

**Town of Clayton**  
**Local Law No. 5 of the year 2016**

**— MARKUP VERSION: 10/4/16 —**

Note 1: Green items are some of the notable changes from LL3.

Note 2: Red comments are the observations of physicist John Droz, jr.

Note 3: page numbers refer to the actual page numbers in LL5.

**A Local Law to Repeal Local Law No. 1 of the year 2007, Local Law No. 1 of the year 2011, Local Law No. 2 of 2011, and to Further Regulate Wind Energy Facilities Within the Town of Clayton**

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

**Section 1. Local Laws Repealed.** Local No. 1 of the year 2007, Local Law No. 1 of the year 2011, Local Law No. 2 of the year 2011 are hereby repealed in their entirety and replaced with this Local Law.

**Section 2. Title.** This Local Law may be cited as the "Wind Energy Facilities" law of the Town of Clayton, New York.

**Section 3. Purpose.** The Town Board of the Town of Clayton adopts this Local Law to regulate the placement of industrial wind energy facilities to protect the public health, safety and welfare of its citizens and visitors; to minimize the adverse impacts on the Town's character and economy; to minimize negative impacts on the unique scenic resources including, but not limited to, the St Lawrence River shoreline corridor and adjacent lands and waterways; to minimize the adverse impacts on property values of nearby citizens; to minimize the adverse impacts on the Town's farming communities; to minimize the adverse impacts on the Town's environment and ecosystems and to provide substantive requirements related to the siting and construction of Wind Energy Facilities and attendant improvements.

**Section 4. Authority.** The Town Board of the Town of Clayton enacts this Local Law under the authority granted by:

- (1) Article IX of the New York State Constitution,
- (2) New York Statute of Local Governments,
- (3) New York Municipal Home Rule Law,
- (4) New York Town Law ,
- (5) New York Agriculture and Markets Law,
- (6) New York Real Property Tax Law,
- (7) New York Waterfront Revitalization of Coastal Areas and Inland Waterways Act,
- (8) New York Executive Law.

**Section 5. Findings.** The Town Board of the Town of Clayton finds and declares that:

- 5-1 Article IX of The New York State Constitution allows local government to protect the health, safety and well-being of the people. {This is an extremely significant matter and "allows" seems to imply that this is optional. "Legally obligates" or "mandates" would seem to be better and more accurate.}
- 5-2 Substantive regulation of the siting and installation of wind turbines is necessary for protecting the health, safety, and well-being of neighboring property owners, the general public, the local economy and local ecosystems.
- 5-3 The possible benefits of wind energy must be balanced against potential negative impacts, including but not limited to negative impacts on the people, the local economy, local ecosystems, and regional military facilities. {The original ¶ 5-3 item (in LL3) included "While wind energy is a semi-renewable energy resource of electricity generation, and under some circumstances it may reduce the use of nonrenewable energy sources..." This is a significant technical point that could be important in an Article 10 court case. It is not clear why the Town benefits from dropping these words, so they should be added back in.}
- 5-4 Several independent legal and economic experts have concluded that there can be serious legal and economic downsides for landowners entering into complicated and one-sided lease/easement contracts written by industrial wind energy developers. {The original version of ¶ 5-4 also listed these contracts as "secretive," which they are. For example, there is a prohibition of the property owner from discussing the terms and conditions with any neighbor. How does the Town benefit by ignoring the secretive aspects of complex contracts proposed to their citizens? The accurate word "secretive" should be reinstated.}

- 5-5** Large-scale multiple-turbine industrial wind energy facilities represent significant potential negative aesthetic impacts because of their enormous size, lighting, and shadow flicker effects.
- 5-6** Installation of large-scale multiple-turbine industrial wind energy facilities can create drainage problems through erosion and lack of sediment control of facility and access road sites, and harm farmlands through construction methods utilized.
- 5-7** Construction of industrial wind energy facilities can create traffic problems and damage local roads.

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- 5-8** There is significant evidence from independent appraisers that industrial wind energy facilities will likely reduce property values of nearby property owners. Said property value reductions will reduce the Town's tax base, potentially resulting in a tax rate increase on all Town property owners. {The editors added in the word "potentially" which is inappropriate. IF the tax base is reduced (which is what the words say here), there WILL BE a resultant tax rate increase on ALL Town property owners.}
- 5-9** A large scale industrial wind energy facility may be a significant source of noise and vibration, and can have negative health impacts on residents in neighboring properties, particularly in areas with low ambient noise levels. According to various medical experts (e.g. the World Health Organization), the infrasound component of such noise can be the most problematic.
- 5-10** In certain circumstances, industrial wind energy facilities can cause electromagnetic interference with some types of communications.
- 5-11** Independent bat experts have concluded that bat deaths caused by industrial wind energy turbines can result in an appreciable reduction in pest controls and reduce regional agricultural yields. Experts project an adverse economic impact on our local community of over one million dollars per year, as a direct result wind turbine bat kills. {There is a typo here where there is a missing word: ...a direct result "OF" wind...}
- 5-12** Independent bird experts have concluded that turbines kill large quantities of birds, including song birds, raptors, and other migratory birds. The Town of Clayton is located on a major migration route for many species of birds, and is habitat for many species, both year round and seasonal.
- 5-13** Independent experts have concluded that industrial turbines can have a variety of adverse health effects on other wildlife, livestock and domestic animals.
- 5-14** Industrial turbines are known to produce infrasound potentially damaging to public health. All sounds are energy waves, so humans can be affected by infrasound, despite not being aware of its presence. The World Health Organization has concluded that health effects due to low frequency components in noise are estimated to be more severe and attenuate less over distance than for community noise in general. {¶ 5-14 seems to be almost identical to ¶ 5-9. Both of those paragraphs should be combined into one. Otherwise there will be unnecessary duplication and confusion here.}
- 5-15** The Town of Clayton has many scenic view sheds, and some of these would be negatively impacted by industrial wind energy facilities.
- 5-16** Since the enactment of Town of Clayton Local Law No. 1 of 2007 (as amended by Town of Clayton Local Laws No. 1 and No. 2 of 2011), the Town of Clayton has adopted a revised Local Waterfront Revitalization Plan which includes the establishment of a Scenic Overlay District in recognition of the importance of the scenic assets of the St. Lawrence River to the community.
- 5-17** Significant public and private dollars have been invested in infrastructure within the Town to enhance and promote the region's principal industry of tourism. Several studies by independent experts have concluded that nearby industrial wind energy facilities can have a major negative economic impact on tourism sensitive communities.
- 5-18** The Town and its citizens desire to maintain the pastoral, rural, and agricultural nature of this region. An industrial wind energy facility is in conflict with the culture and character of this community.
- 5-19** The Town and Village of Clayton Local Waterfront Revitalization Plan (LWRP) specifically identifies aesthetics and skylines as having broad-scale economic impacts to the tourist-centric region. {Items 5-19, 5-20, 5-21 & 5-24 should be elaborated on to show the relevance to industrial wind energy — which is what this law is about. As these are currently written, the connection with wind energy is not apparent.}

- 5-20** The Town of Clayton, Lyme, and Orleans have enacted a Chaumont River Strategic Plan comprising of strategic economic development, demographic, and historical preservations of the region in the vicinity of the hamlet of Depauville and river front areas along the Chaumont River.
- 5-21** Concurrently with the drafting of this Law, the Town is drafting change to its Comprehensive Plan and zoning ordinances to more forcefully proclaim that tourism, based on the unique rural and waterfront aesthetics of the community, should be the primary driver of economic development in the Town moving forward.
- 5-22** A major regional military base, Fort Drum, has substantial and frequent military aviation maneuvers in the area. Any wind turbine development at the western edge from the Wheeler Sack Airfield runways will have operational impacts that will impact the favorability of the site for training missions and future development. In addition, the performance of both defense and navigational radars would be degraded by the tall towers and quickly rotating blades of a wind energy facility. It appears likely that any wind energy facility could be considered an encroachment during any future Department of Defense Base Realignment and Closure proceedings ("BRAC"), therefore increasing the possibility that Fort Drum could be closed in the future. {It is not clear what "at the western edge of Wheeler Sack airfield" means, or its relevance. Flight path interference and RADAR interference are distinctly different things. NOAA says mitigation is needed if turbines are within 11 miles of a weather RADAR. S3438 proposes a 30 mile limit from military airfields. This needs to be made much clearer... Add to end: "or have a mission reduction, or lose out in a mission expansion opportunity."}
- 5-23** Homeowners and property owners have the right to peaceful use and enjoyment of their property and have a right to be protected against encroaching activities hosted on adjacent parcels.
- 5-24** Zoning laws should not be construed to legalize or otherwise allow the crime or tort of trespassing.
- 5-25** The Town of Clayton has regulated wind energy facilities for the past decade through local laws. This Local Law represents an updating of said regulations.

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- 5-26** In formulation of this Local Law, information from the following agencies has been reviewed: New York Department of Environmental Conservation (NYS DEC), New York Energy Research and Development Authority (NYSERDA), and the World Health Organization (WHO) published guidelines. Local wind laws from other municipalities have also been reviewed, and experiences of other communities and experts with industrial wind energy cases have been studied. A Town of Clayton Wind Advisory Committee was appointed in 2008 to make recommendations regarding industrial wind energy regulation. Many of their conclusions and recommendations were incorporated into the earlier local wind laws, including Local Law No. 2 of 2016. This law is also based on the findings in support of all previous wind energy related laws enacted by the Town, except for where such findings are inconsistent with this Law, in which case the findings of this Law control. {The reference to Local Law 2 of 2016, seems like a mistake... A period is also missing at the end of that sentence... Section 1 of LL5 says that it replaces all prior wind laws, so the last part of the last sentence of ¶5-26 does not make sense. How can there be conflicts with findings of laws that are nullified?... ¶5-26 removes the reference to "WiseEnergy.org" that was in LL3. That was there to strengthen the Town's basis for the Findings, as that site has several hundred scientific studies that would then be automatically referenced in the Town's wind law. Removing that reference weakens the Findings. Recommend putting it back in.}
- {Item 5-18 (in LL3) was inexplicably removed from LL5: "Due to the unusually broad array of potentially problematic Findings (and lack of scientifically proven net benefits), the Precautionary Principle dictates that the Town be particularly conservative and cautionary in its regulation of industrial wind energy." Removing that reference weakens the Findings, so how is it in the Town's interest to do it?}

- Section 6. Definitions.** As used in this chapter, the following terms shall have the meanings indicated within the language of this Law. Words not defined in this Local Law shall be given their ordinary and common meaning: {Several worthwhile definitions were inexplicably dropped from the LL3 version. It's not clear why excluding all of them is in the Town's interest. (Some eliminated terms: Article 10, Completed Application, State, Wind Energy, Wind Farm, and Windmill.)}
- 6-1** **Accessory Equipment:** Any equipment serving or being used in conjunction with a LWEF. The term includes but is not limited to utility or transmission equipment, power supplies, generators, batteries, equipment buildings, storage sheds, shelters or similar structures.
- 6-2** **Blade Glint:** The intermittent reflection of the sun off the surface of the blades of one or more wind turbines.

