation of a wind turbine shall be low in volatile organic compounds. The operator should use recyclable or biodegradable products to the extent possible. Any on-site storage of chemicals or solvents shall be referenced. A list of chemicals used must be provided.

- (f) Maintenance or repair. Maintenance or repair shall include, but not limited to, tower repair, painting, nacelle refurbishment or replacement, rotor repair or replacement, and integrity of security measures. Site access shall be maintained to a level acceptable to emergency response officials. Any maintenance, repair, retrofit, replacement or refurbishment of equipment shall adhere to all applicable local, state and federal requirements. Any maintenance, repair, retrofit, replacement or refurbishment of a site that increases the height of previous approved turbine shall, at a minimum, require Town Board review and approval.

F. Standards.

- (1) Advertising. No advertising shall be allowed on any part of the large wind energy system, including the fencing and support structures. No lettering, company insignia, brand names, logo, or graphics shall be allowed on the tower or blades. Reasonable identification of the large wind energy system by the manufacturer and owner is permitted at ground height.
- (2) Ecosystems and animals. Large wind energy systems may not cause any violations of the Endangered Species Act or of NYS endangered species regulations. Adverse impacts to animals and ecosystems shall minimized to the maximum extent feasible.
- (a) Forest Conservation. Forested sites shall not be deforested and sites deforested less than five years before application submittal shall not be used to construct Wind Energy Facilities, unless the Applicant offsets the adverse impact of deforestation through conservation of the same amount of existing similar habitat, or creation of the same amount of new sites to host similar habit (“Conserved Forest Habitat”). Conserved Forest Habitat created pursuant to this section shall be permanently conserved through creation of public parkland with covenants prohibiting deforestation and requiring the land to be kept in a natural, forested state, or by creation of a conservation easement held by an entity other than the Applicant, and with restrictions requiring the land to be kept in a natural, forested state, or by any other means of permanent conservation acceptable to the Town. The Town may, but is not required to, hold any real property interest created pursuant to this section. Conserved Forest Habitat shall be located within the Town of Lafayette.

Brush, hedgerows and isolated trees or stands of trees in otherwise open fields or scrubland may be cut, however clear cutting of trees more than three inches in diameter at breast height (as defined herein) in an area exceeding 10,000 square feet is prohibited except as otherwise permissible under this section. This clearing restriction shall apply to trees cleared for any reasons, including but not limited to clearance for wind turbines, transmission lines, access roads, fencing, or any other component of a wind energy facility.

Any portion of a property that has been clear-cut in excess of the area described in the paragraph above, regardless of the reason for such clear cutting, shall not be included in an application for a wind energy project for a period of five years following such clear cutting.

- (b) Post-construction avian fatality monitoring. To quantify and mitigate or avoid actual impacts to bats and birds, the owner/operator of any large wind energy system shall implement an avian fatality monitoring program using the study methodology set forth in Smallwood, K. Shawn, et al, Estimating Wind Turbine Fatalities Using Integrated Detection Trials, 2018, The Journal of Wildlife Management, 82(6):1169-1184; and Smallwood, K. Shawn, et al, Dogs Detect Larger Wind Energy Effects on Bats and Birds, 2020, The Journal of Wildlife Management 1-13; 2020. The initial study shall commence within one year of commencement of commercial operation, and last for a minimum duration of three years. A second study shall be conducted 10 years after the first study is completed. All results shall be

made publicly available, be subject to peer review, and be provided to the town and the Public Service Commission within 6 months of completion of each study.

