

**Local Law No One of 2011**

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

**Section 1: Local Law No. 1 of 2011 entitled “WIND ENERGY FACILITIES” is hereby adopted to read in its entirety as follows:**

**WIND ENERGY FACILITIES**

**ARTICLE I**

**GENERAL**

**§1. Title**

This Local Law shall be cited as the “Wind Energy Facility Law of the Town of Hopkinton, New York.”

**§2. Purpose**

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

1. Article IX of the New York State Constitution, §2(c) (6) and (10).
2. New York Statute of Local Governments, §10 (1), (6), and (7).
3. New York Municipal Home Rule Law, §10 (1) (i) and (ii) and §10 (1), (a) (6), (11), (12), and (14).

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4. The supersession authority of New York Municipal Home Rule Law, §10 (2)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this Local Law, and what variances may be granted to the extent such grant of power is different than under Town Law as it relates to the power of the Town Board to regulate land use within the Town to the extent the provisions of this Local Law differ from the authority granted to the Town by Article 16 of the Town Law or any other provision of law.
6. 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, (II) (peace, good order and safety), (15) (Promotion of public welfare), (15-a) (Excavated Lands), (16) (Unsafe buildings), (19) (Trespass), and (25) (Building lines).
7. New York Town Law §64(17-a) (protection of aesthetic interests), (23) (General powers).
8. New York Real Property Tax Law §487.

### **§4. Findings and Determinations**

The Town Board of the Town of Hopkinton makes the following findings and determinations:

1. Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
2. The generation of electricity from properly sited wind turbines, including small systems, can be cost-effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
3. Regulation of the siting and installation of wind turbines is necessary for protecting the health, safety, and welfare of neighboring property owners and the public.
4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.
5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road sites, and harm farmlands through improper construction methods.

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6. Wind Energy Facilities may present a risk to birds, bats and other creatures if not properly sited.
7. If not properly sited, Wind Energy Facilities may adversely affect the property values of adjoining property owners.
8. Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively impact the quiet enjoyment of properties in the vicinity.
9. Construction of Wind Energy Facilities can create traffic problems and damage local roads.
10. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

### ARTICLE II

#### PLANNING BOARD

##### **§5. Town Of Hopkinton Planning Board**

1. Planning Board Established. There is hereby created a Town of Hopkinton Planning Board (the "Planning Board"). The Planning Board shall have such duties as prescribed herein, including approving site plans, WECS Permits, and Small WECS permits, and assisting with the review of any wind overlay zone applications, and, if facilities are permitted, with administering this local law as it relates to such facilities. Relief from the strict application of the law must be obtained from the Town Board,
2. Composition. The Planning Board shall consist of five (5) members, all of whom shall reside in the Town at the time of their respective appointments and during their terms of office.
3. Appointment of Members and Terms of Office. Appointment of Planning Board Members shall be made by the Town Board. The terms of the initial appointments shall be as follows: one member to serve a one (1) year term; one member to serve a two (2) year term; one member to serve a three (3) year term; one member to serve a four (4) year term; and, one member to serve a five (5) year term. All members appointed or reappointed thereafter following on the expiration of the term of an initial member shall be appointed for a term of five (5) years. Reappointment of a member shall be at the discretion of the Town Board.

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4. Vacancies. In the event of a vacancy arising during the term of office of any member for any reason, such vacancy shall be filled by appointment of a new member who shall serve the balance of the term vacated.
5. Selection and responsibilities of Chair, Vice-Chair and Secretary. The Planning Board, at its initial meeting, shall, by a majority vote, select a Chair, Vice-Chair and Secretary. The Chair shall preside at all meetings of the Planning Board and shall take such actions on behalf of the Planning Board as authorized by the vote of its members. The Vice-Chair shall act for the chair at such times as the Chair is unavailable. The Secretary shall be responsible for preparing the agenda and minutes of the meetings of the Planning Board, shall receive all correspondence and other communications directed to the Planning Board, and shall prepare all correspondence, reports and other documents on behalf of the Planning Board as are authorized by the vote of its members.
6. Meetings; Quorum; Votes. The Planning Board shall meet at such times of its choosing, but shall schedule a regular meeting during which all matters before it may be considered at least quarterly during the year, in accordance with the requirements for public notice, access and participation established in the New York State Public Officers law, Article 7 (the "Open Meetings Law"). All proceedings of the Planning Board shall be recorded by the Secretary and, unless otherwise provided for by law, be a matter of public record. A quorum of the membership of the Planning Board shall be obtained for any purpose of the Planning Board when at least three (3) of the members are present. The Planning Board may not act in any manner or for any purpose in the absence of a quorum of its membership. Votes of the Planning Board shall be taken following a recorded motion and second from the membership, and shall be recorded as to ayes and nays. A majority of the membership of the Planning Board shall constitute the "majority vote" of the Planning Board required for all purposes under this law.

### **§5.1.1 Powers and Authorities of Planning Board**

The Planning Board established pursuant to §5.1 of this Law is hereby authorized to receive applications for all site plan reviews and WECS permits as required under this Law. On making the determination provided for that such applications are complete, the Planning Board is authorized to review them in accordance with the provisions of this Law and to make findings provided for its decisions therein, in accordance with the standards established by this local law; to wit: the Planning Board is authorized by majority vote, at its discretion, to

- i) Approve the application; or
- ii) Disapprove the application

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The Planning Board is further authorized, at its discretion, to require, receive and consider reports, testimony, and other evidence during its proceedings, and to make such additional inquiries as it deems necessary into any matter relevant to the making of its determination on a site plan application properly before it.

