

TOWN OF KENDALL  
LOCAL LAW NO. 1 OF THE YEAR, 2008

Amendment to the Town of Kendall  
Zoning Ordinance Regulating Wind Energy Conversion Systems

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TOWN OF KENDALL  
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A Local Law Entitled “Amendment to the Town of Kendall Zoning Ordinance  
Regulating Wind Energy Conversion Systems”

Be it Enacted by the Town Board of the Town of Kendall as Follows:

The Zoning Ordinance of the Town of Kendall is hereby amended by this Local Law, as follows:

**SECTION 210**            **DEFINITIONS**

*Add the following new definitions to section 210 in alphabetical order:*

**AGRICULTURAL WIND ENERGY FACILITY:** A system consisting of supporting tower(s) and wind turbine with associated plant and equipment used primarily to generate electrical power for agricultural purposes, to include all farm uses and residence of farm owner or tenant of property; regulated and taxable as farm asset. The Farm operation shall be seven (7) acres or larger and generate annually a minimum of ten thousand (\$10,000) dollars of farm income.

**ALTERNATIVE ENERGY SYSTEMS:** Structures, equipment, devices or construction techniques used for the production of heat, light, cooling, or electricity or other forms of energy on-site and may be attached to or separate from the principal structure. Current examples include windmills, solar collectors and solar green houses, heat pumps or other related devices.

**AS BUILT:** When construction conditions require changes to contract drawings they are so noted and described on final drawings of record.

**COMMERCIAL WIND ENERGY CONVERSION SYSTEM:** (also CWECS) A wind energy conversion system (WECS) consisting of one wind turbine, one tower, and associated control or conversion electronics and delivery system which has a rated capacity greater than 250 kilowatts and a total height of no more than four hundred fifty (450) feet.

**ELECTRONIC AND ELECTRONIC MAGNETIC INTERFERENCE:** Interference to satellite towers, microwave transmissions, cell communication towers and “ghosting” of television reception caused by electronic reflections of electrical generating facilities.

**ESSENTIAL SERVICES AND PUBLIC UTILITIES:** Erection, construction, operation, or maintenance by municipal agencies or public utilities of telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities, but shall not include telecommunication facilities as

defined herein, and shall not include wind energy facilities (including infrastructure supporting wind energy facilities), landfills, waste transfer stations or other facilities with the primary purpose of handling or disposing of household or industrial waste.

FALL ZONE (FOR WIND ENERGY SYSTEMS): A distance of one and a half times (150%) the Wind Energy System height as measured as a vertical distance from the pre-construction or post construction grade, whichever is lower, at the tower base to the highest point (apex) of the rotor blade.

GLOBAL POSITIONING SATELLITE (GPS): Satellite placed, monitored by governments, to accurately reference electronically, instrument locations on the earth's surface.

GROUND CLEARANCE: The minimum distance between the lowest point of the rotor blade rotation and ground at the base of a tower.

HUB HEIGHT: Center of rotational axis of rotor blades and gearbox (nacelle).

INDUSTRIAL WIND ENERGY FACILITY: Shall be considered to be the same as CWECS and regulated as such.

INFRASOUND: Sounds produced by such devices as wind generating equipment below the sound level of the audible level of human hearing, about 20 hertz (Hz), which produces tactual sensation of pressure for some humans and travels farther than higher frequencies.

KILOWATT (KW): A unit of measurement of electrical power equal one thousand (1,000) Watts.

MEGAWATT (MW): A unit of measurement of electrical power equal to one million (1,000,000) Watts.

METEOROLOGICAL TOWERS: (also MET Towers) Any commercial equipment and tower used to collect atmospheric data such as temperature, wind speed and direction. The data is used to evaluate the feasibility of installing COMMERCIAL WIND ENERGY CONVERSION SYSTEMS (CWECS). MET Towers are temporary structures and are intended to be removed at the end of the data collection period.

NACELLE: Large enclosure placed at the top of supporting tower, housing equipment such as the generator, gearbox, drive train, rotor blades and hub and breaking system.

NET-METERING: An exchange of excess electricity between owner of generating facility and utility company. The utility company may accept over generation beyond the owner's needs and allows the metering system to reverse spin, thereby crediting producer under an interconnection agreement.

**OVERLAY DISTRICT:** A district that encompasses one or more underlying districts and that imposes additional requirements above that required by the underlying district.

**PILOT PROGRAM:** (Payment In Lieu of Taxes) A program implemented as replacement of revenue lost to towns by State of New York Tax Exemption Law for renewable energy systems (Real Property Tax Law 487).

**RESIDENTIAL WIND ENERGY CONVERSION SYSTEM:** A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a maximum rated capacity of 30 kilowatts (30KW) and a total height not to exceed 65 feet on parcels between two and less than five acres and 120 feet on parcels of five or more acres.

**SHADOW AND FLICKER:** Effect of sunrays passing the rotating blades of a wind energy generating system similar to the effect of strobe lighting.

**SOUND PRESSURE LEVEL OR SOUND LEVEL (dBA):** A logarithmic measurement of sound pressure (sound level) fluctuation produced by a particular source of sound as compared to a reference (background) sound pressure level. Sound pressure shall be expressed in decibels, using A-frequency weighting (dBA), which is the most commonly used standard in the United States for the measurement of environmental noise. With human hearing, low and high frequency sounds appear to be less loud. A-weighting (A-frequency weighting) reduces the level of low and high frequencies to produce a reading that corresponds approximately to what humans hear. The measurement of sound pressure levels shall be performed in accordance with the latest revision of International Standards for acoustic noise measurement techniques for Wind Generators (IEC 61400-11) or other industry accepted procedures.

**STAND ALONE SYSTEM:** Not connected to power grid or net-metered.

**TOTAL HEIGHT:** (also TIP HEIGHT or MAXIMUM OVERALL HEIGHT) The vertical distance from the pre-construction or post construction grade, whichever is lower, at the tower base to the highest point (apex) of the rotor blade.

**TOWER:** The support structure, including guyed, monopole and lattice types, upon which a wind turbine, nacelle, generator and other mechanical and electrical devices are mounted.

**TOWER HEIGHT:** The vertical distance from the pre-construction or post construction grade, whichever is lower, at the tower base to the center of the horizontal axis of the rotor blade.

**TRANSMISSION LINES:** Conductive lines required delivering derived power to electrical grid. These conductors of electrical energy can be installed underground and overhead.

**VERTICAL AXIS WIND TURBINE:** (also VAWT) One or more mechanical devices, such as wind turbines, with multiple caged blades which are designed and used to convert the kinetic energy of wind into a usable form of energy. The turbine rotates on a vertical axis. The VAWT includes all parts of the system except the tower and transmission equipment.

**WIND ENERGY OVERLAY DISTRICT:** An overlay district which encompasses part or parts of one or more underlying districts and establishes requirements limited to Commercial Wind Energy Conversion Systems.

**WIND ENERGY FACILITY:** Any Wind Energy Conversion System, including Commercial Systems, Agricultural Systems, Residential Systems or Meteorological Towers (MET Towers), including all related infrastructure, electrical lines and substations, access roads, and accessory structures.

**WIND ENERGY CONVERSION SYSTEM:** The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation or support, generator, infrastructure, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, or control facilities or other components used in the system. The turbine or windmill may be on a horizontal or vertical axis. A wind energy conversion system may consist of one or more wind turbines.

## **SECTION 725            WIND ENERGY OVERLAY DISTRICT**

### **A. CREATION**

The Town Board of the Town of Kendall hereby adopts the rules and procedures for creating Wind Energy Overlay Districts to allow consideration of use of the Town's wind energy resource through Commercial Wind Energy Conversion Systems (CWECS) and to regulate or prohibit the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

### **B. AUTHORITY**

The Town Board of the Town of Kendall adopts this Section under the authority granted by:

1. Article IX of the New York State Constitution, § 2 (c) (6) and (10).
2. New York Statute of Local Governments, § 10 (1), (6), and (7).
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and § 10 (1)(a)(6), (11), (12), and (14).
4. The supersession authority of New York Municipal Home Rule Law, § 10 (2)(d)(3).
5. New York Town Law, Article 16 (Land Use).
6. New York Town Law § 130(1) (Building Code), (3) (Electrical Code), (5) (Fire Prevention), (7) (Use of streets and highways), (7-a) (Location of driveways), (11) (Peace, good order and safety), (15) (Promotion of Public welfare), (15-a) (Excavated Lands), (16) (Unsafe buildings), (19) (Trespass), and (25) (Building lines).