- 6-3** **Conservation Area:** Such areas include but are not limited to natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act 33 USC Sec. 1251 et seq.; shoreline areas; water bodies; riparian buffers; populations of endangered or threatened species, or habitat for such species; archaeological sites, cemeteries, and burial grounds; important historic sites; other significant natural features and scenic viewsheds; and existing trails or corridors that connect the tract to neighboring areas.
- 6-4** **dBA:** A-weighted decibels, abbreviated dBA [or dBa, or dB(a)], is an expression of the relative loudness of sounds in air as perceived by the human ear. With A-weighting, the decibel levels of low frequencies are reduced compared to the middle and high frequencies (A-weighted energy equivalent sound level). Unless specified otherwise, in this law dBA means LAeq (energy equivalent sound level).
- 6-5** **dbc:** C-weighted decibels, abbreviated dbc [or dBc, or dB(c)], is an expression of the relative loudness of sounds in air across a broad spectrum of frequencies. With C-weighting, the representative decibel level of all frequencies is nearly linear and is suitable for measurements at very high sound pressure levels. Unless specified otherwise, in this law dbc means L<sub>Ceq</sub> (energy equivalent sound level). {dbc was not in the definitions of LL3, as the term was not used in the LL3 regulations. The reasons that dBA was exclusively used in LL3 (and not dbc) were to: **a**) simplify the law, **b**) to minimize the testing requirements, **c**) to minimize the cost of tests, and **d**) to minimize the points of contention. It's important to understand that certain levels of dBA are a **proxy** for dbc. The recommendation remains: stick to dBA for the four reasons cited.}
- 6-6** **FAA:** The Federal Aviation Administration or successor agency.
- 6-7** **Indirect Atmospheric Measuring Device:** Specialized ground-based devices to measure wind characteristics without an anemometer and tower. Typical technologies are laser reflection-based (LIDAR) and sound reflection-based (SODAR). {Why is this needed? See comments on 8-2.4.2 (1) d.}
- 6-8** **Infrasound:** Low frequency sounds that are not ordinarily hearable by humans, generally below 2000Hz.
- 6-9** **LWEF (Large Wind Energy Facility):** A WEF that has a rated capacity of 100 kW or more.
- 6-10** **LWEF Boundary:** The outside perimeter of a LWEF project, measured in one mile radii from the base of each of the inclusive wind turbines, substations, meteorological towers, and appurtenant structures and/or facilities. Transmission lines, access roads, and electrical and telecommunications cabling are excluded from the boundary calculation. {Not sure why this is needed, or what are the implications from it. Also not sure why the boundary should be 1 mile from a substation, etc. The concern is turbines, and this item has the potential of causing confusion without providing measurable benefits, so the recommendation is to delete it.}
- 6-11** **LWRP:** Joint Town/Village of Clayton Local Waterfront Revitalization Program. {Why is this underlined?}
- 6-12** **Maintenance:** The cleaning, painting, repair, or replacement of defective parts (including plumbing, electrical, or mechanical work that might require a building permit) in a manner that does not alter the basic design or composition of a structure, such as a wind turbine.
- 6-13** **Meteorological Measuring Device:** An instrument that measures atmospheric and/or weather conditions, such as an anemometer, that measures wind speed, and including but not limited to any tower or structure used to mount a Meteorological Measuring Device

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- 6-14** **Meteorological Tower, or "Met Tower":** A tower or structure used for the purpose of mounting any Meteorological Measuring Device.
- 6-15** **Modification or Modify:** Any change, addition, removal, swap-out, or exchange, that does not qualify as "Repairs and/or Maintenance" as defined herein is a Modification. Also included is any change, addition, swap-out, exchange, that requires or results in changes and/or upgrades to the original design of a turbine.
- 6-16** **Neighboring Parcel:** Any parcel located partially within or adjacent to the WEF boundary of any WEF or wind turbine.. {Not sure of the purpose, necessity, or advisability of the "neighboring parcel" designation. For example, could this arbitrary definition undermine the protections of second row properties? Recommend deleting this item... Note also that there are two periods at the end of the sentence.}
- 6-17** **Ordinary Maintenance:** Actions that ensure that the WEF is kept in good operating condition. Ordinary Maintenance includes but is not limited to inspections, testing, and repairs that maintain functional capacity and structural integrity. Ordinary Maintenance does not include Modifications.

- 6-18 Person:** Any natural or artificial person, including but not limited to any individual, trustee, executor, receiver, other fiduciary, corporation, firm, partnership, association, organization, or club.
- 6-19 Repair:** The replacement of existing equipment or infrastructure of any kind with substantially similar or the same equipment or infrastructure
- 6-20 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.
- 6-21 Shadow Flicker:** The visual effect that results when the blades of an operating wind energy turbine pass between direct and indirect light from the sun and an observer, and cast an observable, moving shadow on a person or property in the vicinity.
- 6-22 SWEF (Small Wind Energy Facility):** A WEF that has a rated capacity of less than 100 kW. Such a facility is used primarily for on-site consumption, is an accessory use, and consists of no more than one wind turbine and any associated tower, control and/or conversion electronics.
- 6-23 Temporary:** Something intended to exist or actually existing for fewer than 180 days, except for an anemometer or other meteorological measuring device or tower that is used to test the wind conditions, which are considered temporary when it exists for two years or less.
- 6-24 Use Conversion:** The commencement of construction activity resulting in a change in previously classified use of any parcel or portion thereof shall constitute a "use conversion" of the associated land acreage.
- 6-25 WEF (Wind Energy Facility):** An electricity-generating facility, whose primary purpose is to supply electricity. This consists of one or more wind turbines, other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines, and other appurtenant structures and/or facilities.
- 6-26 WEF Boundary:** The outside perimeter of a single or multi-turbine WEF inclusive of the setbacks prescribed in §8-2.4.2 measured from the base of the turbine tower. {This is defined differently from ¶6-10 ("LWEF Boundary") and may conflict with it. One of those definitions needs to be changed.}
- 6-27 Wind Turbine:** A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator. Such a system might include a nacelle, rotor, tower, pad transformer, and other appurtenant structures and/or facilities.
- 6-28 Wind Turbine Height:** The distance measured from the lowest adjacent grade to the highest point of the structure, including any attachments, such as a lightning protection device or a turbine rotor or tip of the turbine blade when it reaches its highest elevation.

{Due to the PSC's interpretation of Article 10, the term "Substantive" Requirements was appropriately added to the LL5 version. (Note, however, that the word "substantive" does not appear in the Article 10 law.) The question is: how do "Substantive Requirements" differ from "Requirements"?}

Since this appears to be a beneficial change, "Substantive Requirements" should be added to the defined terms in Section 6 (above). To complement this new term, "Procedural Requirements" should also be added to the defined terms in Section 6. [Note: both of these changes have been made in LL3.]}

**Section 7 Applicability.** The requirements of this Local Law shall apply to all WEFs that have not been constructed as of the effective date of this Local Law, including but not limited to all WEFs that have not filed a final application pursuant to Article 10 of the Public Service law as of the effective date of this law.

## **Section 8 Substantive Requirements for WEF Siting:**

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- 8-1 Meteorological Towers and Indirect Atmospheric Measuring Devices:** Temporary meteorological towers and indirect atmospheric measuring devices may be erected to test the wind conditions on a proposed LWEF site, provided that a permit has been obtained in accordance with §9-1 of this law. The following substantive provisions apply to the siting of Meteorological Towers and Indirect Atmospheric Measuring Devices.
- 8-1.1 Height and Setbacks:** Any meteorological tower or indirect atmospheric measuring device shall meet the setback requirements of §8-2.4.2.

- 8-1.2 Lighting:** A tower may not be illuminated except to meet minimum requirements defined by the FAA or Department of Defense. All illumination devices shall deflect light away from ground level, where permissible.
- 8-1.3 Safeguards:** Perimeter fencing, climbing guards, or bollards shall be installed to prevent unauthorized access or damage to the tower or guy wire anchors.
- 8-1.4 Signage:** A temporary tower may not have any signs indicating manufacturer's logos, marketing, or promotional materials. One sign indicating mandatory content such as the facility address and emergency contact information may be placed on a perimeter fence conforming to sign standards in the Zoning Ordinance.
- 8-1.5 Parking:** The applicant will provide a service road and parking to assure adequate emergency and service access. Road construction shall be consistent with proper practice to reduce loss of vegetation and eliminate soil erosion. {Not sure why a temporary Met Tower needs parking.}
- 8-1.6 Permitted Area:** Meteorological Tower facilities may only be erected in areas permitted for LWEF facilities.