- (3) Interference with electromagnetic communications, radio signals, microwave and television signals. No large wind energy system shall be installed in any location absent sufficient proof being submitted to the Planning Board that the system's proximity to microwave communications, fixed broadcast, retransmission or reception antenna for radio, wireless phone, or other personal communications systems will not produce substantial electromagnetic interference with signal transmission or reception. Any interference with television signals shall be mitigated.
- (4) Colors and surfaces of large wind energy system. Colors and surface treatment of all large wind energy systems shall minimize visual disruption by using white, beige, off-white, gray or another nonreflective, unobtrusive color unless mandated otherwise by the FAA.
- (5) Landscaping. The landscaping of the large wind energy system should be appropriate to screen accessory structures from roads and adjacent residences. It should be designed to minimize the impacts of land clearing and loss of open space. Screening techniques should screen the structures upon installation and not rely on future growth (e.g., trees) to provide adequate screening in the future.
- (6) Lighting.
 - (a) Large wind energy systems shall comply with all applicable FAA requirements for air traffic warning lights. In addition, all wind turbines and meteorological towers shall be equipped with a working Aircraft Detection Lighting System ("ADLS") that shall be operational at all times, and only emitting light when aircraft are detected in the vicinity of any specific turbine.
 - (b) No artificial lighting shall be allowed on large wind energy systems except to the extent required by the FAA or other air safety authority. Minimal ground level security lighting is permitted.
- (7) Minimum lot size. A large wind energy system shall be installed on a lot of record equal to or greater than 20 acres.
- (8) Operation.
 - (a) Maintenance. The owner of the large wind energy system shall submit an annual report of operations and maintenance to the Town by the end of the first quarter..
 - (b) All large wind energy systems shall be maintained in operational condition meeting all of the requirements of this section at all times, subject to reasonable maintenance and repair outages. If the large wind energy system becomes inoperative, damaged, unsafe, or violates a standard, the system owner shall remedy the situation within 90 days after written notice from the Code Enforcement Officer. The Code Enforcement Officer may extend the period by 90 days.
 - (c) If the large wind energy system is not repaired or brought into compliance within the time frame stated above, the Town may, after a public hearing, order remedial action or revoke the special use permit and order removal of the large wind energy system within 90 days.
 - (d) Inspections. All large wind energy systems shall be inspected annually for structural and operational integrity by a registered design professional. The Town has the right to enter the lot of record containing a large wind energy system at any reasonable time to inspect the large wind energy system.
- (9) Noise.
 - (a) In accordance with NYSDEC noise policy (February 2001), the L_{10} noise level generated by a large wind energy system shall not increase the existing L_{90} (background) sound levels by more than six dBA

as measured at the location of any nonparticipating, sensitive noise receptors, including residences, businesses, hospitals, libraries, schools, parks, and places of worship

- (b) In the event that audible noise due to large wind energy system operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in Subsection E(9)(a) of this subsection shall be reduced to 3 dBA above the ambient sound level. A pure tone is defined to exist if the 1/3 octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of two contiguous 1/3 octave bands by 5 dBA for center frequencies of 500 Hz and above, by 8 dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.
 - (c) 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 90 percent over a 1-hour period (L_{90}). Ambient noise levels shall be measured at the exterior of potentially affected existing residences, businesses, schools, parks, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind-generating noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbines' operation, provided that the wind velocity does not exceed 30 miles per hour at the ambient noise measurement location.
 - (d) Independent certification shall be required after construction demonstrating compliance with this noise standard.
 - (e) Cumulative impact. The maximum allowable noise requirements set forth in this section shall include noise caused by all large wind energy systems that may cause noise at any given receptor. If the cumulative noise caused by two or more large wind energy projects exceeds the standards set forth in this section, an owner and/or operator of a large wind energy system shall be required to undertake reasonable mitigation measures for noise abatement up to an including curtailment or the decommissioning of any wind turbine that fails to comply with the noise exposure limits set forth in this section.
- (10) Safety.
- (a) The minimum distance from the ground to the rotor blade tips shall not be less than 50 feet.
 - (b) Large wind energy systems shall not be climbable up to 15 feet above the ground. This can be achieved through anticlimbing devices or a fence around the tower with locking portals at least six feet high.
 - (c) All access doors on towers or to electrical equipment shall be locked or fenced.
 - (d) There shall be clearly visible signs on all large wind energy systems, electrical equipment, and wind energy facility entrances warning of electrical shock or high voltage and harm from revolving machinery. Signage shall also include twenty-four-hour emergency contact information.
 - (e) Each large wind energy system shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the large wind energy system. No large wind energy system shall be permitted which lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
 - (f) All structures which may be charged with lightning shall be grounded according to the NEC.