7. New York Town Law § 64(17-a) (protection of aesthetic interests) and (23) (General powers).

**C. WIND ENERGY OVERLAY DISTRICT RULES**

1. Under New York State statutes the Town is not required to act on rezoning requests to create Wind Energy Overlay Districts. The rezoning of districts is completely at the discretion of the Town Board.
2. Wind Energy Overlay Districts are permitted only in Residential Agricultural (RA), Rural Residential (RR) Districts.
3. No Wind Energy Overlay District may be initially created without specific requests for a CW ECS.
4. Once a Wind Energy Overlay District has been created, new Wind Energy Conversion Systems, accessory structures, or facilities may be added in that district by the granting of a Special Use Permit.

**D. CREATION OF WIND ENERGY OVERLAY DISTRICTS**

1. Upon receipt of an application, the recommendations of the County Planning Board, the recommendations of the Town Planning Board, the holding of public hearings and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the application, in accordance with the standards of this Section.
2. If approved, the Town Board will direct the Planning Board to modify the Official Zoning Map to reflect the creation of the wind energy overlay district.

**SECTION 726            WIND ENERGY CONVERSION SYSTEMS**

**A. PURPOSE**

To permit and regulate the location, erection, operation and transmission lines of wind energy systems, thereby protecting the interests of Town of Kendall residents. Wind Energy Conversion Systems shall be classified as Residential, Agricultural and Commercial Systems permitted by the Town of Kendall and regulated by the enactment of this ordinance.

**B. AUTHORITY**

The Planning Board, as an advisory panel, is charged by the Town Board of the Town of Kendall to prepare ordinance as it may request returning land use ordinance to the Town Board for their disposition.

**C. FINDINGS**

The Planning Board of the Town of Kendall finds that:

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

2. The generation of electricity from properly sited wind turbines has the potential to tie into existing power distribution systems allowing for the transmission of electricity from wind generation stations to utilities or other users, or alternatively may be used to reduce or eliminate on-site consumption of energy.
3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners, the environment, and the general public. Wind Energy Conversion Systems need to be consistent with Article I of the Town of Kendall Zoning Ordinance and continue the Open Space Policy of the Town of Kendall Master Plan.
4. Wind Energy Conversion Systems represent significant potential aesthetic impacts because of their large size, lighting and shadow flicker effects. The installation of Commercial Wind Energy Conversion Systems will change the landscape and appearance of the Town of Kendall.
5. If not properly regulated, installation of Wind Energy Conversion Systems can create drainage problems through erosion and lack of sediment control for the facility and access roads and harm farmlands through improper construction methods.
6. Wind Energy Conversion Systems may present risks to avian bird populations.
7. If not properly sited, Wind Energy Conversion Systems may present risks to the property values of adjoining property owners.
8. Without proper planning, construction of Wind Energy Conversion Systems can create traffic problems and damage local roads.
9. If improperly Sited, Wind Conversion Energy Systems can interfere with various types of communications.

## **SECTION 727 COMMERCIAL WIND ENERGY CONVERSION SYSTEMS**

### **A. GENERAL**

1. No Commercial Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Kendall except in compliance with this section.
2. No Commercial Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Kendall, except in a Wind Energy Overlay District.
3. The placement, construction, and major modification of all Commercial Wind Energy Conversion Systems (CWECS) within the boundaries of the Town of Kendall shall be permitted only by Special Use Permit.
4. Commercial Wind Energy Conversion Systems are permitted only in the Residential Agricultural (RA), Rural Residential (RR) Districts.
5. The applicant shall pay all costs associated with the Town of Kendall's review and processing of each application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The

Town of Kendall may require the applicant to enter into an escrow agreement to cover the engineering and legal costs of reviewing and processing all applications. This agreement will include the cost of the review required by SEQRA, creation of an overlay district, or modification to the Town of Kendall Master Plan.

6. Prior to the creation of a Wind Energy Overlay District the Town Board has the ability to negotiate a payment in lieu of taxes and/or host community agreement with any applicant to compensate the Town for expenses or impacts on the community.
7. The Town of Kendall reserves the right to opt out of the provision of the New York State Real Property Tax Law (RPTL) Section §487 under the authority within its jurisdiction granted by Paragraph 8 of that law.
8. Prior to the issuance of a building permit, the applicant shall provide the Town of Kendall with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with the construction and operation thereof.
9. The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an interconnection agreement with the New York System Operator and/or the applicable transmission owner.
10. The applicant is responsible for remediation of damaged roads during construction and upon completion of the installation or during periods of maintenance of a Wind Energy Conversion System. A public improvement bond shall be posted prior to the issuance of any building permit in an amount determined by the Town Board, sufficient to compensate the Town of Kendall for any damage to local roads and infrastructure.
11. The Town of Kendall shall be named as an additional insured under the general liability policy of the applicant, with an amount no less than an amount to be determined by the Town Board given the nature and scope of the project.

## B. APPLICATION

1. Applicants shall request a pre-application meeting(s) with the Planning Board, Code Enforcement Officer, and with any consultants retained by the Planning Board for preliminary application review.
2. Upon submittal of an application, the Planning Board shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this application is included in the application. No application shall be acted on by the Planning Board until the application is deemed complete by the Planning Board.
3. An Application for a Commercial Wind Energy Conversion System (CWECS) shall include the following:
  - a. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation. The application shall include a certified list of

- individual and corporate officers of the applicant and their responsibilities to this project.
- b. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that:
    - 1) The property owner is familiar with the proposed application.
    - 2) The property owner authorizes the submission of the application.
  - c. Proof of ownership of involved properties or long-term leases, legally executed and filed with the Orleans County Clerk.
  - d. Address or other property identification of each proposed tower location, including Tax Map section, block and lot number with Global Positioning Satellite (GPS) location of each proposed wind tower and related structure.
  - e. A plot plan with a minimum scale of one (1) inch = four hundred (400) feet prepared by Professional Engineer licensed in the state of New York, stamped and dated to include:
    1. Six Copies of the Drawing Package.
    2. North arrow and bar scale.
    3. Property Lines and physical dimensions of the site provided by a surveyor licensed in the state of New York.
    4. Topography by one foot (1 ft.) contours.
    5. The applicant shall include an existing Site Plan and proposed Site Plan to include all roadways, fields, ponds, lakes, water courses, wetlands, residences, buildings, structures, historical sites, cemeteries, bridges or culverts, water wells, sewage systems, crop land and wood land by lot, block and tax identification number.
    6. Location of public roads, adjoining properties, schools, hospitals, and public buildings within two-thousand five hundred (2500) feet of the boundaries of the proposed CWECS Site.
    7. Each WECS clearly referenced including location and elevation.
    8. To demonstrate compliance with fall zone and set back requirements, circles are to be drawn around each proposed tower location equal to:
      - a. One and a half (150%) times the tower height as measured from the apex of the rotor blade to the base of the tower.
      - b. Circles with a one-thousand five hundred (1500) foot and two-thousand five hundred (2500) radiuses.
  - f. A Construction Plan sequential by site designation, estimated dates and duration of construction displaying access/egress roads for delivery of construction equipment, staging areas, parking areas for receiving and off loading of materials and structural components. No parking on public roads or streets shall be permitted.
  - g. A pre-construction survey to be preformed by an independent third party, of roads, culverts and bridges shall be supplied to the Planning Board and Town of Kendall Highway Superintendent for review, verification, sign-off and record retention. The survey shall include photo and/or video documentation.
  - h. Vertical drawing of the CWECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point