In the event that the Planning Board determines that modifications or conditions are necessary in approving a site plan or WECS permit, it is hereby authorized to require or impose such reasonable modifications and conditions as, in its discretion, are necessary to adequately safeguard the public health and safety, or are needed to provide for and safeguard the welfare and quality of life of adjacent landowners and of the residents of the Town.

The Planning Board is authorized to propose any additional rules and regulations that it deems necessary for the efficient administration of this Law, subject to the approval of the Town Board.

The Planning Board may also require the posting of a bond or other similar performance guarantee to ensure 1) recovery of Town application review costs, 2) compliance with any applications and with any conditions established for approval, and 3) to cover any Town costs involved in the development post-approval.

***Waiver of Conditions:*** The Town Board may, in the event of practical difficulties or unnecessary hardship related to the physical location proposed for improvement, reduce or waive any requirements for approval or approval with modifications of site plans submitted pursuant to this Local Law. Any such waiver or reduction shall be applicable only to the particular site and not to the situation of the applicant. The Planning Board shall make specific, written findings, and make recommendations to the Town Board for a final decision

As required under SEQRA, the Planning Board is authorized to act as the lead agency for the purpose of reviewing a proposed site plan or WECS permit pursuant to that law. All applications for WECS other than Small WECS shall be Type I actions.

Once a site plan has been approved, the Planning Board may act on the request of any person, or on its own initiative, to suspend or, at its discretion, revoke such site plan approval when work or other compliances with the approved site plan is not accomplished as required. The Planning Board is also authorized to recommend to the Town Board, in such instance and as appropriate, that any building permit or other approval that has been granted be likewise suspended or revoked.

**§5.1.2 Enforcement Officer**

1. Powers and Duties. The Enforcement Officer shall carry out all the functions identified in this Law and be responsible for the overall inspection of site improvements to ensure compliance with approved site plans. The Town may hire such experts as are necessary to assist the Enforcement Officer or carry out the Officer's functions

**§5.1.3 Issuance of Building Permit Conditioned**

No building permit shall be issued by any official or employee of the Town for any project that requires site plan or WECS review and approval under this Law unless all approvals are on file with the Town Clerk. Any building permit issued in contravention of this provision, or that is issued in error, or that is issued based upon any misrepresentation of the applicant, whether intentional or unintentional, shall not be deemed to confer any right of any sort upon the person that the permit is issued to, nor shall it be deemed to deny or restrict any right or ability of the Town to take any action of any sort against such person and the building, structure or property that is the subject of the building permit.

**§5.1.4 Appeals Procedure**

Any person aggrieved by any decision of the Planning Board or by the action of any officer of the Town with respect to the provisions of this Law may apply to the Supreme Court for a review of the decision by a proceeding brought under Article 78 of the Civil Practice Law and Rules. Such proceeding must be brought within thirty (30) days of the date of the filing of a final decision rendered pursuant to this Law in the Office of the Town Clerk.

**§5.1.5 Violations and Enforcement**

Any person, corporation, partnership, association or other legal entity who violates any of the provisions of this Law, or site plan approval or subsequent permit granted pursuant to this Law shall be guilty of an offense against the Town of Hopkinton and be subject to a fine of not more than Three Hundred Fifty dollars (\$350) or to imprisonment for a period of not more than six (6) months or both to be recovered by the Town in a civil action. Each week of said offense, if continuous, shall constitute a separate offense.

In case of any violation or threatened violation of any of the provisions of this Law, or conditions imposed under an approved site plan, the Town may institute any appropriate action or proceeding to prevent or enjoin the unlawful activity deemed to give rise to the violation; i.e., to restrain, correct, or abate such activity, or to prevent occupancy of any building, structure or land involved in such activity, or to prevent any illegal act, conduct, business or use that

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constitutes all, or part, of any such activity.

The Planning Board may act to suspend or revoke any approved site plan or WECS permit in the event of any deviation or discrepancy from the terms and conditions of the approved site plan or WECS permit.

No building permit, certificate of occupancy or other authorization of use shall be granted until all improvements shown on an approved site plan or WECS permit agreed upon as conditions to an approved site plan are installed or a performance guarantee deemed sufficient by the Planning Board has been posted for such improvement and a timetable approved by the Planning Board for such completion has been established and agreed to by the applicant.

Any permit or approval granted based upon a site plan or WECS permit approved pursuant to this Law shall be void if the site plan was approved in reliance upon any material misrepresentation or failure to make a material fact or circumstances known, whether by or on behalf of an applicant.

### **§5.1.6 Excavation of Soil Following Approval of Site Plan**

Unless a permit for commercial excavation has been granted, no applicant, after obtaining an approved site plan under this Law, shall, in connection with the development of the property that is the subject of the site plan, strip, excavate or otherwise remove topsoil for sale or for use on premises other than those from which the topsoil is taken.

### **§6. Variances**

The Town Board is hereby granted the power to vary or modify the strict application of the requirements contained in this Law as they relate to area or dimensions upon the application of the criteria hereafter listed. In no event shall the Town Board have the authority to issue a use variance to permit the location of WECS in an area outside of the Wind Overlay District as established under this Law.