(11) Setbacks.

- (a) Each large wind energy system shall be set back at least 1.5 times its height from all property lines, or a distance sufficient to comply with the noise exposures limits set forth in this section, whichever is greater.
 - (b) Each large wind energy system shall be set back two times its height from the nearest school, hospital, place of worship, or public library, or a distance sufficient to comply with the noise exposures limits set forth in this section, whichever is greater.
 - (c) Each large wind energy system shall be set back 1.5 times its height from, overhead utility or transmission lines, other towers, electrical substations, meteorological towers, roads, and structures of any kind.
 - (d) Each large wind energy system shall be set back 1.5 times tower height from all structures and buildings other than residences on a nonparticipating owner's property.
 - (e) Wetlands are a valuable natural resource worthy of protection. To provide a buffer between wetlands and large wind energy systems, preserve water quality, limit sediment discharges, erosion, and uncontrolled stormwater discharges, and provide wildlife habitat, each large wind energy system shall be setback 100 feet from the boundary of any wetland. The area within the setback is intended to create a protective buffer around the wetland. The buffer area within the setback shall be a non-disturbance area where natural vegetation must be maintained to the maximum extent practicable.
- (12) Shadow flicker. Large wind energy systems shall be located in a manner that minimizes shadow flicker to any building and/or structure. The maximum allowable shadow flicker at any building or structure is 8 hours/year, and 20 minutes/day. An owner of a large wind energy system shall be required to undertake reasonable mitigation measures for shadow flicker, up to an including the decommissioning of any wind turbine that fails to comply with the shadow flicker exposure limits set forth in this section.
- (a) Shadow flicker compliance monitoring. No later than the second anniversary of a large wind energy system's date of commencement of commercial operation, the owner and/or operator of the large wind energy system shall provide the town with a report detailing the actual measured shadow flicker at all residences within 1 mile of any wind turbine, and for which any shadow flicker exposure was anticipated based upon model data submitted with an application for a sting permit or analogous state approval.
 - (b) Cumulative impact. The maximum allowable shadow flicker and compliance monitoring requirements set forth in this section shall include shadow flicker caused by all large wind energy systems that may cause shadow flicker at any given receptor. If the cumulative shadow flicker caused by two or more large wind energy projects exceeds the standards set forth in this section, an owner and/or operator of a large wind energy system shall be required to undertake reasonable mitigation measures for shadow flicker up to an including curtailment or the decommissioning of any wind turbine that fails to comply with the shadow flicker exposure limits set forth in this section.
- (13) Siting and installation.
- (a) Any construction on agricultural land shall be conducted according to the NYSDAM's "Guidelines for Agricultural Mitigation for Wind Power Projects." In addition, impacts to agriculture shall be minimized to the maximum extent practicable. Large wind energy systems shall limit the use of agricultural areas within their project limits to no more than 10 percent of soils classified by the NYS Department of Agriculture and Markets' Agricultural Land Classification as mineral soils groups 1 through 4, prime farmland, and prime farmland if drained. To offset or mitigate the adverse impact of using high quality soils for a non-agricultural purpose, and/or as required by New York Public Service Law Section 138(4), any large wind energy system sited on soils classified by the NYS Department of Agriculture and Markets' Agricultural Land Classification as mineral soils groups 1 through 4, prime farmland,

and/or prime farmland if drained, shall: (1) prepare and carry out an agricultural co-utilization plan acceptable to the Town or relevant state permitting authority, as the case may be; and (2) permanently conserve an equal amount of soils classified by the NYS Department of Agriculture and Markets' Agricultural Land Classification as mineral soils groups 1 through 4, prime farmland, and/or prime farmland if drained, located in the Town of Columbia, in a manner acceptable to the Town, or relevant state permitting authority, as the case may be.