- of any rotor blade, location of climbing pegs, and access doors. One drawing may be submitted for each CWECS of the same type and total height.
- i. A description of the total amount of land impacted by the construction and operation of a Wind Energy Facility. The description will include the impacts of land clearing, the loss of open spaces and the amount of agricultural land used during all phases of the project.
  - j. Landscaping Plan depicting existing vegetation and describing any areas to be cleared and all specimens to be added, identified by species and species size at installation with their location.
  - k. Lighting Plan:  
The applicant shall submit a lighting plan that describes all lighting that will be required. Such plan shall include, but is not limited to, the planned number and location of lights, lighting that may be required by the FAA including, a copy of the FAA lighting determination, types of light, whether any such lights will be flashing, and mitigation measures planned to control the light so not to spill over onto neighboring properties.
  - l. Adjacent Property Owners:  
A list of all adjacent property owners of land within two-thousand five hundred (2500) feet as measured from the tower base to non-participating property lines shall be provided to the Planning Board for review and record retention. The list shall contain the names, property addresses, mailing address and tax map numbers of the property owners.
  - m. Decommissioning Plan:  
The applicant shall submit a decommissioning plan which shall include:
    1. The anticipated life of the CWECS.
    2. The estimated decommissioning cost in current dollars.
    3. How said estimate was determined including the amount the cost is offset with salvage value.
    4. The method of ensuring that the funds will be available for decommissioning and restoration.
    5. The method, such as annual re-estimate by an independent licensed engineer or qualified estimator approved by the Town, by which the decommissioning cost will be kept current.
    6. The manner in which the CWECS will be decommissioned and the site restored and shall include the following:
      - a. Removal of wind turbines and associated ancillary equipment.
      - b. Removal of substations and associated ancillary equipment.
    7. Removal of the concrete base of the wind turbine to a depth of not less than five (5) feet and restoration of affected land to pre-construction grade.
    8. Removal of buried cables if less than five (5) feet in depth.
    9. A pre-decommissioning survey, to be performed by an independent third party, of roads, culverts and bridges and affected land. The survey shall include photo and/or video documentation.
    10. Removal of access roads and restoration of affected land.
    11. Widening of roadways if necessary for heavy equipment and final restoration of all roadways used during removal.

12. Restoration of vegetation (consistent and compatible with surrounding vegetation) less any fencing or minor improvements requested by the landowner.
- n. The application shall include information relating to the construction, installation and repair of the Wind Energy Facility as follows:
  1. Construction schedule describing anticipated commencement and completion dates.
  2. Hours of operation.
  3. Designation of heavy haul routes.
  4. A list of materials, equipment and loads to be transported.
  5. Identification of temporary facilities intended to be constructed, and representatives in the field with name and phone number(s).
  6. Specific turbine information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each wind turbine model, tower, and electrical transmission equipment.
  7. Method of delivery, both short and long term storage, and the method of removal from the Site of large components for repairs which may become necessary in the normal course of operation of the WECS over its operational life.
  8. The amount of farm land removed from use during the construction period and after completion of the Wind Energy Conversion Facility.
- o. SEQRA Review:
  1. Applications for CWECS are deemed Type 1 projects under SEQRA. The town may conduct its SEQRA Review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Town of Kendall's proceedings. The SEQRA shall also include a Visual EAF Addendum (from SEQRA Part 617.20, Appendix B).
  2. At the completion of the SEQRA Review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town of Kendall shall issue a Statement of Findings. The Statement of Findings may also serve as the Town's decision on the application.
- p. Agricultural Data Statement:

Applications for a facility that are proposed on property within an agricultural district containing a farm operation, or on property with boundaries within five hundred (500) feet of a farm operation located within an agricultural district, shall include an Agricultural Data Statement. The statement shall include:

  1. The name and mailing address of the applicant.
  2. A description of the proposed project and its specific location.
  3. Identification of the agricultural district in which the site is located.
  4. A brief description of the farm operations and how they will be affected by the proposed wind system.

5. The name and mailing address of any owner of land located in an agricultural district within five hundred (500) feet of the boundary of the property upon which the project is proposed.
  - q. A tax map or other map showing the project site and the location of the farm operations involved.
4. Wind Energy Studies
- All studies where applicable shall comply with NYSDEC Visual and Noise Assessment and Mitigation Guidelines. The Following studies shall be submitted with the application:
- a. Meteorological Data:  
The applicant shall show evidence that a wind assessment has been conducted. Meteorological data such as air temperature, wind speed and wind direction shall be collected through a Meteorological Tower (MET Tower) sited within the Town of Kendall on or in close approximation to the proposed Site. Test data cannot be interpolated from areas outside the town of Kendall.
  - b. Shadow Flicker:  
The applicant shall conduct a study on potential shadow flicker. The study shall identify areas where shadow flicker may interfere with residences, churches, schools and all public areas and buildings and describe measures that shall be taken to eliminate or mitigate the problems.
  - c. Visual Impact:  
Applications shall include a visual impact study of the proposed CWECS as installed, which may include computerized photographic simulations. The study shall demonstrate any visual impacts from each strategic vantage point from residences, schools, churches, historic site and all public buildings and gathering places. Mapping at a minimum shall include visibility based on topography-only and vegetated analysis with locations of residences, schools, churches, historic site and all public buildings and gathering places.
  - d. Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring CWECS Sites.
  - e. Fire Protection:  
The application shall include a fire protection and emergency response plan, created in consultation with the fire departments having jurisdiction over the proposed sites.  
The plan may include but is not limited to the following:
    1. Fireproof or fire resistant building materials.
    2. Buffers or fire retardant landscaping.
    3. Availability of water.
    4. An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment operated without regular human occupancy.
    5. Identification of tower locations and inclusion into the county 911 emergency system.

6. Provision of training and fire fighting equipment for local fire protection personnel.
- f. Noise Analysis:

A noise analysis completed by a certified New York State acoustical engineer documenting the noise levels associated with the proposed CWECS.  
The study shall include the following:

  1. A survey and report that analyzes the pre-existing ambient noise regime (including seasonal variations), including but not limited to separate day and night measurements of low frequency and A-weighted noise levels across a range of wind speeds (include near cut-in), turbulence measurements, distance from the turbines, with location of residences, buildings and facilities located within two miles of the proposed project site.
  2. A description and map of the project's noise producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
  3. A description and map of the noise sensitive environment, including the site property lines, residences, schools, places of worship and other facilities where quiet is important within two miles of the proposed site.
  4. Manufacturers' noise design and field test data, both audible dB(A) and low frequency, for all proposed structures.
- g. A geological report shall be furnished which shall, at a minimum, include the following:
  1. Soils engineering and geological characteristics of the site based on on-site sampling and testing. Copies of soil boring logs are to be included in the report to the Town.
  2. Foundation design criteria for all proposed structures including the need for any blasting.
  3. Slope stability analysis.
  4. Grading criteria for ground preparation, cuts and fills, and soil compaction.
  5. Impact on existing water aquifers including a study and impact on existing wells.
  6. Submission of a storm water pollution prevention plan (SWPPP).
  7. Post construction monitoring plans for NYS Dept. of AG & Markets guidelines, NYSDEC Draft Bird/Bat guidelines, regular structural/operational inspections conducted by an independent licensed engineer(s), and operational noise monitoring.
- h. Ice throw calculations:

A report from a New York State Professional Engineer that calculates the maximum distance that ice from the turbine blades could be thrown for the make and model wind turbine proposed for the site. The basis of the calculation and all assumptions must be disclosed.
- i. Blade throw calculations:

A report from a New York State Professional Engineer that calculates the maximum distance, in the event of a failure, that pieces from the turbine blades could be thrown for the make and model wind turbine proposed for the site. The basis of the calculation and all assumptions must be disclosed.

- j. Catastrophic tower failure:  
A report from the turbine manufacturer stating the wind speed and conditions with all assumptions that the turbine is designed to withstand.
- k. The applicant will include a complaint resolution process for both the construction and operational phase to address complaints from nearby residences. The process may use an independent mediator or arbitrator and include a time limit for acting on a complaint.
- l. Other Information:  
Such additional information as may be reasonably requested by the Town or the Town Engineer.

### C. STANDARDS FOR CW ECS

- 1. Construction and Traffic Routes:
  - a. Construction of a CW ECS poses potential risks because of the large size of construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such routes shall include:
    - 1. Minimize traffic impacts from construction and delivery vehicles.
    - 2. Minimize WECS related traffic during times of school bus activity.
    - 3. Minimize wear and tear on local roads.
    - 4. Minimize impacts on local business operations.
  - b. Permit conditions may require remediation during construction, limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public and all applicable state, county and municipal highway authorities and superintendents whose roads are included in the WECS traffic route plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips, and the dates and time periods of expected use of designated traffic routes.
  - c. The applicant is responsible for remediation of damaged roads during construction and upon completion of the installation, periods of maintenance, and decommissioning/restoration of a Wind Energy Facility.
  - d. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable State and Federal laws and regulations.
  - e. Geological soil testing shall be done at each proposed tower foundation. Should testing suggest any interference with existing water aquifers the site will be disqualified.
  - f. Access roads required for construction shall be adequate to support weight of trucks, erection cranes, facility sections and heavy construction equipment. Temporary roads are to be returned to pre-construction condition leaving only private driveways used for routine maintenance by facility and utility crews.