- A. Upon specific request from the applicant, the Town Board shall have the power to grant an area variance after taking into consideration the benefit to the applicant if the variance 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 Planning Board shall consider:
  - 1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the area variance.

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2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.
  3. Whether the requested area variance is substantial.
  4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
  5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Planning Board, but shall not necessarily preclude the granting of the area variance.
- B. The Town Board, in granting an area variance, shall grant the minimum variance that it shall be 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.
- C. The Town Board shall, in granting an area variance, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- D. All variances shall be considered as part of the overall permit review conducted by the Planning Board in connection with the application, but must be granted by the Town Board.
- E. Variances for Small WECS

The Town Board is hereby granted the power to vary or modify the strict application of the requirements contained in this Article as they relate to area or dimensions upon the application of the criteria hereafter listed.

- A. Upon specific request from the applicant, the Town Board shall have the power to grant an area variance after taking into consideration the benefit to the applicant if the variance 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 Town Board shall consider:
1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the area variance.



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2. Whether the benefit sought by the application can be achieved by some method feasible for the applicant to pursue other than an area variance.
  3. Whether the requested area variance is substantial.
  4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
  5. Whether the alleged difficulty was self-created, which consideration be relevant to the decision of the Town Board, but shall not necessarily preclude the granting of the area variance.
- B. The Town Board, in granting an area variance, shall grant the minimum variance that it shall be 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.
- C. The Town Board shall, in granting an area variance, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- D. All variances shall be considered as part of the overall permit review conducted by the Planning Board in connection with the application, but must be granted by the Town Board.

### **§8. Permits Required**

- A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Hopkinton, except in compliance with this Local Law.
- B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Hopkinton, except in a Wind Overlay Zone, pursuant to a WECS Permit approved pursuant to this Local Law.
- C. No Permit shall be issued for construction, reconstruction, modification or operation of a WECS in the Town of Hopkinton, unless and until a Wind Overlay District has been created by act of the Town Board.
- D. No building Permit shall be issued for construction, reconstruction, modification or operation of a WECS in the Town of Hopkinton, until all other permits as may be required

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- (e.g., FAA, DEC, etc.) have been issued and evidence of same provided to the Town of Hopkinton.
- E. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Hopkinton, except pursuant to a WECS Permit issued pursuant to this Local Law.
  - F. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Hopkinton, except pursuant to a Small WECS Permit issued pursuant to this Local law.
  - G. Exemptions. No permit or other approval shall be required under this Local Law for mechanical, non-electrical WECS utilized solely for on-site agricultural operations.
  - H. Transfer. No transfer of any Wind Energy Facility or WECS Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance by the transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability of an applicant or of any other party under this Local Law.
  - I. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when there will be (1) no increase in Total Height of the WECS; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.

### **§9. Definitions**

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

**AMBIENT NOISE LEVEL** – The composite of sound pressure level from all sources near and far on a 24/7 basis. The normal or existing level of environmental sound pressure at a given location.

**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-PARTICIPATING RESIDENCE** – A primary dwelling within a designated wind zone whose owner does not have a contract with the developing wind power company.

**PARTICIPATING RESIDENCE** – A primary dwelling within a designated wind zone whose owner has a

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contract with the developing wind power company.

**RESIDENCE** – means any dwelling suitable for habitation existing in the Town of Hopkinton on the date an application is received. A residence may be part of a multi-dwelling or multipurpose building, and shall include buildings such as hunting camps, seasonal residences, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

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

**A WEIGHTED SOUND PRESSURE LEVEL (LA)** — The sound pressure level measured in decibels (dBA) and equal to 20 times the logarithm to the base 10 of the ratio of root mean square sound pressure to a reference sound pressure, weighted by frequency band following standard practice. The reference sound pressure in air is  $2 * 10^{-5}$  Pascals.

**SHADOW FLICKER** – a repeating cycle of changing light intensity that occurs when the shadow cast by rotating turbine blades passes over an object or window.

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

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

**TOTAL HEIGHT** – The height of the tower and the furthest vertical extension of the WECS.

**WECS PERMIT** - A permit for a Wind Energy Facility, other than a Small WECS.

**SMALL WECS PERMIT** – A permit for a Small WECS

**WIND ENERGY CONVERSION SYSTEM (“WECS”)** – a machine that consists of a wind turbine, a tower, associated control or conversion electronics that converts the kinetic energy in the wind into a usable form (commonly known as a “wind turbine” or “windmill”), and which has a rated capacity of more than one hundred kilowatts (100KW).

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

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

WIND OVERLAY ZONE – Those areas of the Town of Hopkinton which the Town Board has determined are appropriate for the development of wind energy conversion systems (WECS) and related infrastructure, electrical lines and substations, access roads and accessory structures.

### **§10. 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. No permit or other approval shall be required under this local law for mechanical, non-electrical WECS utilized solely for on-site agricultural operations.
- B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that
  - 1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Local Law prior to recommencing production of energy.
  - 2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.
  - 3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-six (26) months after said effective date, unless a WECS Permit for said Wind Energy Facility is obtained.
- C. Wind Energy Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same site shall not preclude the installation of a Wind Energy Facility or a part of such facility on such site. Wind Energy Facilities constructed and installed in accordance with this Local Law shall not be deemed expansions of a

nonconforming use or structure.