**8-2 Substantive Requirements Applicable to WEFs** {The labeling of 8-2 is almost identical to the labeling of "Section 8." Different words should be used to avoid confusion.}

- 8-2.1** Large wind energy facilities, Meteorological Towers and Indirect Wind Measurement Devices, and all other improvements of any kind appurtenant to the installation, operation, or decommissioning of any large scale wind energy facility shall be permitted within the Town of Clayton only in the Wind Energy Facility Overlay District, pursuant to the Town of Clayton Zoning Ordinance, and shall be subject to the substantive requirements of this Local Law, in addition to other applicable local, state and federal laws.
- 8-2.2** Small wind energy facilities shall be permitted on parcels within the Town of Clayton only in an Agricultural District designated as such pursuant to the New York Agriculture and Markets Law §303-a and only outside the Scenic Protection Overlay District pursuant to the Town of Clayton Zoning Ordinance. Small wind energy facilities shall be subject to the requirements and permitting process of this Local Law, in addition to other applicable local, state and federal laws.
- 8-2.3** Wind turbines shall be designed to minimize the impacts of land clearing and the loss of important open spaces. Development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Wind Power Projects published by the New York State Department of Agriculture and Markets and minimize reduction in available arable farm land as outlined in the Jefferson County Agricultural and Farmland Protection Plan.
- 8-2.4 WEF Dimensional Requirements:** In the interest of minimizing health, safety, and welfare impacts to adjoining residents to a WEF and the broader regional concerns outlined in the Town and Village of Clayton Joint Comprehensive Plan and LWRP documents, the following standards and setbacks are required for all WEF-related projects: {"Noise Impacts" (next sub-item) do not seem to be a "Dimensional Requirement." A better title of 8-2.4 might be "WEF Safety Requirements" or similar. Alternatively the "Noise Impacts" section should be moved elsewhere.}

**8-2.4.1 Noise Impacts:**

The rural areas of the WEFOD and agricultural districts are intrinsically quiet areas, where nighttime background sound levels are routinely less than 30dB, and it is a community that values peace and quiet, which is an important part of rural life. Loud, annoying and persistent noise is disruptive to the well-being of people living in its vicinity and is in some cases deleterious to their health. To preserve and protect peace and quiet, the Town hereby declares its intent to regulate noise in accordance with widely recognized acoustic standards. {"WEFOD" is a new acronym that is introduced here, and found only here. Either there is a typo here, or this needs to be defined... The addition of this noise explanation is good — except for the fact that it does not discuss the number one noise concern: **infrasound**. That is a major omission, and indicates a serious misunderstanding of the primary intention of the law's noise regulations.}

Regulating noise requires more than preventing unnecessarily loud noise; it also recognizes that the quality and character of noise both contribute significantly to annoyance. Noises that are distinctly different from natural background sound, those with impulsive, tonal or modulating elements, are further restricted.

**1. Requirements:**

{Why is there is a line space after 1 & 2, but not after 3, 4 or 5?}

- a. The equivalent noise level (LAeq) generated by a noise source shall not exceed either the A-weighted or C-weighted limits listed in Table 1 when measured at any nearby structure, roadway, or property line within the setback radius outlined in §8-2.4.2.

Table 1: Noise Source Guidelines

	Daytime 7AM to 10PM	Nighttime 10PM to 7AM
A-weighted (dB)	40	35
C-weighted (dB)	58	53

{The idea of specifying a daytime and night time sound levels is based on a fundamental misunderstanding. The MAJOR problem with wind energy noise is infrasound — i.e. inaudible noise. Having day & night noise levels is addressing AUDIBLE noise — which is a secondary issue. Infrasound is a health problem 24/7/365, so why would more infrasound be allowed during the day? The scientifically indicated way of protecting citizens from infrasound is to specify a 35 dBA limit, 24/7/365.}

dbc was not in the original proposed law. The reasons that dBA was exclusively used were: **a**) to simplify the law, **b**) to minimize the testing requirements, **c**) to minimize testing cost, and **d**) to minimize the points of contention. The fact is that certain levels of dBA are a proxy for dbc. In other words, adding dbc adds complexity and cost — without proving any consequential benefits. The recommendation is stick to proper dBA levels: 35 dBA 24/7/365.}

{The rest of the noise material (everything in green) should be eliminated. For example, items "1-b" thru "e" are unnecessary complications, and do little if anything to protect citizens... Further, some of this material is unrelated to wind energy (e.g. noise from a religious service: 2-d)...

Additionally, the reference to "Baseline" (¶2) is a serious technical error, as none of the noise regulations in the law are relative to any baseline. Further, "baseline" is not defined anywhere in LL5, which makes much of the noise section contradictory and legally indefensible. Also, this approach AGAIN misses the key point: **the noise regulations in this law should be about protecting citizens from infrasound, NOT audible noise!**

This degree of detail is just asking for conflict and lawsuits about interpretation. It also sets up the entire noise regulation section of LL5 to be rejected by the Article 10 Board as being "technically unreasonable." Lastly, any genuinely NEEDED information on the Noise tests should be in the post-construction section of the law: ¶10-4.}

- b. In all cases, the corresponding C-weighted limit shall be the operable A-weighted limit (from Table 1) plus 18 decibels.
- c. In the event audible noise due to any operation that contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in Table 1 shall be reduced by five (5) dB; for impulsive or regular rhythmic noises the standards in Table 1 shall be reduced by seven (7) dB; and the standards shall be reduced by 12 dB for highly impulsive noise (ANSI S12.9 Pt. 4).
- d. The presumptive background noise level in rural and agricultural settings at buildings, roadways and property lines is 29dBA. The limits specified in Table 1 follow the NYS DEC guidelines in Assessing and Mitigating Noise Impacts – Program Policy (#DEP-00-1) of 6dB over ambient levels as the threshold of complaints due to additions to background noise levels.
- e. The noise levels specified in Table 1 conform to rural areas (2009) and night time (1999) guidelines provided by the WHO.
- f. Noise Source Guidelines listed in Table 1 may be increased by ten (10) dB where a Neighboring Parcel owner and the Applicant have engaged in a WEF setback easement or agreement of the same or longer term than the WEF or wind turbine project. A copy of the WEF setback easement shall be provided to the Planning Board pursuant to §9-2.6(1).

{This is an EXTREMELY bad idea. An increase of 10 decibels is a TEN TIMES increase in noise loudness allowed. Why should the Town allow a wind developer to bribe an uninformed citizen to sign away their health rights??? How is that consistent with the Town's obligation to look out for the health, safety and welfare of citizens?... What if such a person subsequently sells their property — why should the future owner be victimized? In this case, is the Town going to require the seller to reveal to the buyer that they have agreed to a less-than-safe noise level? If not can the Town be held liable — since they gave their blessing to this higher risk arrangement?}

What if this residence is a rental property: should the owner be given the right to victimize tenants? Will Landlords be obligated to include in their lease the fact that there could be a health issue with renting their property? Again, if not, can the Town be held liable — since they gave their blessing to this higher risk agreement?... This is a Pandora's Box. Once the Town allows a 10 decibel exception, the developer (or court) will ask: why not 15 or 20? Why would the Town prohibit no noise "relief" from roads (where citizens are only exposed for a minute or so), yet allow it for individual citizens (who may be exposed 24/7/365)?

Lastly, once the Town opens the door for allowing citizens to abdicate their rights, the developer will then leverage other parts of the wind law to permit similar foolishness. For example, what if a citizen wants to accept a bribe from the developer in exchange for giving up their Property Value Protection Plan rights (¶10-5)? If the Town has agreed to the principle of citizen's giving up their health rights, how can the Town then object to that? Item "f" should be removed in its entirety.}

- g. Where an easement is required for an acceptable initial WEF or wind turbine application, subsequent renewals of the extended WEF project shall require an extended WEF setback easement of the same or longer term as an additional condition of a WEF permit renewal.
  - h. No noise setback relief from buildings and roadways shall be recognized by the Planning Board.
2. **Exemptions to Requirements:** The following noises and related data points shall be excluded from the baseline of ambient noise:  
{There is a line space after 1 & 2, but not after 3,4 or 5.}
- a. Any noise intended to warn the public or indicate the existence of an emergency condition, including any warning device, siren, horn or whistle used by emergency vehicles or by any governmental agency to alert the public to an emergency or warn of a dangerous condition.
  - b. Any noise within limits set by and under the jurisdiction of any state or federal act preempting local regulation.
  - c. Mechanized noise from farming and agricultural operations.
  - d. Noise generated by or produced in association with a religious celebration or observance, parades, or other special municipal events.
  - e. Noise from diesel or gas-powered electric generators used during power outages.
  - f. Construction equipment used during daytime hours.
  - g. Non-industrial noise that is considered a part of normal personal activities, such as but not limited to operation of motor vehicles, boats and yard care.

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3. **Measurement Standards:**
- a. For any acoustic surveys, any microphone shall be situated between 4 and 4.5 feet above the ground. Measurements shall be conducted within the general provisions of ANSI S1.13-2005, and using a meter that meets at least the Type 2 requirements of ANSI S1.4 and S1.4A-1985 (R2006). The instrument noise floor shall be at least 10 dB below the lowest level measured.
  - b. A calibrator shall be used as recommended by the manufacturer of the sound-level meter. The fundamental level of the calibrator and the sensitivity of the sound-level meter shall be verified annually by a laboratory using procedures traceable to the National Institute of Standards and Technology.
  - c. A wind screen shall be used as recommended by the sound-level meter manufacturer.
  - d. An anemometer shall be used and shall have a range of at least 5 to 35 miles per hour (2.2 to 15.6 meters per second) and an accuracy of at least  $\pm 2$  miles per hour ( $\pm 0.9$  meters per second).
  - e. A weather vane shall indicate wind directionality. The compass rose shall be calibrated to geographic north.
  - f. Measurements shall be A-weighted, or, alternatively, in one-third-octave bands. For A-weighted measurements, the uncertainty (tolerance) of measurements shall be 1 dB for a type 1 meter and 2 dB for a type 2 meter. For one-third octave-band measurements, the meter shall meet the type 1 requirements of ANSI S12.4 and S12.4a-1985 (R2006), and the uncertainty of measurements shall be 5 dB in each and every one third-octave band.

- g. The report shall include a sketch of the site showing distances to the structure(s), to the property line, etc., several photographs showing the structure(s), the property, and acoustical instrumentation. All instrumentation shall be listed by manufacturer, model, and serial number. This instrumentation listing shall also include the A-weighted and C-weighted noise floor due to weather or other natural phenomena and the one-third octave band noise floors, if utilized, for each sound-level meter used.
- h. Each report must include digital audio files of the recorded data of the entire survey period.

**4. LWEF Sound Measurement Stations and Verification:**

- a. Each LWEF project shall include multiple sound measurement stations placed within 100 feet of the designated LWEF Boundary for the entire duration of the project. If the proposed project within the Town of Clayton is under 40MW, three (3) stations are required; if 40MW or larger four (4) stations are required.
- b. Station locations shall be designated by the Planning Board, Town Engineer, or Town consultant at the Planning Board's discretion, including three (3) suitable alternate sites. The Applicant will be responsible for securing easements for placement of the recording units and any communications infrastructure needed. If the Applicant is unable to secure rights to a primary station site, any of the alternate sites may be substituted with approval of the Planning Board.
- c. All sound measurement stations shall be dispersed geographically across multiple WEF Turbines along the WEF Boundary. If a suitable sound measurement station location can be sited along the WEF Boundary proximate to multiple turbines, those sites shall be given preference.
- d. Each sound measurement station shall include instruments to measure local weather data (temperature, humidity, wind speed and direction, and atmospheric pressure), include at least one directional microphone to each clearly designated turbine noise source, and at least two omnidirectional microphones. Each station shall have a recording system for all data streams, including full audio recording for each microphone of at least one sample per second or better resolution, and

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the data shall be uploaded at least daily into an Internet web portal accessible to the public.