Overnight parking of vehicles will be permitted only during established construction period or during periods requiring additional personnel or equipment for maintenance and repair of a wind energy system. Parking is prohibited on public roads at all times.

- g. Excavation shall be as required for foundation only, over-excavation shall be repaired as per NYS Building Codes. Excess-quarried materials shall not be used to raise existing grade at the tower base. These materials may be used elsewhere on the proposed site by permission of the owner and Town of Kendall Code Enforcement Officer. Excess materials may not be taken from the Town of Kendall; however, agreement may be pursued by the Town Board for use by the Town of Kendall Highway Department. (Refer to SECTIONS 660 and 707 Town of Kendall Zoning Ordinance.)
- h. All underground work shall be clearly marked "As Built", documented during construction, plotted upon completed project drawings, and filed with the Town of Kendall with "Dig Safely New York (1-800-962-7962)" or its successor.
- i. Utility Right of Ways shall not be renegotiated to take over more ground nor increase limits by removal of trees. Redesign of utility poles must consider impact of access for large farming machinery.
- j. The Town of Kendall will employ an independent engineering inspection service to monitor all construction/erection activities. The facility developer shall assume all costs of this service.
- k. All solid waste, hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations as set forth by the appropriate agencies.
- l. Any construction, ground disturbance or restoration involving agricultural land or land located in agricultural districts shall be done according to the New York State Department of Agriculture and Markets' publication titled "Guidelines for Agricultural Mitigation for Wind Power Projects."

## 2. Certification

The facility developer shall employ an independent and Town of Kendall approved, engineering service to certify to the Town that the facility is built as designed and is qualified for service before final permit is issued by the Code Enforcement Officer. The applicant shall provide the following certifications:

- a. All structural components, including the foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by an independent New York State licensed Professional Structural Engineer. The engineer shall certify compliance with all applicable local, state, and federal codes and regulations.
- b. After completion of the Wind Energy Conversion System, the applicant shall provide a post-construction certification from an independent New York State licensed Professional Engineer stating that the project complies with applicable codes and industry practices and has been completed according to the design plans.
- c. The electrical system shall be certified annually in writing by an independent a New York State licensed Professional Electrical Engineer. The engineer

- shall certify compliance with good engineering practices and with the appropriate provisions of IEEE standards and any other explicit technical standards required in New York State.
- d. The rotor overspeed control system shall be certified in writing by an independent New York State licensed Professional Engineer. The engineer shall certify compliance with applicable design and operational codes.
  - e. Certification of project completion must be supplied by the applicant and approved by the Town of Kendall Code Enforcement Officer.
3. Color, Finish and Visual Impact
- a. All applicants shall use measures to reduce the visual impact of WECSs to the greatest extent possible. All structures shall be finished in a single, non-reflective matt finish color or a camouflage scheme and shall include a maintenance schedule and plan to maintain the finished color and appearance of the WECS.
  - b. Individual WECSs within a Wind Energy Overlay District shall be constructed using wind turbines whose design and appearance shall exhibit uniformity to each other in all respects: height, color, size, geometry, and rotational speed.
  - c. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
  - d. No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the telecommunications provisions of the Town of Kendall Zoning Code.
4. Compliance with Regulatory Agencies:  
The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the Wind Energy Conversion System.
5. Electrical
- a. All interconnecting lines and wires from generators to ground ancillary structures and utility transmission grid will be installed underground to the maximum extent practicable. The Planning Board shall have the authority to waive this requirement only if the Planning Board has sufficient engineering data submitted by the applicant to demonstrate that underground transmission lines are unfeasible.
  - b. Underground high voltage lines shall have five-foot (5') cover to existing grade, per NEC burial guidelines. Burial depth may be reduced in areas of bedrock with less than five feet in depth per NYSDAM, NEC permits and New York State Department of Agriculture and Markets guidelines.
  - c. All precautions shall be applied to prevent stray voltage leakage; should such occur, immediate remedial correction must be taken. A report of complaint and remediation must be given to the Town of Kendall Code Enforcement Officer for immediate analysis and remedial action.
6. Electromagnetic Interference
- a. No Commercial Wind Energy System shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal

communication systems would produce electromagnetic interference with signal transmission or reception.

- b. No CW ECS shall be installed in any location along the major axis of an existing microwave communication link where its operation is likely to produce electromagnetic interference in the link's operation.
  - c. If it is determined that a CW ECS is causing electromagnetic interference, the operator shall take necessary corrective action to eliminate this interference, including relocation or removal of the facilities, or resolution of the issue with the impacted parties.
  - d. Failure to remedy electromagnetic interference is grounds for revocation of the Special Use Permit for the specific WECS or WECSs causing the interference.
7. Fire Prevention
- a. Shall have automatic fire suppression system within the nacelle.
  - b. All Wind Energy Facilities shall be designed and constructed in compliance with the applicable requirements of the New York State Uniform Fire Prevention Code, as currently in effect and as hereafter amended.
8. Height Restrictions
- a. The total height of any Commercial Wind Energy Conversion System shall be four hundred (400) feet. The total height shall be measured from the ground elevation from the pre-construction or post construction grade whichever is lower to the top of the tip of the blade at the apex of rotation.
  - b. The blade tip of any wind turbine shall, at its lowest point, have a ground clearance of not less than fifty (50) feet.
9. Landscaping
- Upon completion of the installation, the Site shall be returned as close as possible to its natural state, including, but not limited to, restoring the subsoil and topsoil to preconstruction condition and reforestation of any woodland that have been cleared for Site preparation. Vegetation shall be planted in a natural pattern on the Site to screen as much of the facility as possible without restricting air flow. Existing vegetation may be used to supplement new plantings.
10. Lighting
- Towers and turbines shall not be artificially lighted or marked beyond the requirements of the Federal Aviation Administration (FAA). Minimum security or safety lighting may be allowed as approved on the Site Plan. Any lighting systems shall be designed to minimize light pollution and shall include the use of light hoods, low glare fixtures or directing lights at the ground. Lighting shall not shine onto adjacent properties.
11. Local Waterfront Revitalization Program
- The applicant is required to conform to all requirements of the Town of Kendall Local Waterfront Revitalization Program (LWRP).
12. Maintenance and Replacement
- a. A permitted facility may be maintained and repaired at any time, which becomes necessary in the normal course of operation of the Wind Energy Facility, without a Special Permit or Building Permit, provided the maintenance does not involve the following:

1. An increase in the number of towers.
  2. An increase in the number of wind turbines.
  3. An increase in the tower height.
  4. A change in the tower location.
  5. A change in the type of wind turbine, nacelle or tower used.
  6. A change in the number or size of accessory structures.
  7. A change that increases the sound pressure level or shadow flicker produced by the facility.
  8. The transportation of heavy equipment, cranes and large spare parts that are oversize loads and require public road use, the widening of access roads, or pose potential damage to the infrastructure of the Town of Kendall, or surrounding communities.
- b. Replacement in kind of a Wind Energy Facility may occur with Town Board approval when:
1. There will be no increase in total height.
  2. No change in location of the WECS.
  3. No additional lighting change or facility color.
  4. No increase in noise or shadow flicker produced by the WECS.
- c. Overnight parking of vehicles will be permitted only during periods requiring additional personnel, equipment, or extended periods of time necessary for the maintenance and repair of a wind energy system. There will be no parking on public roads.
- d. Any damaged or unused parts shall be removed from the Site within thirty (30) days or stored in a locked on-site storage building. All maintenance equipment, spare parts, oil or chemicals shall also be stored in said on-site locked storage building.
13. Safety and Security Requirements
- a. Shall have lightning arresting systems.
  - b. Wind turbines shall be equipped with electromagnetic (automatic) and mechanical (manual) braking systems to prevent over rotation, reducing stress on tower and rotor blades. No wind turbine shall be permitted that lacks an automatic breaking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the Tower structure, rotor blades, and turbine components.
  - c. Security signs for public safety and warnings shall be allowed. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hour, 7 day per week coverage. The Planning Board may require additional signs as approved on the Site Plan.
  - d. A security plan shall be required, including the training of first responders, with emergency personnel contacts and responsibilities posted at the site, including the Town of Kendall Emergency Services, and the Town of Kendall Town Clerk.