### ARTICLE III

#### WIND ENERGY CONVERSION SYSTEMS

##### **§11. Creation of Wind Overlay Zones**

- a) Wind Overlay Zones shall be created by the Town Board to delineate those areas in the Town of Hopkinton that are appropriate for the development of wind energy conversion systems (WECS) and related infrastructure, electrical lines and substations, access roads and accessory structures.
- b) The Town Board shall refer development of Wind Overlay Zones to the Town Planning Board. The Town Planning Board shall hold public meetings after public notice at which the Planning Board shall consider the landscape and topography of the town, current land uses and future development patterns, natural resources, unique or sensitive environments, the local existence of wildlife and plant species, viewsheds, zoning districts, residents' opinions, and other pertinent information.
- c) After considering these and any other information presented at public hearing, the Town Planning Board shall determine those areas which are not considered appropriate for development of wind energy conversion systems (WECS) and related infrastructure, electrical lines and substations, access roads and accessory structures. Any other areas of the Town of Hopkinton may be designated by the Town Planning Board to be potential Wind Overlay Zones.
- d) The Town Planning Board shall report its findings and make recommendations to the Town Board.
- e) The Town Board shall hold a public hearing after public notice as required, and shall consider the recommendations of the Town Planning Board and all other comments, reviews and statements pertaining thereto. After considering these and any other information presented at a public hearing, the Town Board shall determine which areas of the Town shall be determined to be Wind Overlay Zones.
- f) If approved, the Town Board will direct the Town Clerk to modify the Official Map to reflect the creation of the Wind Overlay Zones.

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- g) Once a Wind Overlay Zone has been created, new WECSs or its accessory structures or facilities may be added in that zone by grant of a WECS Permit pursuant to the requirements of this Article.
- h) Construction, reconstruction, modification of Small Wind Energy Conversion Systems (Small WECS) or Wind Management Towers, as defined in this Local Law, shall not be limited to Wind Overlay Zones, as long as these other projects comply with all other regulations contained herein.
- i) Creation of new, reduced, or expanded wind overlay zones may be considered by the Town Board and Planning Board as part of an application for a wind energy facility, or a petition from a member of the public, or on their own motion.

### **§12. Applications for Wind Energy Conversion Systems**

- A. An application for WECS Permit for individual WECS shall include the following:
  - 1. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  - 2. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
  - 3. Address, or other property identification, of each proposed tower location, including Tax Map section, block and lot number, latitude and longitude coordinates.
  - 4. A description of the project, including the number and maximum rated power output capacity of each WECS.
  - 5. For each WECS proposed, 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 existing structures and uses on Site, public roads, and adjoining properties within eighteen hundred (1800) feet of the Site.
    - (c) Location and ground evaluation of each proposed WECS.

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- (d) Location of all above ground utility lines on the Site, and all related transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
  - (e) Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
  - (f) {Intentionally deleted}
  - (g) Boundaries of the Wind Overlay Zone, to demonstrate that each proposed WECS is located within said overlay zones.
  - (h) To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower location equal to:
    - i. Perimeter equal to one and a half times the tower height.
    - ii. Six Hundred foot perimeter.
    - iii. One Thousand Eight Hundred foot perimeter.
- Information shall be provided concerning ownership and land uses within the above-mentioned perimeters.
- (i) Location of the nearest residential structure on the Site and located off-site, and the distance from the proposed WECS.
  - (j) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
6. Elevation drawing of the WECS showing Total Heights, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.
  7. Landscaping Plan depicting vegetation describing the area to be cleared of vegetation and areas where vegetation shall be added, identified by species and size of specimens at installation, and their locations.
  8. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation

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Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of application, no building permit for any lighted facility may be issued until such determination is submitted.

9. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; 5) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all roads, structures and debris to a depth of 3 feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.
10. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process shall use an independent mediator or arbitrator and include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.
11. 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 and hours of construction; and
  - b. A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
12. Completed Part 1 of the Full EAF.
13. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the WECS.
14. For each proposed WECS, include make, model, picture and manufacturer's specifications, including noise decibels data. Include Manufacturer's 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.
15. 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



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Statement (DEIS) prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:

- a. Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.
- 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 the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
- c. Fire Protection: A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Zone.
- d. Noise Analysis: A noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall include low frequency noise.
- e. Property Value Analysis: Property value analysis shall be prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring WECS Sites.
- f. Electromagnetic Interference: An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.
- g. Transportation Impacts: An analysis of impacts on local transportation shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of WECS. Transportation impacts to be considered shall include, at a minimum, potential damage to local road surfaces, road beds and

## Wind Energy Facility Local Law for Town of Hopkinton

associated structures; potential traffic tie-ups by haulers of WECS materials; impacts on school bus routes; impacts of visitors to the WECS facilities.

- h. Ground Water Impacts: An analysis of impacts on local ground water resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of WECS.
  - i. Cultural Resources: An analysis of impacts on cultural resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of WECS.
  - j. Wildlife Impacts: An analysis of impacts on local wildlife shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of 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.
16. The applicant shall, prior to the receipt of a building permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner.
17. A statement signed under penalties of perjury, that the information contained in the application is true and accurate.
18. A list of property owners (whether or not within the Town) with their mailing address within one thousand two hundred feet (1200) of the boundaries of the wind overlay zone. The applicant may delay submittal of this list until the Town Board calls for a Public Hearing on the application.