- e. All weather and sound measurement instruments shall be calibrated annually. Each instrument shall meet the Measurement Standards provisions in §8-2.4.1(3).
- f. Any failure to record data of any of the instruments outlined in this section shall be reported in writing to the Code Enforcement Officer within seven (7) days. Notification shall include the failure mode and remediation plan with an expected service restoration date. The Code Enforcement Officer shall in good faith review and submit any responses of the remediation plan in writing.
- g. One remediation plan extension may be requested to the Code Enforcement Officer and accepted at his sole discretion.
- h. Failure to submit sound measurement data for ten (10) days after an instrument failure without an approved remediation plan to the Code Enforcement Officer shall constitute a violation of this Local Law under §11-2.
- i. Placement of sound measurement stations by the Applicant does not inhibit the Planning Board, Town Engineer, or consultant from establishing additional temporary or permanent monitoring sites anywhere within the township.

**5. Temporary and Enforcement Measurements**

- a. The Town, using the services of the Town Engineer or designated consultant, shall be responsible for and at its sole discretion contract for any enforcement measurements. The Town's engineering contractor shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental noise, and the consultant's project leader shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA. The following protocol may be modified as certain situations may require by the acoustical engineer as long as modifications are in general conformance with the procedure described below.
- b. Initially a preliminary study shall be conducted for a period of one (1) hour. During the one hour period, the equivalent level (Leq) generated by the noise source shall be measured. The measurement location shall be near the complainant's building, roadway or property line, nearest the noise source. Measurements shall be entirely within the appropriate time period, e.g., during nighttime for nighttime enforcement, and the noise source shall operate continuously (if normal operation) during the one hour measurement.

- c. If the noise source is intermittent or if the noise is not present at the time of the preliminary enforcement survey, a more extensive and detailed survey shall be undertaken to monitor noise levels over a longer period. The applicant shall fully cooperate with Town officials and their agents to ensure accurate measurements, including turning on and off noise sources as required.
- d. For all measurements, the surface wind speed, measured at a 1.5-m height, shall be less than 5 m/s.
- e. All equipment used shall conform to the Measurement Standards outlined in §8-2.4.1(3).
- f. Failure to cooperate with Town officials or their agents, or violations of the resultant noise standards established in this Section shall constitute a violation of this Local Law under §11-2.

**8-2.4.2 Physical Setbacks:** Wind turbines have numerous intrinsic hazards associated with large-scale structures with moving parts such as ice throws, audible and inaudible sound levels, noise propagation, catastrophic mechanical damage and flying debris, shadow flicker and blade glint, and general community psychological effects. Physical setbacks protect adjoining property owners and their future development rights and uses. {The wording here is cumbersome and confusing. For example, what is the difference between "audible sound levels" and "noise propagation"? Furthermore, setbacks are not just to protect "adjoining property owners" but rather ALL property owners who are within the setback limit.}

1. The following guidelines provided by world governments and scientific sources addressing intrinsic hazards, the setback requirements from any structure, roadway, or property line are listed as follows:

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- a. LWEF must maintain a one (1.0) mile setback. {The LL5 version changed the wording from LL3. In the process a major error was introduced: setback from exactly *what* no longer appears to be defined. All setbacks should be defined to be from the base of any wind turbine to the PROPERTY LINE of the property in question. This is even more of a problem as the Noise rules of LL5 also apply to the setbacks in this section — which are poorly defined.}
  - b. SWEF must maintain a two-and-one-half times (2.5) tower height setback.
  - c. Meteorological towers must maintain one-and one-half times (1.5) tower height setback. Associated guy wires and anchors must maintain a fifty (50)foot setback.
  - d. Indirect Atmospheric Measuring Devices based on LIDAR technology must maintain a five hundred (500) foot setback. Units based on SODAR technology must maintain a two thousand (2000) foot setback.{It seems that "d" conflicts with "c." And why are SODAR setbacks more than LIDAR?... In LL3 there was an important additional prohibition: "No LWEF wind turbine shall be permitted to be within five (5) miles of any operating or proposed radar facility (NEXRAD, military, commercial, etc.)." Why was this removed when the less important LIDAR/SODAR was inserted?}
2. Dimensional setbacks may be reduced by half where a Neighboring Parcel owner and the Applicant have engaged in a WEF setback easement of the same or longer term than the WEF or wind turbine project and shall re-define a suitable portion of the WEF Boundary. A copy of the WEF setback easement shall be provided to the Planning Board pursuant to §9-2.6(1). {This, like the parallel noise proposal, is an EXTREMELY bad idea. Why should the Town allow a wind developer to bribe an uneducated citizen to sign away their health rights by agreeing to an unsafe setback distance??? How is that consistent with the Town representatives obligation to look out for the health, safety and welfare of citizens?}

What if such a person subsequently sells their property — why should the future owner be victimized? In this case, is the Town going to require the seller to reveal to the buyer that they have agreed to a less-than-safe setback distance? If not can the Town be held liable — since they gave their blessing to this higher risk arrangement?

What if this residence is a rental property: should the owner be given the right to victimize tenants? Will landlords be obligated to include in their lease the fact that there could be a health issue with renting this short-setback property? Again, if not, can the Town be held liable — since they gave their blessing to this higher risk agreement?

As with the similar noise provision, this a Pandora's Box. Once the Town allows a  $2600 \pm$  feet setback exception, the developer (or court) will ask: why not 2000 feet or 1000 feet or 500 feet? This could undermine the entire setback provision — an item of MAJOR significance.

BTW, why would the Town prohibit no setback "relief" from roads where citizens are exposed to wind turbine for a minute or so, yet allow it for citizens possibly exposed 24/7/365?

Lastly, once the Town opens the door for allowing citizens to abdicate their rights, the developer will then leverage other parts of the wind law to permit similar foolishness. For example, what if a citizen want to accept a bribe from the developer in exchange for giving up their Property Value Protection Plan rights ([¶10-5](#))? If the Town has agreed to the principle of citizens giving up their rights here, how can the Town object to that?

8-2.4.2 #2 should be removed in its entirety.}

3. Where an easement is required for an acceptable initial WEF or wind turbine application, subsequent renewals of the extended WEF project shall require an extended WEF setback easement of the same or longer term as an additional condition of a WEF permit renewal.
4. No dimensional setback relief from buildings and roadways shall be recognized by the Planning Board.
5. Restrictions within a WEF Boundary:
  - a. No building permits shall be issued within the default setback radius of an operating WEF or wind turbine as defined in §8-2.4.2.
  - b. Any parcel undergoing subdivision, hosting a WEF or wind turbine or Neighboring Parcels, shall carry any WEF setback easements from the parent parcel to all relevant parcels after subdivision inside the WEF Boundary.

8-2.4.3 **Height Requirements:** To preserve the rural, pastoral, and small village aesthetic of the township as outlined in the Comprehensive Plan and LWRP, height restrictions are required as follows:

1. SWEF facilities shall be limited to one hundred twenty (120) feet in height.
2. LWEF facilities shall be limited to five hundred (500) feet of height.
3. Meteorological Towers shall be limited to one hundred ninety-five (195) feet in height to generally avoid FAA lighting requirements.
4. All Indirect Atmospheric Measuring Devices and accessory structures shall be limited as Accessory Use height restrictions specified in the underlying zoning district.

8-2.4.4 **Miscellaneous Dimensional Requirements**

1. No portion of any wind turbine blade shall sweep closer than thirty (30) feet to the surface grade or top of any accessory structures immediately surrounding the turbine.
2. No LWEF wind turbine shall be permitted to be within five (5) miles of any operating or permitted radar facility.

8-2.5 **Installation and Design:**

1. WEF Power Collection: The electrical connection system from the turbines to a collection point or substation shall, to the maximum extent possible, be placed underground. The power from that collection point or substation may use overhead transmission lines, if approved by the Planning Board.
2. Road Analysis: The applicant shall agree, in writing, to the conditions of §10-3.
3. Security: The Applicant shall verify that the WEF and associated electrical equipment is:
  - a. Located, fenced, or otherwise secured so as to prevent unauthorized access.
  - b. Made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with.
  - c. Installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

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8-2.6 **LWEF Agricultural Assessment Notices:** The Town Assessor will review and make reasonable acreage adjustments along New York Real Property and Tax Services department guidelines, up to and including the entire parcel acreage, calculate revised agricultural acreage and assessment rates for each parcel, and calculate any "roll-back" property tax *penalties* for each parcel as required by New York Agricultural and Markets Law §306(2). The proposed parcel re-assessments shall not include valuation for any proposed LWEF improvements. {This might be a good addition, but it is not clear as to what the intent and implications are of 8-2.6. Please explain the intention here.}

The Assessor shall send a written notice to each affected parcel owner of record by postal mail, whose mailing addresses are defined in the property tax rolls, advising of the project's impacts to the parcel and proposed property tax implications. The notice shall be served to each parcel owner at least seven (7) days before the first public hearing held by the Planning Board in §9-7.

Construction commencement of the LWEF shall constitute a Use Conversion of the Assessor's acreage estimates of the underlying parcel. The Town Assessor will re-calculate the revised agricultural acreage of each parcel, update agricultural assessment values and "roll-back" property tax penalties, and notify each parcel owner by postal mail for the changes of the following tax roll year. The parcel re-assessments shall not include valuation for any proposed LWEF improvements. The Assessor shall also notify the New York State Commissioner of Taxation and Finance of such penalties.

Nothing in this Section alters any of the Town's obligations or methods to any regular or special re-assessment of any parcel's assessed value, including assessment of any partially or fully completed LWEF.