- e. A locked gate shall be provided at the junction of a driveway and a public road to restrict access. Access points shall be guarded by physical structure, fencing or bollards to block non-permitted access to driveways.
14. Set backs for Wind Energy Conversion Systems
- a. The statistical sound pressure level generated by a WECS shall not exceed  $L_{10}$ -50dBA measured at the off-Site property line. However, this sound pressure level may be exceeded during short-term events such as severe wind storms and utility outages. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5dBA. Impendent certification shall be provided by a qualified and Town approved licensed acoustic engineer before and after construction demonstrating compliance with this requirement. The measurement of sound pressure levels shall be performed in accordance with the latest revision of International Standards for acoustic noise measurement techniques for Wind Generators (IEC 61400-11) or other industry accepted procedures.
  - b. In the event audible noise due to the WECS operations contains a steady pure tone, such as a whine, screech or hum, the standards for audible noise shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.
  - c. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, places of worship and public buildings. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed Project Site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.
  - d. A CWECS shall not be operated so that impulsive sound below 20 Hz affects the habitability or use of any dwelling, existing residences, schools, places of worship and public buildings.
  - e. Each CWECS shall be set back from Site boundaries as measured from the center of the CWECS:
    - 1. One-thousand five hundred (1500) feet from any Hamlet district boundary line.

2. One hundred (100) feet plus fall zone radius from state and federally identified wetlands. This distance may be adjusted to be greater distance at the discretion of the Planning Board, based on topography, land cover, land uses, state or federal requirements, and other factors such as the influence CWECs has on any endangered species or the flight patterns of resident birds.
  - f. Two-thousand five hundred (2500) feet from the property line of any school, places of worship, or any public facility.
  - g. One-thousand five hundred (1500) feet from the nearest off-Site residence existing at the time of the application. The setback is to be measure from the exterior of such residence to the center of the WECS and include all residences in and outside the Town of Kendall.
  - h. One-thousand five hundred (1500) feet from the right of way of any public road and highway. The setback shall be measured from the centerline of such right-of-way.
  - i. One hundred (100) feet plus the fall zone radius from the nearest farm building, and utility lines.
  - j. Two hundred (200) feet plus the fall zone radius from on-Site occupied structures (human and farm animal), any historical site, LWRP District, and bridges.
  - k. Six hundred (600) feet from the nearest Site boundary line or tax property boundary (non-residential).
  - l. The Planning Board may impose a setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.
15. Tower Structures
- a. The Fall Zones of a WECS shall not overlap one another.
  - b. Multiple Towers may be sited on a contiguous property and on legally leased adjacent parcels.
  - c. Towers will only be of a mono tubular freestanding design with interior stairs accessed by a security door within the tower column. The use of guy wires is prohibited.
  - d. Nacelle will be of the latest upwind design accessed via interior stair only.
  - e. Wind Turbine Towers shall not have external ladders or climbing devices, fire suppression systems or extinguishers.
16. Wildlife Species and Habitat
- a. Development and operation of a Commercial Wind Energy Facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats or other significant habitats identified in the Town of Kendall. Studies, plans and guidelines will be used to demonstrate criteria established by Federal or State regulatory agencies.
  - b. Migratory birds:  
Development and operation of a Commercial Wind Energy Facility shall be evaluated based on SEQRA findings.

- c. Design and layout of the facility shall not create artificial habitats which draw rodents or prey and entice raptors to frequent the site leading to increased bird strikes.

#### D. TRANSFER

No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town Board, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this section, and the transferee's demonstration, in the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor, nor of any other party, under this Section unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations or violations.

### **SECTION 728            RESIDENTIAL WIND ENERGY CONVERSION SYSTEMS**

#### A. GENERAL

1. The placement, construction, and major modification of all Residential Wind Energy Conversion Systems (RWECS) within the boundaries of the Town of Kendall shall be permitted only by Special Use Permit.
2. Residential Wind Energy Conversion Systems shall require a site plan review and approval by the Planning Board, a Special Permit issued by the Planning Board and a Building Permit issued by the Zoning (Code) Enforcement Officer per Article III of the Town of Kendall Zoning Ordinance.
3. The applicant shall pay all costs associated with the Town of Kendall's review and processing of the application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Kendall may require the applicant to enter into an escrow agreement to cover the engineering and legal costs of reviewing and processing the application. This agreement will include the cost of the review required by SEQRA.
4. Any WECS proposed within a distance of five hundred (500) feet from:  
Any county boundary line; any town boundary line; any village boundary line; any existing or proposed county or state park; any right-of-way of a county or state road or parkway; any stream or canal owned by the county; any existing or proposed county or state owned land on which a public building or institution is situated must be referred to the Orleans County Planning Board. The Orleans County Planning Board shall have thirty (30) days from the date of county receipt to take action on the matter.
5. Residential Wind Energy conversion Systems are permitted in the Residential Agricultural (RA), Rural Residential (RR) and General Business (GB) Districts.
6. The applicant is required to conform to all requirements of the Town of Kendall Local Waterfront Revitalization Program (LWRP).

7. Only one Residential Wind Energy Conversion System per legal single-family residential site shall be allowed and the system shall be primarily used to reduce the on-site consumption of electricity of the residence. At no times shall electricity be distributed across property lines except to tie into the electrical grid system.
8. Residential Wind Energy Conversion Systems shall be placed or located only in rear yards.
9. The Minimum Lot Size shall be no less than two acres (87,120 Sq. Ft.) in area.
10. With the sale or transfer of any portion of the existing property, current or subsequent owners must submit, within thirty (30) days of the property transfer, to the Planning Board, an application for renewal of the Special Use Permit. Approval of the renewal of the Special Use Permit shall be conditional upon:
  - a. Written acceptance of the transfer of obligations from the previous owner to the new owner and the new owner's demonstration, in the sole discretion of the Planning Board that said new owner can meet the technical and any financial obligations of the original Special Use Permit.
  - b. The applicant can still meet all requirements of the Town of Kendall Zoning Ordinance and all conditions of the Special Use Permit.

No sale or transfer of property shall eliminate the liability of either the original owner or of any other party of the Residential Wind Energy Generating System under this Section, unless there are no outstanding obligations or violations.

#### B. APPLICATION

1. Applicants Shall Request a pre-application meeting(s) with the Planning Board, Code Enforcement Officer and with any consultants retained by the Planning Board for preliminary application review.
2. Upon Submittal of an Application the Planning Board shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this application is included in the application. No application shall be acted on by the Planning Board until the application is deemed complete by the Planning Board.
3. An Application for a Residential Wind Energy Conversion System shall include the following:
  - a. Name, address and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  - b. Name, address and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that:
    1. The property owner is familiar with the proposed application.
    2. The property owner authorizes the submission of the application.
  - c. Project description:

Provide a comprehensive description of the project, including project location, total height of the tower, maximum rated capacity of the wind turbine and the utilities required.

- d. A list of all adjacent property owners  
The names, property addresses, mailing address and tax map numbers of all owners of land within five hundred (500) feet of the boundary of the property upon which the property is proposed shall be provided to the Planning Board for review and record retention.
- e. Site Plan  
A scaled site plan (prepared by a licensed Professional Engineer, licensed Land Survey or Landscape Architect) which shall include all of the information listed below. The Planning Board may require additional information, if necessary to complete its review.
  1. Title block showing the drawing title, date of preparation, name and address of applicant, name and address of a the person or firm preparing the drawing, and the signature and seal of a licensed Professional Engineer, Land Surveyor or Landscape Architect.
  2. North arrow and bar scale.
  3. Boundaries and physical dimensions of the site.
  4. Existing watercourses and bodies of water, including any state and federal wetlands.
  5. Public and private roads within one hundred (100) feet of the site boundaries.
  6. Existing residential and non-residential structures and driveways located on-site.
  7. Existing residential and non-residential structures located off-site and within five hundred (500) feet of the site boundaries.
  8. Location of the proposed tower, equipment, foundations, guy points, substations, accessory structures, fences and any other amenities.
  9. Existing and proposed above ground and underground utilities located on the site.
  10. Shall present construction plan detailing access routes, on-site disturbance of landscape, trees, soils and restoration thereof at completion of facility erection period.
  11. A circle drawn to scale around the tower which includes the fall zone equal to 150% of rotor blade height at apex.
- f. Engineering Drawings  
The applicant shall include scaled engineering drawings (prepared by a licensed Professional Engineer, licensed Land Survey or Landscape Architect) which show details and dimensions of the following:
  1. Tower.
  2. Tower Guy wire and anchor details if any.
  3. Turbine.
  4. Foundation.
  5. Distance between ground and the lowest point of any rotor blade.
  6. Height and location of climbing pegs and ladders.