### **§13. Application Review Process**

- A. Ten (10) copies of the application shall be submitted to the Town Code Enforcement Officer (C.E.O.). Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application. The applications shall be distributed as follows:
  - a. 5 – Town Planning Board
  - b. 1 – Code Enforcement Officer
  - c. 2 – One for Town Clerk as part of Project Records; One for public record for public

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review

- d. 1 – County Planning Board
  - e. 1 – Town’s Hired Consultant(s)
- B. Applicants may request a pre-application meeting with the Town Planning Board or with any consultants retained by the Town Board for application review. Meetings with the Town Planning Board shall be conducted in accordance with the Open Meetings Law.
- C. The Town C.E.O. or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Town Planning Board waives any application requirements, no application shall be considered until deemed complete.
- D. If the application is deemed incomplete, the Town Planning Board or C.E.O. shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECS proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Town Planning Board, the Town C.E.O. shall transmit the application to the Town Planning Board.
- F. The Town Planning Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 1,800 feet of each proposed WECS, and published in the Town’s official newspaper, no less than ten (10) nor more than twenty (20) days before any hearing, but, where any hearing is adjourned by the Town Planning Board to hear additional comments, no further publication or mailing shall be required. The Town Clerk shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses. The notice shall include a statement that a copy of the application is available at the municipal building and public library for review.
- G. The public hearing may be combined with public hearings on any Environmental Impact Statements. Notice for SEQRA public hearings must meet specifications set out in Section 617.12(c) of the SEQRA document.
- H. Notice of the project shall also be given, when applicable, to (1) the St. Lawrence County Planning Board, if required by General Municipal Law §239-1 and 239-m, and (2) to adjoining Towns under Town Law §264.

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- I. SEQRA Review. Applications for WECS are deemed Type I projects under SEQRA. The Town Planning Board may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by and communities shall be part of the record of the Town's proceedings. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.
- J. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the hold of the public hearing, and the completion of the SEQRA process, the Town Planning Board may approve, approve with conditions, or deny the applications in accordance with the standards in this Article.

### ARTICLE IV

#### STANDARDS AND GUIDELINES

##### **§14. Standards for WECS**

The following standards shall apply to all WECS, unless specifically waived by the Town Board as part of a permit.

- A. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
- B. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Board Permission. Applications may be jointly submitted for WECS and telecommunications facilities.
- C. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- D. Lighting of tower. 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 Site plan.
- E. All applicants shall use measures to reduce the visual impact of WECSs to the greatest extent possible. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs within a Wind Overlay Zone shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Zone, to provide reasonable uniformity in overall size,

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geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

- F. The use of guy wires is prohibited.
- G. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or recognition. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the interference.
- H. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations. Prior to Transmission of Power.
- I. WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible. All top soil disturbed during construction, reconstruction or modification of WECS shall be stockpiled and returned to the site upon completion of the activity which disturbed the soil.
- J. WECSs shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity; particularly bird and bat species, including those that may be listed by the U.S. Fish & Wildlife Service as threatened or endangered.
- K. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and Federal wetland laws and regulations.
- L. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable State and Federal laws and regulations.
- M. The New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind power projects shall be adhered to, both inside and outside of agricultural districts. The project sponsor (applicant) shall provide the funds for the Town to

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hire an Environmental monitor to oversee the construction and restoration in agricultural fields and ensure the applicant adheres to the following guidelines to the greatest extent that is practical and possible.

### i. Siting Goals:

- i. Minimize impact to normal farming operations by locating structures along field edges and in nonagricultural areas where possible;
- ii. Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields (hedgerows and field and boundaries) and in nonagricultural areas where possible;
- iii. Locate access roads, which cross agricultural fields, along ridge tops and following field contours, where possible, to eliminate the need for cut and fill and reduce the risk of creating drainage problems;
- iv. The permanent width of access roads in agricultural fields should be no more than 16 feet to minimize the loss of agricultural land;
- v. All existing drainage and erosion structures such as diversions, ditches, and site lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures; any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

### ii. Construction Requirements:

- i. The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface;
- ii. Culverts and waterbars shall be installed to maintain natural drainage patterns;
- iii. All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work

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areas such as lower sites and laydown areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.

- iv. Topsoil from work areas (tower sites, parking areas, “open-cut” electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along “open-cut” electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. Topsoil stockpile areas shall be clearly designated in the field and on the on-site “working set” of construction drawings.
- v. Electric Interconnect cables and transmission lines installed above ground can create long term interference with agricultural land use. As a result, interconnect cables shall be buried in agricultural fields wherever practical. Interconnect cables and transmission lines installed above ground should be located outside field boundaries wherever possible. When above ground cables and transmission lines must cross farmland, the project sponsor shall minimize agricultural impacts by using taller structures that provide longer spanning distances and shall locate poles on field edges to the greatest extent practicable. The line location and pole placements shall be reviewed with the Department and the Environmental Monitor prior to final design.
- vi. In cropland, hayland and improved pasture a minimum depth of forty-eight inches of cover will be required for all buried electric cables. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of thirty-six inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to forty-eight inches, the electric cables shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use, whichever is less. At no time will the depth of cover be less than twenty-four inches below the soil surface.
- vii. All excess subsoil and rock shall be removed from the site. On site disposal of each material may be allowed if approved by the landowner and the Environmental Monitor, with appropriate consideration given

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to any possible agricultural or environmental impacts.