#### 8-2.7 Other Requirements for WEFs

1. Any WEF or Wind Turbine shall be a non-obtrusive color (such as light blue, off-white, or light gray) that blends with the sky, as determined by the Planning Board.
- 2.. Any WEF or Wind Turbine shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety. All lighting shall avoid visibility from the ground where possible.
3. Any WEF or Wind Turbine shall not contain any signs or other advertising (including flags, streamers or decorative items or any identification of the turbine manufacturer, WEF owner and operator). This does not include any identification plaques that might be required by the electric utility or a governmental agency.
4. Any WEF or Wind Turbine shall be sited and operated so as to not interfere with television, internet service, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception in neighboring areas. The applicant and/or operator of the WEF shall be responsible for the full cost of any remediation necessary to correct any problems or provide equivalent alternate service, within thirty (30) days of being given notice. This includes relocation or removal of problematic turbine(s), or any other equipment, transmission lines, transformers, and other components related thereto.
5. Any WEF or Wind Turbine shall have a leak containment system for oil, hydraulic fluids, and other non-solids that is certified by an expert (such as an engineer, turbine manufacturer, etc.) acceptable to the Planning Board that all such fluids will be captured before they reach the ground. The applicant shall pay the cost(s) of the experts
6. Any WEF or Wind Turbine operator and owner shall prepare an incident response plan that ensures that local emergency responders have the necessary equipment and training to effectively handle emergencies such as oil spills, turbine fires, turbine structural damage (or collapse) of equipment, including access to heavy equipment needed for rescue of trapped personnel. For LWEF applications, the Escrow Fund will be used to reimburse all local emergency responders for any necessary equipment or training required.
7. All construction debris shall be removed from each WEF or Wind Turbine construction site and disposed of or recycled in a legal manner under County and local waste management regulations.

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#### 8-2.8 LWEF Surety for Removal, when Decommissioned.

The applicant shall place with the Town an acceptable letter-of-credit, bond, cash into the Escrow Account or other form of security that is sufficient to cover the cost of removal at the end of each LWEF turbine's useful life, as detailed in the decommissioning plan. Such surety shall be at least \$200,000 for each wind turbine. The Planning Board may approve a reduced surety amount that is not less than 150% of a cost estimate that is certified by an Engineer, salvage company, or other expert acceptable to the Planning Board. This calculation will not take into account any estimated salvage values.

The Town shall use this surety to assure the faithful performance of the decommissioning terms and conditions of the Applicant's approved plan and this law. The full amount of the bond or security shall remain in full force and effect until all necessary site restoration is completed to return the site to a condition comparable to what is was prior to the LWEF, as determined by the Planning Board (see §9-5). The Applicant will be responsible for assuring that any subsequent Assigns of the LWEF, will provide acceptable surety to the Town, prior to any transfer of ownership.

#### 8-2.9 LWEF Real Property Value Protection Plan:

The LWEF Applicant shall assure the Town that there will be no loss in real property value within two miles of each wind turbine within their LWEF. To legally support this claim, the Applicant shall consent in writing to a Real Property Value Protection Plan (see §10-5). This Plan shall provide assurance to non-participating real property owners (i.e. those with no turbines on their property) near the LWEF, that they have some protection from LWEF-related real property values losses.

{Note that it says the PVG is TWO miles here — yet it says FIVE miles in ¶10-5: a clear contradiction.}

8-2.10 **LWEF Liability Insurance:** The holder of a permit for a LWEF shall agree to secure and maintain for the duration of the permit public liability insurance, as follows:

1. *Commercial general liability covering personal injuries, death and property damage:* \$10,000,000 per occurrence (\$20,000,000 aggregate), which shall specifically include the Town and its officers, councils, employees, committee members, attorneys, agents and consultants as additional named insureds.
2. *Umbrella coverage:* \$50,000,000.
3. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".
4. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days prior written notice in advance of a cancellation.
5. Renewal or replacement policies shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.
6. No more than 15 days after the grant of the permit and before construction is initiated, the permit holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.
7. A certificate of insurance that states that it is for informational purposes only and does not confer sufficient rights upon the Town, shall not be deemed to comply with this Local Law.

**Section 9: Requirements for WEF Siting: Permit Required.** Large Wind Energy Facilities, Meteorological Towers and Indirect Wind Measurement Devices, and all other improvements of any kind appurtenant to the installation, operation, or decommissioning of any large scale wind energy facility shall be permitted within the Town of Clayton only in the Wind Energy Facility Overlay District, pursuant to the Town of Clayton Zoning Ordinance, and shall be subject to the substantive and procedural permitting requirements of this Local Law, in addition to other applicable local, state and federal laws.

**9-1 WEF Permit Requirements for Meteorological Towers and Indirect Atmospheric Measuring Devices:** Temporary Meteorological Towers and Indirect Atmospheric Measuring Devices may be erected to test the wind conditions on a proposed LWEF site. WEF procedural permitting requirements for Meteorological Towers are limited to the requirements of §9-1 of this law and any other requirements for application for a Special Use Permit. Indirect Atmospheric Measuring Devices, *including LIDAR units*, may not be sited without a Special Use Permit. {It's unclear as to why the LIDAR part of the prior sentence is needed. Further, LL5 adds LIDAR & SODAR — yet here the SODAR is not mentioned. Why?}

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9-1.1 **Permit:** Meteorological towers and Indirect Measuring Devices require a Special Use Permit before a building permit can be issued. The Special Use Permit term is valid for two (2) years after the date that the Planning Board approves an application and the tower must be removed before the permit expires. The applicant may apply for one (1) extension of two (2) years but in no case shall the tower be in place for more than four (4) years. Such approval extension application shall be accompanied by a second application fee (§9-4) and justifications for an approval extension.

9-1.2 **Airspace Impacts:** A copy of a FAA determination report as a result of filing the FAA Form 7460-1, "*Notice of Proposed Construction or Alteration of an Object that may affect the Navigable Airspace*" shall be submitted with any building or special use permit applications for a Meteorological Tower or Indirect Atmospheric Measuring Device.

**9-2 WEF Permit Application for WEFs other than Meteorological Towers and Indirect Atmospheric Measuring Devices:** Throughout the permit process, the applicant shall promptly notify the Planning Board of any changes to the information contained in the permit application. Changes that do not materially alter the initial site plan may be administratively accepted. The application for a WEF shall be an electronic digital filing that contains at least the following:

9-2.1 **Summary:** A narrative overview of the WEF, including its generating capacity.

9-2.2 **Inventory:** A tabulation describing the:

1. Specific number, types, and height of each wind turbine to be constructed, including their generating capacity.
2. Dimensions and respective manufacturers.
3. Appurtenant structures and/or facilities.

9-2.3 **Vicinity map:** Identification of the property on which the proposed WEF will be located.

9-2.4 Site Plan: A plan showing the:

1. Planned location of each wind turbine.
2. All property lines within two (2) miles of the property lines of the proposed site. Neighboring Parcels that have engaged a WEF setback easement should be clearly designated.
3. Access road and turnout locations.
4. Substation(s) and ancillary equipment, buildings, and structures, including any permanent meteorological towers.
5. Electrical cabling from the WEF to upstream electrical connections, including substation(s) or utility services.
6. Associated transmission lines.
7. Certification that the proposal is designed to meet all State structural and electrical building codes.
8. Conservation Areas, including natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act; shoreline areas; water bodies; riparian buffers; populations of endangered or threatened species (federal or state), or habitat for such species; flyways; archaeological sites, cemeteries, and burial grounds; important local historic sites; existing healthy, native forests consisting of at least one acre of contiguous area; individual existing healthy trees that are at least 100 years old; other significant natural features and scenic view sheds; existing trails or corridors that connect the tract to neighboring areas.
9. Location of all structures and properties within the geographical boundaries of any applicable setback.
10. A landscaping plan that shows proposed screening and buffering of all buildings and other non-turbine structures on the site or sites.
11. A pre-planned response plan for high wind conditions.
12. The total acreage of the proposed WEF, including all proposed structures, accessory buildings, transformers, substations, power lines, drainage and spoilage areas, parking

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- areas, storage areas, and access roads with suitable buffer distances for each parcel as part of the project. The WEF acreage includes buffer spaces.
13. Any other documentation needed to satisfy the requirements of this permit, as requested by the Planning Board in its sole discretion.

9-2.5 **SWEF Specific Requirements:** The applicant shall provide the following information to the Planning Board:

1. Proof the SWEF site is in a State-certified agricultural district.
2. Historical data from the electrical utility of power usage for the past two (2) years and projections for any increases in consumption for the future two (2) years. Large increases in proposed power consumption require a plan showing updated equipment and electrical loads.
3. A project plan with the proposed SWEF is within 110% of the proposed power consumption of the agricultural use or operation.
4. A report or approved permit from the electrical utility accepting the project's interconnection to the electrical grid.
5. Wind turbines shall be designed to minimize the land clearing and the loss of important open spaces. Development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Wind Power Projects published by the New York State Department of Agriculture and Markets and minimize reduction in available arable farm land outlined in the Jefferson County Agricultural and Farmland Protection Plan.
6. Under New York Agriculture and Markets Law §305-a, any agricultural district-sited turbines with primarily on-site consumption of produced power are considered an agricultural structure.

9-2.6 **LWEF Specific Requirements:** The applicant shall provide the following information to the Planning Board, and commission and present the results of the following studies, in connection with any LWEF permit application:

1. Signed copies of all leases/easements or other land use agreements related to each proposed wind turbine, substation, meteorological tower, access road, or utility cable in the WEF project proposal.
2. **LWEF Economic Impact Study:** The Town will hire independent experts (paid for from the Escrow Account: see §9-5) to perform a conservative assessment of the LWEF's net economic impact on the community. Factors considered will include, but are not limited to impact on tourism, reduced agricultural yields due to bat takings, beneficial predator loss, livestock disturbance, property devaluations (and the commensurate loss in tax base), cost to community due to adverse health effects, the economic impact of the closure of any nearby military base, and the higher cost of

electricity. Costs will be compared to any community benefit, including but not limited to taxation incomes, and new employment from the LWEF, if any.

3. **LWEF Environmental Impact Study:** An Environmental Impact Study (EIS) shall be conducted that includes review comments from citizens in the Town, independent experts, as well as all applicable state and federal agencies, including at least the:
- (1) NY Department of Environmental Conservation,
  - (2) NY Department of Health,
  - (3) NY Department of Transportation,
  - (4) US Fish and Wildlife Service, *and*
  - (5) US Army Corps of Engineers.