7. Fencing and the color and finish of each major component.
  8. Details and dimensions of all proposed equipment, accessory structures, access roads and driveways.
- g. Manufacturers Product Information
1. Applications shall include product information from the manufacture of the proposed wind turbine or rotor blade, tower, supporting foundations, anchorage, inverter, structures and transmission lines as a composite.
  2. Supporting documentation shall include a company history and operational facilities in service as reference information and a statement of projected operational life of the facility.
  3. Supporting evidence showing that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
  - h. The application shall include a full SEQR Environmental Assessment Form (EAF) with Part 1 prepared by the applicant. The SEQRA shall also include a Visual EAF Addendum (from SEQRA Part 617.20, Appendix B).
- i. Agricultural Data Statement
- Applications for a facility that are proposed on property within an agricultural district containing a farm operation, or on property with boundaries within five hundred (500) feet of a farm operation located within an agricultural district, shall include an Agricultural Data Statement. The statement shall include:
1. The name and mailing address of the applicant.
  2. A description of the proposed project and its specific location.
  3. Identification of the agricultural district in which the site is located.
  4. A brief description of the farm operations and how they will be affected by the proposed wind system.
  5. The name and mailing address of any owner of land located in an agricultural district within five hundred (500) feet of the boundary of the property upon which the project is proposed.
  6. A tax map or other map showing the project site and the location of the farm operations involved.
- j. Agreement to Remove Facilities
- Applications shall include a written agreement in which the applicant agrees to remove the facility and to restore the site when the facility reaches the end of its design life, or if the facility ceases to operate for more than six (6) consecutive months, or if the property is sold and the new property owner does not want to continue operation of the facility, or if directed by the Town of Kendall due to non-compliance.
- The agreement must include or declare that:
1. All work will be arranged and paid for by the applicant.
  2. A description of how the facility will be removed.
  3. A description of how the site will be restored.
  4. Specify the estimated cost for removal and restoration.

5. Specify the source and/or method of funding that will be available for removal and restoration.
- k. The Applicant Shall Agree to provide annually, a “Cost of Living” Adjusted Bond, escrow account or financial security sufficient for the removal of Wind Energy System at it’s maturity, continued malfunction or disability of system and/or egregious violation of any portion of this Ordinance which causes the Code Enforcement Officer or Planning Board to issue a Stop Order and/or rescind the Special Permit. If the applicant secures a surety bond to insure funds are available for removal and restoration, a copy of the bond shall be attached to the agreement. The company issuing the bond must appear on the U.S. Department of the Treasury’s listing of approved surety and have a valid New York State surety license. The penal sum of the bond must be equal to the estimated cost of removal and restoration. The agreement must be signed by the applicant and bear the seal and signature of a Notary Public.
- l. Agreement to Pay Town Consultant Fees:  
The application shall include a written agreement in which the applicant agrees to pay for reasonable legal fees and consultant fees incurred by the Planning Board should they choose to employ a consultant to review the drawings, analyses, studies, reports and certifications submitted by the applicant. The applicant must also agree to pay for reasonable consultant fees incurred by the Planning Board should they choose to employ a consultant to assist with the SEQRA process. The agreement must be signed by the applicant and bear the seal and signature of a Notary Public.
- m. Agreement to Provide Sound Pressure Level and Shadow Flicker Testing:  
Applications shall include a written agreement in which the applicant agrees to provide and pay for a reasonable amount of pre-construction ambient noise level testing and post-construction sound pressure level testing and/or shadow flicker analysis when requested by the Planning Board. Testing may be requested at any time during the term of a Special Permit to ensure compliance or to resolve noise or visual complaints received from nearby property owners. The agreement must be signed by the applicant and bear the seal and signature of a Notary Public.
- n. The applicant shall provide proof of liability insurance. The Town of Kendall shall be named as an additional insured under the general liability policy of the applicant, with an amount no less than an amount to be determined by the Town Board given the nature and scope of the project.

#### C. STANDARDS FOR RESIDENTIAL WIND ENERGY CONVERSION SYSTEMS

1. The Tower Design must be certified by a NYS Licensed Engineer.
2. The Tower Height shall be no more than:
  - a. Sixty five (65) feet or less on parcels of land between two and less than five acres.
  - b. One hundred twenty (120) feet on parcels of land of five acres or more.
  - c. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Administration Requirements, including Subpart B

(commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

3. Ground Clearance of horizontal axis rotor blades shall not be less than thirty-five feet (35ft). To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a two hundred fifty (250) foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
4. Rooftop and Tower Systems supported in part or wholly by a non-residential accessory building shall be of Vertical Axis Wind Turbine design only. All buildings must be evaluated for the stress and loads developed by a VAWT and certified by a New York State licensed Engineer.
5. The System Maximum Turbine power output is limited to a rated capacity of thirty (30) kW.
6. Storm Water Run-Off and Erosion control shall be managed in a manner consistent with all applicable State and Federal laws and regulations.
7. Any Construction or Ground Disturbance involving agricultural land or land located in agricultural districts shall be done according to the New York State Department of Agriculture and Markets' publication titled Guidelines for Agricultural Mitigation for Wind Power Projects.
8. The use of guy wires is disfavored. A guyed system may be approved only by compelling evidence and documentation submitted to the Planning Board as to why a free standing tower cannot be used. Should a guyed system be approved, the tower shall incorporate appropriate measures to protect the guy wires from damage which could cause tower failure. All ground attachment points and tower base must be enclosed by six foot (6ft.) high security fencing.
9. Wind Turbine Towers shall not be climbable for the first twelve feet above ground level. The tower shall be constructed to provide one of the following means of access control or other appropriate method of access:
  - a. Tower climbing apparatus "pegs" or "rungs" located no closer than twelve feet from the ground.
  - b. A locked, protective fence six foot (6ft.) in height that encloses the tower.
  - c. A locked anti-climb device installed on the tower.
10. The Proposed Site shall include a fall zone radius of no less than 150% of rotor blade height at the apex.
  - a. The fall zone shall be:
    1. Free of obstructions, residences or structures and shall not include public or private roads.
    2. No closer than fifty (50) from the site property line.
    3. No closer than 500 feet from the nearest off-site residence (including residences outside the Town of Kendall).
  - b. The fall zone and any tower guy wires shall not be located on or across any above ground electrical transmission or distribution lines.
11. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site Plan.

- Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and directing lights at the ground.
12. The System's Tower, nacelle, and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize any visual disruption.
  13. The Wind Energy Conversion System shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.
  14. All Horizontal Axis WECSs shall be equipped with electro-magnetic and manual brake controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor and over stress the tower and components. Vertical axis wind turbines shall be controlled to prevent overspeed, and exceeding the design limits of the rotor, support structure, and other components.
  15. All On-Site electrical wires associated with the system shall be installed underground, whether net-metered or a stand alone system, except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the Planning Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
  16. The Statistical Sound Pressure Level generated by a WECS shall not exceed  $L_{10} - 45\text{dBA}$  measured at the nearest residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 45 dBA, the standard shall be ambient dBA plus 5dBA. Certification shall be provided after construction demonstrating compliance with this requirement.
  17. The system shall be operated such that no disruptive electromagnetic interference is caused to neighboring residences or cell phone and microwave towers. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the interference or cease operation of the system.
  18. No brand names, logo, antennas, or advertising shall be allowed on any part of the facility or placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on the system generator housing in an unobtrusive manor. However, permanent identification of manufacturer and responsible contact information in case of failure or malfunction will be mounted on the Tower Base.
  19. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the Wind Energy Conversion System.
  20. A residential WECS which is not used for six (6) consecutive months shall be deemed abandoned and a public nuisance and shall be subjected to the requirements of SECTION 730.

#### D. RENEWAL OF SPECIAL PERMITS FOR RESIDENTIAL WIND ENERGY CONVERSION SYSTEM

Three (3) Copies of the following information must be submitted to the Planning Board, and shall constitute a complete application for special permit renewal.