- viii. In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.
- ix. All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.
- x. Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.

### iii. Restoration Requirements

- i. Following construction, all disturbed agricultural areas will be decompacted to a depth of 10 inches with a deep ripper or heavy-duty plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks 4 inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks 4 inches and larger shall be removed from the surface of the topsoil.  
Subsoil decompaction and topsoil replacement should be avoided after October 1, unless approved on a site-specific basis by the landowner in consultation with Ag and Markets. All parties involved should be cognizant that areas restored after October 1 may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1, necessary provisions should be made to restore any eroded areas in the springtime, to establish proper growth.
- ii. All access roads will be graded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.
- iii. All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the



surrounding areas.

- iv. All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.
- v. Following restoration, all construction debris will be removed from the site.

iv. Two Year Monitoring and Remediation

- i. The Project Sponsor will provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.
- ii. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settings, crop production, drainage and repair of severed fences, etc. Impacts will be identified by the Environmental Monitor through on-site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and the Department of Agriculture and Markets.
- iii. Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the Project Sponsor.
- iv. When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the Project Sponsor as well as other appropriate parties, will help to determine the

## Wind Energy Facility Local Law for Town of Hopkinton

appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at or shortly after the completion of construction, the signing of a release form prior to the end of remediation period will not obviate the Project Sponsor's responsibility to fully redress all project impacts.

- v. Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected area, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

- N. The maximum Total Height of any WECS shall be 500 feet.
- O. Construction of the WECS shall be limited to the hours of 7 A.M. to 7 P.M. Monday through Friday, unless the prior written approval of the Town Planning Board is received to allow deviation from such hours.
- P. 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 Wind Energy Permit for the specific WECS or WECSs causing the problems.
- Q. No WECS shall make abnormal noises caused by mechanical malfunction or maintenance deficiencies within the required 1800 foot distance of residences above the level allowed in Section 17 (§17). The WECS must be taken off line within eight hours of notification by the Town Supervisor or other designated person by the Town Board. The WECS shall not be reactivated until the problem has been resolved.

### **§15. Required Safety Measures**

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- 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. If the property owner or applicant submits a written request that fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.
- C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence) containing emergency contact information, including a local telephone number with 24 hour, 7 day a week coverage. The Town Board may require additional signs based on safety needs.
- D. No climbing pegs shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
- E. The minimum distance between the ground and any part of the rotor or blade system shall be thirty-five (35) feet.
- F. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
- G. Copies of all reports concerning operating and safety inspections for each WECS shall be filed with the Town Clerk.

### **§16. Traffic Routes**

- A. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or 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. Permit conditions may limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.
- B. The applicant is responsible for remediation of damaged roads upon completion of the

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installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permits in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads.

- C. If the applicant uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway including but not limited to snow plowing. No act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.

### **§17. Noise Standards and Setbacks for Wind Energy Conversion Systems**

A. The statistical sound pressure level generated by a WECS shall not exceed forty-five (45) L10 A-weighted decibels (“dBA”) measured at the site property line. Independent certification shall be required before and after construction demonstrating compliance with this requirement. If the ambient noise level measured at the site property line exceeds the standard, the standard shall be equal to the ambient noise level.

B. The sound pressure level generated by a WECS shall not increase ambient sound levels by more than 6 dBA at any sensitive noise receptors, including residences, hospitals, libraries, schools, and places of worship, located within 2,000 feet of the site property line. Independent certification shall be required before and after construction demonstrating compliance with this requirement. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location

C. In the event the sound pressure level due to WECS operation contains a steady pure tone, such as a whine, or hum, the standards for the sound pressure level set forth in subparagraph a) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and four hundred (400) hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred twenty-five (125) hz.

D. Ambient noise levels shall be measured at the exterior of potentially affected existing

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residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

- E. Any noise level falling between two whole decibels shall be the lower of the two.
- F. Each WECS shall be setback from Site boundaries, measured from the center of the WECS:
  - 1. 600 feet from the nearest site boundary property line.
  - 2. 600 feet from the nearest public road.
  - 3. 600 feet from the nearest edge of the Wind Overlay District.
  - 4. 1,800 feet from the nearest off-site non-participating residence existing at the time of application, measured from the exterior of such residence.
  - 5. One and half times the Total Height of the WECS from any non-WECS structure or any above-ground utilities.
  - 6. 100 feet from state-identified wetlands or bodies of water. This distance may be adjusted to be greater at the discretion of the reviewing body, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds, bats or other creatures.

### **§18. Issuances of WECS Permits**

- A. Upon completion of the review process, the Town Planning Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- B. If approved, the Town Planning Board will issue a WECS Permit for each WECS upon satisfaction of all conditions for said Permit, and direct the Building Inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Local Law.
- C. The decision of the Town Planning Board shall be filed within five (5) days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

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- D. If any approved WECS is not substantially commenced within two (2) years of issuance of the permit, the WECS Permit shall expire.