The EIS shall include a SEQR, and cover, at a minimum, the potential impacts on the human population (such as audible and inaudible sound, vibrations, EMFs, shadow flicker and blade glint, view sheds, blade throw, high wind resistance, etc.), as well as the animal populations, migratory areas used by waterfowl, the location of any air routes recognized by the FAA and/or established by the Department of Defense, land, and water (including impacts on groundwater resources due to foundations, pilings, etc.), and air. The study area shall include the area within the confines of the proposed LWEF, as well as the area at least two (2) miles surrounding the proposed LWEF.

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All costs and expenses incurred related to the Environmental tests for the LWEF shall be paid from the Escrow Account (see §9-5). The Town shall use the Escrow Account funds to hire independent qualified experts, as needed, to do the following:

- a. Provide the location and full description of any of the following: open drainage courses, streams, vernal pools, wetlands, and other important natural areas and site features, including, but not limited to, floodplains, deer wintering areas, Essential Wildlife Habitats, significant wildlife habitats, livestock, scenic or special resources, habitat of rare and endangered plants and animals, natural communities of endangered species (federal or state), unique natural areas, sand and gravel aquifers, wells, and historic and/or archaeological resources.
- b. The Applicant must provide a written report from all appropriate state and federal agencies detailing their evaluation of the proposed LWEF.
- c. The Applicant must demonstrate, to the satisfaction of the Town, that the proposed LWEF will not have an undue adverse effect on geological stability, surface or subterranean water resources, rare, threatened, or endangered wildlife, significant wildlife habitat, essential wildlife habitat, raptor habitat, livestock, threatened or endangered plants and rare and exemplary natural plant communities and ecosystems, and will not materially increase storm water runoff.
- d. The Applicant must provide a cumulative-impact assessment of their LWEF in the context of any other LWEFs within twenty-five (25) miles, including migratory bird, bat and large mammal corridors, and demonstrate that the LWEF is not located in an area that will result in degradation of important wildlife corridors or flyways.
- e. Pre-construction and post-construction field studies shall be conducted using the most advanced techniques available. If the pre-construction field studies demonstrate significant adverse effect to birds, bats, game animals, water resources, habitat fragmentation or other ecosystem degradation, the LWEF Applicant shall propose a remediation plan, subject to the Town's approval. The Applicant accepts that some environmental impacts cannot be satisfactorily resolved, and that such situations will be factored into the Town's decision regarding the net benefits of the LWEF.
- f. In determining the nature and effectiveness of such remediation plans, the Town will be guided by inputs of its citizens, its own consultants, the appropriate state & federal agencies, and applicable state and federal laws and regulations. The LWEF Applicant will be responsible for the full cost of implementing any approved remediation plan, under the supervision of the Town and its designated agents.
- g. After implementation of any remediation plan, the Town will review the situation to determine its effectiveness. Should the Town find the remediation efforts inadequate, the LWEF Applicant will be given sixty (60) days from that finding to resolve the deficiencies. In the absence of a successful resolution, the Town (at its sole discretion) shall have the right to deny the LWEF Permit.
- h. A computer-generated "zone of visibility map" (covering at least a five (5) mile radius from the proposed LWEF) shall be created to illustrate locations from which the proposed installation may be seen, with and without foliage.

**4. LWEF Air Space Impacts: {Two periods after "4".}**

- a. For all portions of the LWEF more than 200 feet tall, the applicant shall provide a copy of a FAA determination as a result of filing the FAA Form 7460-1, "Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace."
- b. If any portion of a LWEF will be located within five (5) miles of any civilian or military airport runway, or heliport, the applicant shall provide a copy of a FAA determination as a result of filing the FAA Form 7460-1, plus demonstrate compliance with all local Town, State and Federal airport related laws.
- c. The applicant shall establish to the satisfaction of the Planning Board that the LWEF will not adversely impact the restricted air space in the area, particularly as it relates to the flight paths to and from Fort Drum.

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- d. The applicant shall establish to the satisfaction of the Planning Board that the LWEF will not degrade the performance of any military or civilian radar in the vicinity of the Project.
- e. The applicant shall establish to the satisfaction of the Planning Board that the LWEF will not result in an elevated encroachment score, or have a similarly deleterious impact on any other metric quantifying encroachment on any military facility, pursuant to any future review of any nearby military base under the Defense Base Closure and Realignment Commission ("BRAC").
- f. The applicant shall forward this application to the Commanding Officer, Fort Drum, in order to provide for review and comment concerning any possible impacts on the operations and mission of Fort Drum. These comments are separate from whatever is in the DOD Clearinghouse documents. This application may not be deemed completed until such time as the LWEF Air Space Impacts review is completed and written comments are received.
- g. The applicant shall provide a narrative description of all risks to:
  - (1). Civil air navigation (including civilian radar).
  - (2). Military air navigation routes, military air traffic control areas, military training routes, military special-use air space, military radar or other potentially affected military operations, and shall further include documentation that addresses any potential adverse impact on military operations and readiness as identified by the Department of Defense Clearinghouse and any remediation action agreed to by the applicant.
  - (3). Weather radar systems within a fifty (50) mile radius of the LWEF boundary.
  - (4). Hot Air Balloon rides available to the public within twenty (20) miles of the LWEF.

**5. LWEF Visual Impacts:** The applicant shall furnish a visual impact assessment to the Planning Board, which shall include:

- a. Pictorial representations of "before and after" views from 360 degree viewpoints within two (2) miles of the proposed LWEF boundaries, including a drone perspective from the WEF. These will include, but not be limited to, major roads; the St. Lawrence River; state and local parks; other public lands; historic districts; preserves and historic sites. The Planning Board will provide guidance concerning the appropriate key sites. The applicant shall provide a map showing where the pictures were taken and the distance of each location from the proposed WEF.
- b. If any portion of a proposed LWEF will be located within one (1) mile of the right-of-way of a Federal or State-designated Scenic Route, the applicant shall describe the proposed measures to be taken to minimize the visual impact of the proposed WEF (including shadow flicker and blade glint) upon a Scenic Route.
- c. The Applicant shall not install any lighting that exceeds the minimum required by the FAA. If approved by the FAA, on-demand lighting (AVWS) is required.

**6. LWEF Water Table Impact Plan:** The applicant shall serve notice for dug well and bedrock well water testing to all parcel owners within the physical setback radius of each potential LWEF turbine at least ninety (90) days before the start of construction, inclusive of suitable contact information of the Applicant's Water Testing Coordinator. All parcel owners shall have sixty (60) days to contact the Coordinator to arrange for well water testing. Well water shall be sampled upstream of any water filtration or purification equipment following NYS DOH procedures and sent to a NYS DOH-certified laboratory for testing of hardness, bacterial, lead, and copper contamination at the Applicant's expense. Documentation of well water test results shall be sent to the parcel owner, Town Engineer, and the Applicant.

Any change of the Water Testing Coordinator contact information throughout the life of the LWEF project shall be made in writing to each of the parcel owners in the physical setback radius and the Town Engineer.

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Any parcel owner in the turbine setback radius may test their well water at their expense at any future date with a NYS DOH-certified laboratory. Significant unfavorable deviation of the test results with initial readings may be presented to the Water Testing Coordinator, Code Enforcement Officer, Town Engineer, or Town-designated consultant for review and further investigation at the Applicant's expense. If at least three parcel owners within the dimensional setback radius of a turbine outlined in §8-2.4.2 have significant unfavorable deviations of test results and investigations conclude a turbine's foundation or operation caused the effects to the water table, the Code Enforcement Officer may force shutdown the offending turbine until an effective water table remediation plan is determined, approved by the Code Enforcement Officer, implemented, and deemed satisfactorily completed by the Code Enforcement Officer. Upon acceptance of a successfully completed plan, the turbine may return to active service. {¶6 is a new section that was not in LL3. Although it seems to have merit, it is not clear as to what the objective and implications of this section are. Please explain.}

7. **LWEF Agricultural Assessment Notices:** The applicant shall include in its application a site plan of all acreage needed on each underlying parcel to implement the proposed LWEF project as defined in §9-2.4. This site plan is necessary for the Town Assessor's compliance with §8-2.6.
8. **LWEF Decommissioning Plan:** A description of how the structural and turbine materials will be disposed of, how the site will be restored, as well as:
  - a. Anticipated life of the LWEF.
  - b. Estimated decommissioning costs including contingency costs of at least 20% (in current US dollars), as provided by an appropriately experienced licensed engineer.
  - c. A verifiable means of determining if the decommissioning plan needs to be activated due to cessation of use, such as a letter from the electric utility or Applicant stating that it will notify the Code Enforcement Officer within ten (10) business days if electricity is not received from any turbine within the LWEF for any thirty (30) consecutive day period.
  - d. Method for ensuring that funds will be available for decommissioning and restoration as set forth in this section.
9. **LWEF Impacts on Other Town Municipalities:** If the proposed LWEF is within two (2) miles of the boundaries of adjacent municipalities (schools, villages, or other townships) the Applicant shall provide written notification of this application to those municipalities.
10. **Maintenance Plan:** The Applicant shall detail all pre-planned and conditional actions that will be taken to keep the WEF operating quietly, efficiently, and to prevent it from polluting land, water, or air. This will include, but is not limited to, actions to minimize audible sounds, infrasound, vibrations, blade glint, and fluid leaks. The Applicant shall conduct preventive maintenance inspections at least once every year, and after any wind event defined as a tropical storm or Category 1 (or higher) hurricane, or where sustained wind speeds exceed 70 mph. Each inspection shall look for areas prone to failure such as metal fatigue, nut loosening, tension cable, and guy wire loosening that might impact the public health and safety. Such inspection reports shall be provided to the Code Enforcement Officer within thirty (30) days of the inspection.
11. **Modification:** Any changes to the original design of individual SWEF or LWEF wind turbines or project plans, beyond ordinary maintenance, require Special Use Permit approvals by the Planning Board. Permit amendment applications must include reasons for the modifications and expected results.
12. **Ancillary Materials:** Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the Town to ensure compliance with this Local Law, or to protect the health, safety and well-being of the Town's citizens, or local ecosystems.
13. **Predicting Noise Impacts:** At the discretion of the Planning Board an application shall include certification by an independent acoustical engineer as to the predicted A and C-weighted sound levels at potentially impacted buildings and property lines. The firm with which the engineer is associated shall be a member of the National Council of Acoustical Consultants (NCAC) with a specialty in environmental noise, and the independent acoustical engineer shall be a Member, Board Certified of the Institute of Noise Control Engineering of the USA. The predicted noise levels shall then be reviewed by the Town's consulting engineer, or their agent, to establish the validity of the predicted impacts. All

sound measurements shall be taken in accordance with the standards set forth in §8-2.4.1(3). {Considering the number of variables involved, it is not clear how meaningful a "prediction" of noise levels will be. It is also not spelled out as to exactly what happens if the predicted noise levels exceed the LL5 legally allowed level... Also, what happens if the predicted noise levels are in compliance, but the actual noise levels are not? Has the Town assumed some liability based on their consultant's blessing of the developer's situation? It is not apparent that this item has any genuine merit — and may cause complications and harm. The recommendation is to delete ¶9-2.6-13.}

- 9-3 Planning Board Decision:** The approval by the Planning Board shall be valid for a period of two (2) years unless Building Permits are issued. Approved Special Use Permits shall expire for parcels whose Building Permits have not been issued in the two year period. Prior to the expiration of such approval, the Applicant may submit one (1) approval extension application for up to an additional two (2) years. Such approval extension application shall be accompanied by a second application fee (see §9-4) and justifications for such extension.