1. Special Use Permit Application Form. The application shall be marked "RENEWAL" by the applicant.
2. Special Use Permit Renewal Fee  
The applicant shall pay a non-refundable renewal fee as established by the Town of Kendall Town Board.
3. At the request of the Planning Board the applicant/owner shall make available (subject to a non-disclosure agreement) to the Town, all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems as necessary to prove the WECS is functioning. Requested reports may be edited as necessary to protect proprietary information.
4. Structural Integrity Certification  
If the facility has been installed for longer than the manufacturer's warranty period, the renewal application shall include a certification that the facility was inspected for structural and mechanical integrity by a New York State licensed Professional Engineer, and that the facility is structurally sound and poses no risk of failure or harm to residences on the Site or to the public. The inspection must be performed within thirty (30) days of the date of the application, and the certification shall include the date of inspection, a description of the inspection, methodology used, computations, and any other data used to determine the facility's structural integrity. The certification must be signed by the permit holder and bear the seal and signature of a licensed Professional Engineer. If the inspection report identified structural deficiencies, the Special Use Permit will not be renewed until all deficiencies are corrected and the facility is determined to be structurally sound by a licensed Professional Engineer.

## SECTION 729            AGRICULTURAL WIND ENERGY DERIVING SYSTEMS

### A. GENERAL

1. Agricultural Wind Energy Generating Systems shall require a site plan review and approval by the Planning Board, a building Permit issued by the Zoning (Code) Enforcement Officer per Article III of the Town of Kendall Zoning Ordinance.
2. The applicant shall pay all costs associated with the Town of Kendall's review and processing of the application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Kendall may require the applicant to enter into an escrow agreement to cover the engineering and legal costs of reviewing and processing the application. This agreement will include the cost of the review required by SEQRA.
3. Any Wind Energy Conversion System proposed within a distance of five hundred (500) feet from:  
Any county boundary line; any town boundary line; any village boundary line; any existing or proposed county or state park; any right-of-way of a county or state road or parkway; any stream or canal owned by the county; any existing or proposed county or state owned land on which a public building or institution is

situated must be referred to the Orleans County Planning Board. The Orleans County Planning Board shall have thirty (30) days from the date of county receipt to take action on the matter.

4. Agricultural Wind Energy Generating Systems are permitted in the Residential Agricultural (RA), Rural Residential (RR).
5. The applicant is required to conform to all requirements of the Town of Kendall Local Waterfront Revitalization Program (LWRP).
6. The minimum lot size shall be no less than seven (7) acres in area.
7. The Agricultural Wind Energy Facility shall be primarily used to generate electricity for the generation of energy for predominantly agricultural purposes only, and includes any farming residence and Farm Labor camp(s).

#### B. APPLICATION

1. Applicants shall request a pre-application meeting(s) with the Planning Board, Code Enforcement Officer and with any consultants retained by the Planning Board for preliminary application review.
2. Upon submittal of an application the Planning Board shall, within 30 days of receipt, or such longer time if agreed to by the applicant determine if all information required under this application is included in the application. No application shall be acted on by the Planning Board until the application is deemed complete by the Planning Board.
3. An application for an Agricultural Wind Energy Conversion System shall include the following:
  - a. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  - b. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that:
    1. The property owner is familiar with the proposed application
    2. The property owner authorizes the submission of the application
  - c. Address or other property identification of each proposed tower location, including Tax Map section, block and lot number.
  - d. Project description  
Provide a comprehensive description of the project, including project location, total height of the tower, maximum rated capacity of the wind turbine and the utilities required.
  - e. A List of all adjacent property owners  
The names, property addresses, mailing address and tax map numbers of all owners of land within one-thousand (1000) feet of the boundary of the property upon which the property is proposed shall be provided to the Planning Board for review and record retention.
  - f. Site Plan  
A scaled site plan (prepared by a licensed Professional Engineer, licensed Land Survey or Landscape Architect) which shall include all of the

information listed below. The Planning Board may require additional information, if necessary to complete its review.

1. Title block showing the drawing title, date of preparation, name and address of applicant, name and address of a the person or firm preparing the drawing, and the signature and seal of a licensed Professional Engineer, Land Surveyor or Landscape Architect.
  2. North arrow and bar scale.
  3. Boundaries and physical dimensions of the site in sufficient scale to verify setbacks.
  4. Existing watercourses and bodies of water, including any state and federal wetlands.
  5. Public and private roads within one hundred (100) feet of the site boundaries.
  6. Existing residential and non-residential structures and driveways located on-site.
  7. Existing residential and non-residential structures located off-site and within five hundred (500) feet of the site boundaries.
  8. Location of the proposed tower, equipment, foundations, guy points, substations, accessory structures, fences and any other amenities.
  9. Existing and proposed above ground and underground utilities located on the site.
  10. Shall present construction plan detailing access routes, on site disturbance of landscape, trees, soils and restoration thereof at completion of facility erection period.
  11. A circle drawn to scale around the tower which includes the fall zone equal to 150% of rotor blade height at apex
- g. Engineering Drawings  
The applicant shall include scaled engineering drawings (prepared by a licensed Professional Engineer, licensed Land Survey or Landscape Architect) which show details and dimensions of the following:
1. Tower
  2. Turbine
  3. Foundation
  4. Distance between ground and the lowest point of any rotor blade.
  5. Height and location of climbing pegs and ladders.
  6. Fencing and the color and finish of each major component.
  7. Details and dimensions of all proposed equipment, accessory structures, access roads and driveways.
- h. Manufacturers Product Information  
Applications shall include product information from the manufacture of the proposed wind turbine or rotor blade, tower, supporting foundations, anchorage, inverter, structures and transmission lines as a composite. Supporting documentation shall include a company history and operational facilities in service as reference information and a statement of projected operational life of the facility.

- i. The Application shall include a Full SEQR Environmental Assessment Form (EAF) with Part 1 prepared by the applicant. The SEQRA shall also include a Visual EAF Addendum (from SEQRA Part 617.20, Appendix B).
  
- j. Agricultural Data Statement  
Applications for a facility that is proposed on property within an agricultural district containing a farm operation, or on property with boundaries within five hundred (500) feet of a farm operation located within an agricultural district, shall include an Agricultural Data Statement. The statement shall include:
  1. The name and mailing address of the applicant.
  2. A description of the proposed project and its specific location.
  3. Identification of the agricultural district in which the site is located.
  4. A brief description of the farm operations and how they will be affected by the proposed wind system.
  5. The name and mailing address of any owner of land located in an agricultural district within five hundred (500) feet of the boundary of the property upon which the project is proposed.
  6. A tax map or other map showing the project site and the location of the farm operations involved.
  
- k. Agreement to Remove Facilities  
Applications shall include a written agreement in which the applicant agrees to remove the facility and to restore the site when the facility reaches the end of its design life, if the facility ceases to operate for more than six (6) consecutive months, or if directed by the Town of Kendall due to non-compliance.  
The agreement must include or declare that:
  1. All work will be arranged and paid for by the applicant.
  2. A description of how the facility will be removed
  3. A description of how the site will be restored.
  4. Specify the estimated cost for removal and restoration.
  5. Specify the source and/or method of funding that will be available for removal and restoration.
  
- l. The Applicant shall agree to provide an annually, “Cost of Living” adjusted Bond, escrow account or financial security sufficient for the removal of Wind Energy System at it’s maturity, continued malfunction or disability of system and/or egregious violation of any portion of this Ordinance which causes the Code Enforcement Officer or Planning Board to issue a stop order and/or rescind the Special Permit. If the applicant secures a surety bond to insure funds are available for removal and restoration, a copy of the bond shall be attached to the agreement. The company issuing the bond must appear on the U.S. Department of the Treasury’s listing of approved surety and have a valid New York State surety license. The penal sum of the bond must be equal to the estimated cost of removal and restoration. The agreement must be signed by the applicant and bear the seal and signature of a notary public.
  
- m. Agreement to pay Town Consultant Fees:

The application shall include a written agreement in which the applicant agrees to pay for reasonable consultant and legal fees incurred by the Planning Board should they chose to employ a consultant to review the drawings, analyses, studies, reports and certifications submitted by the applicant. The applicant must also agree to pay for reasonable consultant fees incurred by the Planning Board should they choose to employ a consultant to assist with the SEQRA process. The agreement must be signed by the applicant and bear the seal and signature of a notary public.