### **§19. Abatement**

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

### **§20. Limitations on Approvals; Easements on Town Property**

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

### **§21. Permit Revocation**

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- A. Testing fund. A WECS Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Planning Board in response to complaints by neighbors. The scope of noise testing shall be to demonstrate compliance with the terms and conditions of the WECS Permit and this Local Law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Planning Board to cure any deficiency. An extension of the 90 day period may be considered by the Town Planning Board, but the total period may not exceed 180 days.
  
- B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall take WECS off line within eight hours of notification from the Town Supervisor or other designated person by the Town Board.
  
- C. Notwithstanding any other abatement provision under this Local Law, and consistent with §18(A) and §20(B), if the WECS 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 opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Wind Energy Permit for the WECS and require the removal of the WECS within 180 days after removal of the WECS an additional 90 days will be allowed for the tower site to be restored to a pre-tower condition.. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

**ARTICLE V**

**WIND MEASUREMENT TOWERS**

**§22. Wind Site Assessment**

The Town Board acknowledges that prior to construction of a WECS; an assessment is typically needed to determine local wind speeds and the feasibility of using particular sites. Installation of Wind Measurement Towers, also known as anemometer (“Met”) towers, shall be permitted with a permit, but shall be limited to those areas delineated as Wind Overlay Districts.

**§23. Applications for Wind Measurement Towers**

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

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

**§24. Standards for Wind Measurement Towers**

- A. The distance between a Wind Measurement Tower and the non-participating property line shall be at least 1.5 times the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.



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- B. WECS Permits for Wind Measurement Towers may be issued for a period of up to twenty-six (26) months. Permits may be renewed if the Facility is in compliance with the conditions of the WECS Permit.
- C. Anchor points for any guy wires for a Wind Measurement Tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be sheathed in bright orange or yellow covering from three to eight feet above the ground.
- D. The New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind farm projects shall be adhered to both inside and outside of agricultural districts.

### **§25. Application Review Process**

- A. Applicants may request a pre-application meeting with the Town Planning Board, or with any consultant retained by the Town Board for application review. Meetings with the Town Planning Board shall be conducted in accordance with the Open Meetings Law.
- B. Ten (10) copies of the application shall be submitted to the Town C.E.O. Payment for all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application.
- C. Town C.E.O. or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Town Planning Board waives any application requirement, no application shall be considered until deemed complete.
- D. If the application is deemed incomplete, the Town C.E.O., or its designated review by the Town Board, shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of Wind Measurement Towers proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Town Planning Board, the Town C.E.O. shall transmit the application to the Town Planning Board.

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- F. The Town Planning Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 1,000 feet of each proposed Wind Measurement Tower, and published in the Town's official newspaper, no less than ten (10) nor more than twenty (20) days before any hearing; but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The Town Clerk shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- G. The public hearing may be combined with public hearings on any Environmental Impact Statements.
- H. Notice of the project shall also be given, when applicable, to (1) the St. Lawrence County Planning Board, if required by General Municipal Law §239-1 and 239-m, and (2) to adjoining Towns under Town Law §264.
- I. SEQRA review. Applications for Wind Measurement Towers are deemed unlisted projects under SEQRA. The Town may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Town's proceedings. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.
- J. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Planning Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

### ARTICLE VI

#### SMALL WIND ENERGY CONVERSION SYSTEMS

##### **§26. Purpose and Intent**

The purpose of this Article is to provide standards for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

## Wind Energy Facility Local Law for Town of Hopkinton

### **§27. Permitted Areas**

Small Wind Energy Conversion Systems (Small WECS) may be permitted in any zoning district on a Site of at least 1 acre, upon issuance of a Small WECS Permit. A Small WECS shall be set back from all property lines a distance equal to at least 1.5 times its height

### **§28. Applications**

Applications for Small WECS Permits shall include:

1. Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address of each proposed tower Site, including Tax Map section, block and lot number,
4. Site plan of each tower site, including but not limited to showing the location of the tower in relation to other structures and lot lines, topography of the site, location of trees and other landscape elements.
5. Ownership and land use information within a 500-foot radius of the location proposed for each tower.
6. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
7. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.
8. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
9. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan to connect the system to the electricity grid, and so states so in the application.

10. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

**§28. Application Review Process**

- A. Applicants may request a pre-application meeting with the Town Planning Board or with any consultants retained by the Town Board for application review. Meetings with the Town Planning Board shall be conducted in accordance with the Open Meetings Law.
- B. Ten (10) 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 variances are requested, variance application fees shall be paid at the time of the receipt of the application.
- C. Town C.E.O. or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Town Planning Board waives any application requirement, no application shall be considered until deemed complete.
- D. If the application is deemed incomplete, the Town C.E.O. or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of Small WECS proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Town Planning Board, the Town C.E.O. shall transmit the application to the Town Planning Board.
- F. The Town Planning Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 1,000 feet of each proposed Small WECS, and published in the Town's official newspaper, no less than ten (10) nor more than twenty (20) days before any hearing; but, where any hearing is adjourned by the Town Planning Board to hear additional comments, no further publication or mailing shall be required. The Town Clerk shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.