- (b) Connection of transmission lines from the wind energy facility to local distribution lines.
 - [1] No construction of any large wind energy system shall be started until evidence is given of a signed interconnection agreement or letter of intent with an interconnecting public service agency.
 - [2] A large wind energy system shall meet the requirements for interconnection and operation as set forth in the NYISO's regulations.
 - [3] Transmission lines and points of connection to local distribution lines should be combined to the extent possible. The large wind energy system should be connected to existing substations if possible, or if new substations are needed, the number should be minimized.
- (c) Power lines. Power lines between large wind energy systems and any other buildings or structures shall be completely underground. Power lines between large wind energy systems and the on-site substation shall be placed underground. Power lines for connection to a NYISO and transmission poles, towers, and lines may be aboveground.
- (d) Road access to project site. Subject to the owner's preference, entrances to access roads shall be gated and kept locked. The project shall only use designated traffic routes established in the application review process. Routes should be chosen to minimize traffic impacts and shall take into consideration a large wind energy system adverse impact to traffic during school bus times, wear and tear on local roads, and impacts on local businesses. Existing roads should be used to the extent possible or, if new roads are needed, they should minimize the amount of land used and the adverse environmental impacts. The applicant is responsible for remediation of any damaged roads due to siting and installation of the large wind energy system.
- (14) Total height. Wind Turbines shall not exceed a total height of 350 feet from the ground to the tip of the blade at its highest point.
- (15) Traffic routes.
 - (a) Construction of large wind energy systems poses potential risks because of the large sized construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for such systems and for associated facilities shall use traffic routes established as part of a mutually acceptable, executed Road Use Agreement ("RUA") between the Applicant and the Town, which shall be in force prior to commencement of any construction or pre-construction activities. A mutually acceptable RUA shall, at a minimum, include the following terms:
 - [1] terms sufficient to minimize traffic impacts from construction and delivery vehicles, including impacts on local residential areas; and
 - [2] terms sufficient to minimize related traffic during times of school bus activity; and
 - [3] terms sufficient to minimize wear and tear on local roads; and
 - [4] terms sufficient to minimize impacts on local business operations; and
 - [5] terms sufficient to minimize disseminating traffic route information to the public; and

- [6] the RUA shall apply to road use, road improvement, and road repair during construction, operation, and decommissioning of the facility, and the term of the RUA shall run from prior to commencement of construction, through completion of decommissioning in accordance with all permits and applicable laws; and
 - [7] the RUA shall include a process for assessment, improvement, and repair of road condition before and after periods of use before construction, during construction, during operation, before decommissioning, and during decommissioning, with the cost of the assessment, improvement, and repair of town roads to be borne by the Applicant and facility owner; and
 - [8] the RUA shall clearly indicate whether any license, easement or any other form of permission is granted to the Applicant to place facility components and infrastructure on, under, or over Town property such as Town roads and rights of way; and
 - [9] the RUA shall require provision of a security instrument benefiting the town in the form of a bond, escrow, or letter of credit that shall be maintained by the Applicant and facility owner and operator, from prior to commencement of construction to completion of decommissioning, in an amount sufficient to reconstruct the entire length of all roads used as traffic routes pursuant to the RUA. An acceptable Road Use Agreement shall include provisions for calculating the amount of security, and include provisions for escalation or periodic recalculation of security, and yearly provision of proof of security.
- (b) The applicant/owner is responsible for obtaining all necessary permits in addition to the RUA, and shall be responsible for improving roads as necessary prior to use, and repairing damage on all roads, whether such damage occurs during the construction, maintenance, operation, or decommissioning of a large wind energy system. All applicable local, county, state and federal highway departments shall approve the transportation plan and a copy of such approvals shall be submitted to the Town.
- (16) Type of construction. A large wind energy system shall be of monopole construction (single pole). No lattice structures or guy-wire-supported structures shall be permitted.
 - (17) Public hearings. No action shall be taken by the Town Board to issue a special use permit, by the Planning Board to issue preliminary site plan approval nor the Zoning Board of Appeals to grant a use and area variance until after public notice and hearing. Proper notice of a hearing before a board shall be given by legal notice published in the official newspaper of the Town at least 10 days before the date set for a public hearing and written notice mailed to the applicant or his agent at the address given in the application to be considered. The applicant shall be responsible for notifying by first-class mail all property owners of record within three (3) miles of the outside perimeter or boundary line of property involved in the preliminary application of the time, date and place of such public hearing by mail at least 10 days prior to such hearing. Notice shall be deemed to have been given if mailed to the property owner at the tax billing address listed on the property records of the Town Assessor or at the property address. At least seven days prior to such hearing, the applicant shall file with the board his/her affidavit verification of mailing such notice. Failure of property owners to receive such notice shall not be deemed a jurisdictional defect.
- G. Abatement, decommissioning, site restoration plan and bond.
- (1) Abatement and decommissioning. If a large wind energy system is not operated for a continuous period of 12 months, the Town will contact the owner by registered mail and provide 90 days for a response. The owner is required to respond and set forth reasons for the stoppage and a timetable for action. If the Town has made all reasonable efforts to notify the owner but the owner does not satisfactorily respond, the Town can contract for removal and restoration using the money in the decommissioning bond and charge the owner any difference in cost.