**9-4 Permit Fees.** Non-refundable Permit Application Fees shall be as follows:

- 9-4.1 LWEF Permit: \$200 per megawatt (MW) of rated maximum capacity.
- 9-4.2 LWEF Amendment Permit: \$100 per megawatt (MW) of rated maximum capacity.
- 9-4.3 SWEF Permit: \$250 per turbine.
- 9-4.4 SWEF Amendment Permit: \$100 per turbine.
- 9-4.5 Wind Measurement Tower Permit: \$200 per tower.
- 9-4.6 Wind Measurement Tower Permit amendments and renewals: \$100 per tower.

- 9-5 LWEF Escrow Account.** The Applicant shall pay to the Town a non-refundable Application Fee (see §9-4) and also fund a separate escrow account. The Town Board and/or Planning Board reserve the right to obtain engineering, economic impact, environmental impact, or other professional services to aid it in the review of any submitted LWEF application. These costs (and other expenses incurred by the Town) are reimbursable only from the Escrow Account, not the Application Fee. The Escrow Account will also be used to reimburse the Town for other reasons as set forth in this law.

- 9-5.1 The Applicant shall reimburse the Town for all oversight expenses incurred relating to the LWEF, from application through decommissioning.
- 9-5.2 These LWEF-related oversight expenses include (but are not limited to) amounts required for Building Permits, Licensing, Re-Licensing, and Decommissioning — e.g. administration, engineering, expert health and wildlife evaluations, handling complaints, legal, etc. "Legal" includes reasonable attorney fees for the Town if the Town has to sue the Applicant.
- 9-5.3 Any Escrow Account interest shall stay with the account and be considered new principle.
- 9-5.4 This Escrow Account will be setup by the Applicant at the time of the LWEF permit Application. This Escrow Account will be at a financial institution approved by the Town, solely in the name of the Town, to be managed by the Town's Chief Financial Officer (or designee). The Applicant will make an initial deposit of **\$75,000**. A LWEF Permit Application will not be processed until proof of deposit has been provided by the Applicant. A LWEF Permit Application determination will not be made until all costs incurred by the Town to date, have been reimbursed by the Applicant. {Credit to the editors that they have increased the recommended Escrow Account in LL3 from \$50,000 to \$75,000. That is an improvement.}
- 9-5.5 If the LWEF Application is denied, all Escrow Account funds will be returned to the Applicant, less related expenses incurred by the Town. The money will be returned, along with a statement as to these costs, within 30 days of the Application being formally denied, or receipt of a Letter of Withdrawal. Permit Application Fees are non-refundable.
- 9-5.6 This Escrow Account will be funded during the life of the LWEF by the Applicant/Owner/Operator. The Applicant/Owner/Operator will replenish any Escrow funds used by the Town within 14 days of being sent written notification (and explanation) of said withdrawals. Failure to maintain the Escrow Account at **\$75,000** (within 30 days of being given notice) shall be cause for revocation (or denial of renewal) of the LWEF Permit.
- 9-5.7 Once the Owner believes that they have satisfactorily complied with the decommissioning conditions specified herein, they will send the Town written notification. The Town then has sixty (60) days to verify to their satisfaction that all decommissioning conditions have been complied with. If there is material non-compliance, the Town will so notify the Owner and the decommissioning process starts over. Otherwise the Town will return all Escrow Account funds to the Owner, less related expenses incurred by the Town, along with an explanatory statement.

**9-6 LWEF Indemnification.** Any application for a LWEF within the Town shall contain an indemnification provision.

The provision shall require the applicant to at all times defend, indemnify, protect, save, hold

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harmless, and exempt the Town, and its officers, councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said LWEF, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its employees or agents. With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

**9-7 Application Review Process.**

- 9-7.1 Applicants may request a pre-application meeting with the Planning Board or with any consultants retained by the Planning Board for pre-application review. Meetings with the Planning Board shall be conducted in accordance with the Open Meetings Law.
- 9-7.2 Six printed copies and one electronic copy of the application shall be submitted to the Town Zoning Officer. Execution of the Escrow Fund Agreement and payment of all application fees and initial escrow account funds shall be made at the time of application submission. In addition, the applicant shall provide the Planning Board, free of charge, with a reasonable number of additional copies necessary to coordinate review with all involved agencies and interested parties, pursuant to SEQRA.
- 9-7.3 Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application, unless the Planning Board waives any application requirement, no application shall be considered complete and ready for final action until deemed complete and until either a negative declaration is issued under SEQRA, or a Final Environmental Impact Statement and SEQRA Findings are issued by the lead agency.
- 9-7.4 If the application is deemed incomplete, the Planning Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the project definition has been substantially Modified.
- 9-7.5 Upon submission of a complete application the Town Zoning Officer shall transmit the application to the Planning Board. A copy of the complete application shall also be sent to the Town Assessor.
- 9-7.6 The Planning Board shall hold at least one public hearing on the application. Notice shall be provided by first class mail to property owners within 500 feet of the boundaries of the proposed SWEF turbines and/or within the LWEF boundary and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Planning Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Planning Board, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses. {Notice should be given to all property owners within two (2) miles of the LWEF boundaries. That does not seem to be what the words here say.}
- 9-7.7 The public hearing may be combined with any other public hearing required, including public hearings held pursuant to SEQRA.
- 9-7.8 Referral shall also be made, when applicable, to the Jefferson County Planning Board, pursuant to General Municipal Law §§239-1 and 239-m.
- 9-7.9 SEQRA review. Applications for a WEF shall be deemed Type I projects under SEQRA. The Planning Board shall be responsible for the review of the proposed project under SEQRA, shall where appropriate, act as lead agency under SEQRA and shall coordinate its review with all other involved agencies having discretionary approval over any aspect of the proposed project in accordance with the requirements of SEQRA.
- 9-7.10 Ongoing replenishment of an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Planning Board shall issue a Statement of Findings, which Statement may also serve as the Planning Board's decision on the applications.
- 9-7.11 Upon receipt of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the applications, in accordance with the standards in §9-8.

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**9-8 Standards for Planning Board's WEF Permit Application Decision:** The Planning Board may disapprove a WEF Permit Application for a variety of reasons, including but not limited to, the following:

- 9-8.1 Conflict with safety and safety-related codes and requirements.
- 9-8.2 The use or construction of a WEF is contrary to a pre-existing purpose of a specific zoning or land-use designation, such as a town comprehensive plan or LWRP.
- 9-8.3 A SWEF is oversized given the stated use of its electrical power, or the SWEF is located outside a State-certified agricultural district.
- 9-8.4 The operation of a Large WEF would be a net economic liability to the community.
- 9-8.5 The operation of a WEF would create unacceptable health risks to the public.
- 9-8.6 The placement and operation of a WEF could create unacceptable risks to wildlife and/or regional ecosystems.
- 9-8.7 The placement and location of a WEF would result in a conflict with, or compromise or change in, the nature or character of the surrounding area.
- 9-8.8 The operation of a WEF would create unacceptable interference with any type of operating or permitted radar systems.
- 9-8.9 Conflicts, as determined by the Planning Board, with the military's unrestricted ability to use the Restricted Air Space, including no flight hazards and/or use limitations. In addition, the Planning Board will consider whether construction or operation of the proposed WEF would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any military installation or branch of military in the State, and possibly result in a detriment to continued military presence in the State.
- 9-8.10 Refusal to maintain the required balance in the application or project's escrow fund, with at least thirty (30) days written notice to the Applicant of any replenishment requirements.
- 9-8.11 Conflicts with any provisions of this Local Law.

## **Section 10. WEF Post-Construction Requirements**

**10-1 WEF Certification.** Prior to operation of any approved and constructed WEF, the applicant must provide a certification that the project complies with applicable codes, industry practices and conditions of approval (where applicable).

**10-2 Reservation of Authority to Inspect WEF.** In order to verify that the holder of a permit for a WEF and any and all lessees, renters, and/or licensees of it, have placed and constructed such facilities in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, Local Laws and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, and maintenance of such facilities, including all turbines, towers, buildings, and other structures constructed or located on the site.

- 10-2.1 Following the issuance of any approval required under this Local Law, the Planning Board or its designee shall have the right to enter onto the site upon which a WEF has been placed, at reasonable times in order to inspect such WEF and its compliance with this Local Law.
- 10-2.2 After undertaking such inspection, the Planning Board or its designated representative shall provide notice of any non-compliance with the terms of this Local Law or the conditions of approval, certificate, or any other permit or approval issued hereunder or by any other authority, and shall provide the owner or applicant with a reasonable time frame to cure such violation, such time frame to be determined based upon the seriousness of the violation, its actual and/or potential impact upon public safety, and the actual and/or potential impact of the violation upon Town residents and/or local ecosystems.

**10-3 WEF Construction Related Damage:** The owner, developer, or operator of any WEF shall, to the extent practicable, repair or replace all real or personal property, public or private, damaged during the WEF construction.