## Wind Energy Facility Local Law for Town of Hopkinton

- G. The public hearing may be combined with public hearings on any Environmental Impact Statements.
- H. Notice of the project shall also be given, when applicable, to (1) the St. Lawrence County Planning Board, if required by General Municipal Law §239-l and 239-m, and (2) to adjoining Towns under Town Law §264.
- I. Applications for Small WECS are deemed unlisted projects under SEQRA. The Town may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Town's proceedings. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review.
- J. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Planning Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

### **§29. Development Standards**

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

- A. A Small WECS system shall be located on a lot a minimum of one acre in size; however, this requirement can be met by multiple owners submitting a joint application. Tower height maximum of 65 feet shall be allowed. For property sizes over five (5) acres maximum of 100 feet shall be allowed.
- B. Small WECS may be used primarily to generate on-Site power or to reduce the on-Site consumption of electricity. Maximum turbine output is limited to 100 kw.
- C. Tower height may be a maximum of 100 feet. Setbacks from all property lines shall be maintained, at a minimum, at one and a half times the total height of the tower.
  - 1. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

## Wind Energy Facility Local Law for Town of Hopkinton

- D. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
- E. 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). To the greatest extent feasible a small wind energy system shall use natural landforms and vegetation for screening.
- F. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- G. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the Town if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
- H. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- I. The system shall be operated such that no damage is caused by stray voltage. If it has been demonstrated that a system is causing stray voltage, the system operator shall promptly mitigate the damage or cease operation of the system.
- J. At least one sign shall be posted on the tower at a height of five (5) feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator, or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
- K. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
  - 1. Tower-climbing apparatus located no closer than 12 feet from the ground.
  - 2. A locked anti-climb device installed on the tower.

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- L. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be sheathed in bright orange or yellow covering from three to eight feet above the ground.
- M. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.
- N. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
- O. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.
- P. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.
- Q. The New York State Department of Agriculture and Market guidelines for agricultural mitigation for wind power projects shall be adhered to both inside and outside of agricultural districts.
  - 1. Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.
  - 2. Noise. A Noise Study shall be required to be submitted with the application to determine ambient noise levels before a final approval is granted.

Guidelines for Review of Small Wind Energy Production Facilities located on farm operations in Agricultural Districts.

As Energy costs increase and financial assistance becomes more available, an increasing number of

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farm operators are considering the installation of small wind energy production facilities to help offset on-farm production costs. In prior AML §305-a reviews, the Department has considered wind turbines used to supply a portion of a farm's electrical needs (not exceeding 110% of the farm's anticipated demand) to be on-farm equipment. The turbine must be part of a "farm operation" which otherwise meets the AML §301, subd. 11 definition of that term.

1. Sketch of the parcel on a location map (e.g., tax map) showing boundaries and dimensions of the parcel of land involved and identifying contiguous properties and any known easements or rights-of-way and roadways.  
Show the existing features of the site including land and water areas, water or sewer systems, utility lines, and the approximate location of all existing structures on or immediately adjacent to the site.
2. Show the proposed location and arrangement of small wind energy production facilities on the site.
3. Include copies of plans or drawings prepared by the manufacturer.
4. Provide a description of the project and a narrative of the intended use of the proposed wind energy production facility, including any anticipated changes in the existing topography and natural features of the parcel to accommodate the changes. Include the name and address of the applicant and any professional advisors. If the applicant is not the owner of the property, provide authorization of the owner.
5. List safety measures to prevent unauthorized climbing on the tower.
6. Prescribe requirements for automatic braking, governing, or feathering system to prevent uncontrolled rotation of the rotor blades and turbine components.
7. Include a requirement that the wind tower be setback 1.5 times the combined height of the tower and blades from existing structures and property not owned by the farm operation.

### **§30. Abandonment of Use**

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



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requirements of this section.

### ARTICLE VII

#### MISCELLANEOUS

##### **§31. Fees**

- A. Non-refundable Application Fees shall be as follows:
  - 1. WECS Permit: \$750 per megawatt of rated maximum capacity
  - 2. Wind Measurement Towers: \$500 per tower
  - 3. Small WECS: \$150 per Small WECS
  - 4. Wind Measurement Tower Permit renewals: \$50 per Wind Measurement Tower
- B. Building Permits: The Town of Hopkinton believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, for such facilities an administrative fee of \$25 per permit request shall be charged for administrative costs, plus the amount charged to the Town by the outside consultant hired to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties, document handling and storage.
- C. 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.
- D. The Town Board may amend these fees, by resolution after a properly noticed public hearing.

##### **§32. Tax Exemption**

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

### **§33. Enforcement: Penalties and remedies for violations**

- A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy conversion facility or wind monitoring tower in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than six (6) months, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$350 for each violation and each week said violation continues shall be deemed a separate violation.
- C. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation to prevent the illegal act.

### **SECTION 2: Severability**

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

### **SECTION 3 Provision of Notice Deemed to have Occurred**

Unless otherwise specifically provided herein, any notice, letter or other written communication furnished to an applicant under any provision of this Law shall be deemed furnished by an applicant under any provision of this Law shall be deemed furnished on the date that it is actually received by the person or entity specified in such provision.

## Wind Energy Facility Local Law for Town of Hopkinton

### **SECTION 4:     Headings for Convenience**

The underlined heading of any section or provision of this Law is for the convenience of the reader and shall not be construed as part of the respective section or provision in the interpretation of same.

### **SECTION 5:     Effective Date**

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