- (2) Decommissioning and site restoration plan agreement with the Town required prior to commencement of construction or issuance of any building permits. The plan shall include:
 - (a) The anticipated life of the large wind energy system; and
 - (b) Triggering events for decommissioning and removal; and
 - (c) The estimated decommissioning costs in current dollars; and
 - (d) How the estimate was determined; and
 - (e) Provision for a re-estimate of such decommissioning costs at most every five years by a registered design professional; and
 - (f) The manner in which the large wind energy system will be decommissioned and the site restored, including removal of all structures, turbines, cabling, electrical components, debris, and foundations to a depth of four feet, restoration of the soil and vegetation, and restoration of roads and driveways, less any fencing or residual minor improvements requested by the owner.
- (3) The applicant shall be required to execute and file with the Town Clerk a bond, or other form of security acceptable to the Town Attorney for an initial term of up to and including the entire useful life of the large wind energy system as determined by and acceptable to the Town Attorney and Engineer, in an amount sufficient for the faithful performance of the terms and conditions of the permit issued under this section, and to provide the decommissioning, removal and restoration of the site subsequent to the removal of the large wind energy system. The amount of the bond or security shall be no less than 150% of the cost of the removal of the large wind energy system and restoration of the site, and shall be reviewed and adjusted at five-year intervals. The applicant shall submit, initially and every five years, documented justification, acceptable to the Town Attorney and Engineer, for the bond amount. In the event of a default upon performance of such condition or any of them, the bond or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The bond or security shall remain in full force and effect until the complete removal of the large wind energy system and site restoration is finished acceptable to the Town Attorney and Engineer. The Town Attorney may also require a corporate guarantee to assure compliance with this section. The amount of the bond or security shall not be reduced by any estimated salvage value.

H. Transfer and replacement.

- (1) If ownership of a large wind energy system changes, the new owner shall present full contact information and proof to the Town that all required bonds and insurance policies remain in full force 30 days prior to the transfer of ownership.
- (2) Any replacement of or modification or alteration to a large wind energy system, excluding regular maintenance and repair, requires an amendment to the special use permit, which amendment shall not be unreasonably withheld.
- (3) Replacement of a large wind energy system may occur without an amendment to the special use permit when there will be:
 - (a) No increase in the total height of the large wind energy system; and
 - (b) No change in the location of the large wind energy system; and
 - (c) No additional lighting on the large wind energy system, except to the extent required by the FAA; and
 - (d) No increase in noise produced by the large wind energy system.

(Seal)

Date: _____

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF ONONDAGA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

Attorney for the Town
Title

Town of _____ LaFayette

Date: _____