The applicant shall reimburse the NY DOT, County and/or Town Highway Departments (as appropriate) for any and all repairs and reconstruction to roads that are necessary due to the construction or decommissioning of any WEF. A qualified independent third party or other qualified person, agreed to by the NY DOT, County and/or Town Highway Departments (as appropriate) and the applicant, shall be hired to pre-inspect the roadways to be used during construction and/or decommissioning. This third party shall be hired

- 10-3.1 Any road damage during construction that is caused by a WEF owner, developer, or operator and/or one or more of its subcontractors that is identified by this third party shall be repaired or reconstructed to the satisfaction of NY DOT, County and/or Town Highway Departments (as appropriate) at the applicant's expense, prior to the final inspection. In addition, the applicant shall pay for all costs related to this third party pre-inspection work prior to receipt of the final inspection.
- 10-3.2 The surety for removal of a decommissioned WEF shall not be released until the Planning Board is satisfied that any road damage that is identified by this third party during and after decommissioning that is done by the applicant and/or one or more of its contractors or subcontractors has been repaired or reconstructed to the satisfaction of the NY DOT, County and/or Town Highway Departments at the applicant's expense. In addition, the owner, developer, or operator of the WEF shall pay for all costs related to work of this third party's inspection prior to receipt of the release of the surety.

- 10-4 Continual Monitoring of WEF Noise Impacts:** Each occurrence of a noise violation exceeding the standard provides in §8-2.4.1 by each individual turbine shall be a separate violation of this Local Law, and the penalties defined in §11-2 shall be cumulative.

For each violation, the problem turbine(s) shall be shut down within one business day of being directed to do so by the Code Enforcement Officer or their designee. The problem turbine(s) shall remain shutdown until it can be demonstrated to the satisfaction of the Code Enforcement Officer (or their designee) that those turbines can be operated so as to not exceed the noise standards provide in §8-2.4.1.

- 10-5 LWEF Real Property Value Protection Plan:** The Applicant, owner, operator, or developer of any LWEF guarantees that there will be no loss in real property value within **five miles** of the LWEF (the "Potential Project Impact Area"), due to the LWEF. Any real property owner(s) included Potential Project Impact Area who believes that their property may have been devalued due to the LWEF, may elect to exercise the following appraisal and mitigation procedure: {The original wind law (LL3) said that the developer had to guarantee that there would be no property value loss within two (2) miles. LL5 now says five (5) miles.}

Although this may seem better, it is not. A primary argument against the pro-wind property value studies (e.g. Hoen) is that they purposefully included in their studies, properties they knew would NOT be devalued — by expanding the evaluation area beyond two (2) miles.

The words here give credence to the wind developer's argument: that properties between 2-5 miles should be considered. There is NO Scientific evidence that this is true — so by having such a condition we are undermining our own arguments for a PVG. That is counterproductive.

Increasing the Two mile limit to Five does NOT provably provide any additional real protections to citizens — and it will definitely undermine the Town's defense of a PVG. Strongly recommend reverting to two (2) miles.}

- 10-5.1 All appraiser costs are paid by the Applicant, owner, developer, or operator of a LWEF from the Escrow Account. Applicant and the property owner shall each select a licensed appraiser. Each appraiser shall provide a detailed written explanation of the reduction, if any, in value to the real property ("Diminution Value"), caused by the proximity to the LWEF. This shall be determined by calculating the difference between the current Fair Market Value (FMV) of the real property and what the FMV would have been at the time of exercising this option, assuming no WEF was proposed or constructed.

1. If the higher of the Diminution Valuations submitted is equal to or less than 25% more than the other, the two values shall be averaged ("Average Diminution Value": ADV).
2. If the higher of the Diminution Valuations submitted is more than 25% higher than the other, then the two appraisers will select a third licensed appraiser. If the two appraisers cannot agree on a third appraiser, the Town Board will make the selection. The third appraiser shall present to Applicant and property owner a written appraisal report as to the real property's Diminution Value. The parties agree that the resulting average of the two highest Diminution Valuations shall constitute the ADV.
3. In either case, the property owner may elect to receive payment from Applicant of the ADV. Applicant is required to make this payment within 60 days of receiving said written election from property owner.

**10-5.2 Other Protection Plan Conditions:**

1. If a property owner wants to exercise this option, they must do so within 10 years of the WEF receiving final approval from the Town.
2. A property owner may elect to exercise this option only once.
3. The Applicant and the property owner may accept mutually agreeable modifications of the terms in §10-5.1, although the Applicant is not allowed to put other conditions on a financial settlement, such as a confidentiality condition. If the property owner accepts

- some payment for property value loss based on an alternative method, that acceptance and payment shall be considered an exercise of this option.
4. The terms in §10-5 apply to the property owner of record as of the date of the LWEF approval, and is not transferrable to subsequent owners.
  5. The property owner of record as of the date of the LWEF approval must reasonably maintain the property from that time, until they choose to elect this option.
  6. The property owner must permit full access to the property by the appraisers, as needed to perform the appraisals.
  7. The property owner must inform the appraisers of all known defects of the property as may be required by law, as well as all consequential modifications or changes to the property subsequent to the date of the LWEF application.
  8. The terms in §10-5 will be guaranteed by the Applicant (and all its successors and assigns), for 10 years following the LWEF receiving final approval or certification of any kind from the Town, or any other government authority, by providing a bond (or other surety) to the Town, in an amount determined to be acceptable by the Town. This surety account will ensure execution of all aspects of the terms in §10-5 (including compensation of eligible property owners in the case of default by Applicant). Failure to maintain this surety account shall be cause for revocation or denial of renewal of the LWEF Permit, and shall be considered a violation of this law subject to the penalty provisions described in §11-2. The number of distinct violations for the purpose of calculating a monetary penalty in accordance with §11-2 shall be equal to the number of individually taxed real property parcels contained in the Potential Project Impact Area, and each week the violation occurs shall be considered a separate and distinct violation.
  9. Payment by the Applicant not made within sixty (60) days will accrue an interest penalty. This will be twelve percent (12%) annually, from the date of the written election from property owner.
  10. For any litigation regarding this section, all reasonable legal fees and court costs will be paid by the Applicant.

**10-6 LWEF Environmental Monitoring:** The Applicant will permit post-construction environmental studies deemed appropriate by the Town Planning Board. These will be funded by the Escrow Account. Post-construction field studies will include, but are not limited to, scientific assessments of regional nesting failures, and territory abandonment of special status species like raptors species, within two (2) miles of the LWEF. When these assessments are being done, only researchers involved with these studies will be legally allowed to touch carcasses. LWEF personnel or contractors who move carcasses without written Town approval will be subject to a fine per §11-2. During the life of the project every bird or bat carcass, or crippled bird or bat found within the LWEF Boundary must be reported by the Applicant to the Town Code Enforcement Officer, within seven (7) days.

**10-7 LWEF Decommissioning:** If the Town Code Enforcement Officer or authorized representative condemns any portion of a WEF for cause, or if no electricity is generated from any turbines for three (3) consecutive months, the WEF owner and/or property owner shall have three (3) months to remedy the safety issues or complete the decommissioning of the WEF according to the approved plan.

- 10-7.1 The Town Code Enforcement Officer or authorized representative may grant extensions of time for repair and/or maintenance for good cause, such as the need to back-order parts that are not currently available from the supplier or the need to repair a WEF damaged by a storm.
- 10-7.2 The Planning Board will review the projected decommissioning costs (§9-2.6(8)) every five (5) years. The LWEF owner will adjust their security to any changes from the original calculation.
- 10-7.3 Decommissioning shall include the complete removal of turbines, buildings, electrical components, cabling, and any other associated facilities and/or structures, including below-ground items (foundations, anchors, and other installed objects), to a depth of five (5) feet below grade.
- 10-7.4 Decommissioning shall include removal of roads and access gates unless the landowner requests in writing that selected surface areas not be restored.
- 10-7.5 Disturbed earth shall be graded and re-seeded.

**10-8 WEF Complaints:** The Town shall set up a procedure for filing and handling WEF complaints. The Town may establish a monitoring committee to oversee resolution of complaints regarding WEFs.

The WEF owner shall initially be given a reasonable opportunity to resolve all complaints. If a resolution is not

made in a reasonable time (as determined by the Town) the Town may engage mediators or its monitoring committee to attempt to resolve disputes. The cost of such resolution shall be borne by the WEF owner.

## **Section 11. Taxes, Penalties, Enforcement, and Construction with other Laws**

**11-1 WEF Tax Exemption:** The Town reserves the right to opt out of the Tax Exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by §8 of that law, or by any other provision of law. Further, the Town reserves the right to assess any and all parts of the WEF at their full current market value. That value will be determined by the documented construction cost, less any applicable depreciation.

### **11-2 Enforcement; Penalties and Remedies for Violations:**

- 11-2.1 The Town Board and/or Planning Board shall appoint such Town staff or outside consultants as it sees fit to enforce and implement this Local Law.
- 11-2.2 Any person owning, controlling or managing any building, structure or land related to a WEF, shall be legally and financially responsible for any and all violations of this Local Law. Such violations would include noncompliance with the terms and conditions of the permit herein, or any order of the enforcement officer. Any person who is responsible for so doing, shall be guilty of an offense and subject to a fine of not more than \$1000 per incident, and/or any other penalties provided by local, state, or federal law.  
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 \$1000 for each violation, and each week said violation continues shall be deemed a separate violation. If multiple turbines are in violation, each turbine's violation shall be considered a separate offense.
- 11-2.3 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 legal action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, operation, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

### **11-3 Financial Stability and Sale of LWEF:**

- 11-3.1 The Planning Board may, at its discretion, request the most recent annual audited financial report of the Applicant prepared by a duly licensed Certified Public Accountant, during the review process. If such report does not exist, the Planning Board may, in its sole discretion, require a suitable alternative to demonstrate the financial responsibility of the applicant and its ability to comply with the requirements of this Local Law.
- 11-3.2 No transfer of any LWEF or permit, or sale of the entity owning such LWEF, including the sale of more than 30% of the stock of such entity (not counting sale of shares on a public exchange) shall occur without written acceptance by such entity of the obligations of the permittee under this Local Law and the terms of the permit. Any such transfer shall not eliminate the liability of any entity for any act occurring during its ownership or status as permittee.

### **11-4 Supplement to Town of Clayton Zoning Ordinance:** A copy of this Law and any subsequent amendments shall be included in any printed or electronic publications of the Town of Clayton Zoning Ordinance.

**Section 12. Severability:** Should any provision of this Local Law be declared by any Court, administrative body, or board, or any other government body or board, to be unconstitutional, invalid, preempted, void, or otherwise inapplicable for any reason, 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, invalid, preempted, void, or otherwise inapplicable. {Credit to the editors here as the Severability words in LL5 are an improvement over what originally was in LL3 (which has now been updated).}

**Section 13: Effective Date:** This local law shall take effect immediately upon filing with the Secretary of State.