- n. Agreement to provide sound pressure level and shadow flicker testing:  
Applications shall include a written agreement in which the applicant agrees to provide and pay for a reasonable amount of sound pressure level testing and or shadow flicker analysis when requested by the Planning Board. Testing may be requested at any time during the term of a special permit to ensure compliance or to resolve noise or visual complaints received from nearby property owners. The agreement must be signed by the applicant and bear the seal and signature of a notary public.

#### C. STANDARDS FOR AGRICULTURAL WIND ENERGY CONVERSION SYSTEMS

1. The Tower Design must be certified by a New York State Licensed Engineer.
2. The Tower Height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the code of federal regulations regarding installations close to airports.
3. Ground Clearance of horizontal axis rotor blades shall not be less than thirty-five feet (35ft). To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a two hundred fifty (250) foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
4. Rooftop and Tower Systems supported in part or wholly by a non-residential structure shall be of Vertical Axis Wind Turbine design only. All buildings must be evaluated for the stress and loads developed by a VAWT and certified by a New York State licensed Engineer.
5. All Towers shall be free-standing (self supporting). The use of guy wires is prohibited.
6. Wind Turbine Towers shall not be climbable for the first twelve feet above ground level. The tower shall be constructed to provide one of the following means of access control or other appropriate method of access:
  - a. Tower climbing apparatus “pegs” or “rungs” located no closer than twelve feet from the ground.

- b. A locked, protective fence six foot (6ft.) in height that encloses the tower.
- c. A locked anti-climb device installed on the tower.
7. The Proposed Site shall include a fall zone radius of no less than 150% of rotor blade height at the apex.
  - a. The fall zone shall be:
    1. Free of obstructions, and shall not include public or private roads.
    2. No closer than fifty (50) from the site property line.
    3. No closer than 1000 feet from the nearest off-site residence (including residences outside the Town of Kendall).
  - b. The fall zone shall not be located on or across any above ground electrical transmission or distribution lines.
8. Storm-water Run-off and Erosion Control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
9. No Tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site plan. Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and directing lights at the ground.
10. The System's tower, nacelle, and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize any visual disruption.
11. The Wind Energy Conversion System shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.
12. All Horizontal Axis WECS shall be equipped with electro-magnetic and manual brake controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor and over stress the tower and components. Vertical axis wind turbines shall be controlled to prevent overspeed, and exceeding the design limits of the rotor, support structure, and other components.
13. All On-site electrical wires associated with the system shall be installed underground, whether net-metered or a stand alone system, except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the Planning Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
14. The Statistical sound pressure level generated by a WECS shall not exceed  $L_{10} - 50$  dBA measured at the nearest residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5dBA. Certification shall be provided after construction.
15. The System shall be operated such that no disruptive electromagnetic interference is caused to neighboring residences or cell phone and microwave towers. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the interference or cease operation of the system.

16. No brand names, logo, antenna, or advertising shall be allowed on any part of the facility or placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer logo may be displayed on the system generator housing in an unobtrusive manner. However permanent identification of manufacturer and responsible contact information in case of failure or malfunction will be mounted on the tower base.
17. Access roads required for construction shall be adequate to support weight of trucks, erection cranes, facility sections and heavy construction equipment. The applicant is responsible for remediation of damaged roads during construction and upon completion of the installation or maintenance of a Wind Energy Conversion System.
18. Any construction or ground disturbance involving agricultural land or land located in agricultural districts shall be done in accordance with the New York State Department of Agriculture and Markets' publication titled Guidelines for Agricultural Mitigation for Wind Power Projects.
19. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the Wind Energy Conversion System.

**SECTION 730      Enforcement; Penalties; Abatement; Limitations; Bonds; Funds and Remedies for Violations for all WECS**

**A. ENFORCEMENT**

In addition to the Code Enforcement Officer, the Town Board may appoint such town staff or outside consultants as it sees fit to enforce this section.

**B. PENALTIES**

Any person owning, controlling, or managing any building, structure, or land who shall undertake a wind energy conversion facility in violation of this Section or in noncompliance with the terms and conditions of any permit issued pursuant to this Section, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subjected to:

1. For a first offense, a fine of not more than \$400 or imprisonment for a period of not more than fifteen days, or subject to both such fine and imprisonment.
2. For a second offense (both within a period of five years), a fine of not less than \$400 or more than \$700 or imprisonment for a period not to exceed six months, or subject to both such fine and imprisonment.
3. For a third offense (all within a period of five years), a fine of not less than \$700 or more than \$1000 or imprisonment not to exceed six months, or subject to both such fine and imprisonment.
4. 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 set forth herein for each violation and each week said violation continues shall be deemed a separate violation.

5. In case of any violation or threatened violation of any of the provisions of this section, including the terms and conditions imposed by any permit issued pursuant to this section, in addition to other remedies and penalties herein provided, the Town of Kendall may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving, and or use, and to restrain, correct, or abate such violation, to prevent the illegal act.

### C. ABATEMENT

1. Public Nuisance  
Every unsafe, incomplete, abandoned, or inoperable Wind Energy Facility is hereby declared a public nuisance which shall be subjected to abatement by repair, rehabilitation, demolition, or removal.
2. Inoperable:
  - a. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, by lack of income generation or physical damage. The applicant/owner shall make available (subject to a non-disclosure agreement) to the Town, all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested as necessary to prove the WECS is functioning. Requested reports may be edited as necessary to protect proprietary information.
  - b. Safety issues deemed to be of an imminent threat to the health, safety and/or welfare of any person affected by a Wind Energy Conversion System as determined by the Code Enforcement Officer shall require the immediate shut down of the WECS, an immediate corrective action shall be taken and the imminent threat fully mitigated.
3. If any WECS remains non-functional or inoperative for a continuous period of six months, the applicant agrees that, without any further action by the Town Board, it shall remove said system and return the land to pre-existing conditions at its own expense. Removal of the system shall include but not limited to:
  - a. All above ground structures including support buildings, transmission equipment, and fencing from the property.
  - b. Removal of the concrete base of a wind turbine to a depth of not less than five (5) feet to pre-construction grade elevation.
  - c. All agricultural areas shall be restored to as close to pre-construction conditions as possible and shall be in compliance with NYS Dept. of Ag and Markets guidelines. A remediation plan shall be put in place to identify and correct any remaining or recurring impacts derived from a WECS or WECSs.
4. This Provision may be waived at the discretion of the Town Board if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after a public hearing.

5. Notwithstanding any other abatement provisions, if the WECS is not repaired, made operational, or brought into permit compliance after said notice, and after a public meeting at which time the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, the Town may:
  - a. Order either remedial action within a particular timeframe.
  - b. Or order revocation of the Special Use Permit for the WECS and order removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommissioning Plan to remove the WECS.

**D. LIMITATIONS ON APPROVALS; EASEMENTS ON TOWN PROPERTY**

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

**E. DECOMMISSIONING BOND OR FUND**

1. A Applicant, developer, successors, property owner, heirs, or assigns, private or court appointed and of record shall continuously maintain a fund or bond payable to the Town of Kendall for the removal of non-functioning towers, accessory facilities, and land restoration in an amount and frequency of review to be determined by the Town Board for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York-licensed financial institution. All cost of the financial security shall be borne by the applicant, developer, successors, property owner, heirs, or assigns, private or court appointed and of record.
2. Any cost incurred by the Town that exceeds the amount of such financial surety or is not covered by said surety shall be the complete and sole responsibility of the applicant. If the applicant is insolvent and such costs cannot be practicably collected from said applicant, then such costs shall become a lien upon the property in which the costs were incurred. The lien shall thereafter be assessed on the next succeeding years tax bill for such parcel and collected in accordance with normal tax foreclosure proceedings if such tax bill remains unpaid thereafter.
3. Upon completion of all such removal activities by the Town, any remaining portion of the posted surety shall be returned to the applicant.

F. TESTING FUND

A Special Use Permit shall contain a requirement that the applicant fund periodic noise and/or shadow flicker testing by a qualified independent third-party measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town in response to complaints by neighbors. The scope of the testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit or Site Plan and shall also include an evaluation of any complaints received by the Town. The Applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

G. SEVERABILITY

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

**CHANGES TO EXISTING WIND ENERGY ZONING ORDINANCE**

Proposed changes to the existing Town of Kendall Zoning Ordinance as amended July 16, 1996

SECTION 106 VIOLATIONS AND PENALTIES

- A. Any person, firm or corporation, who violates, disobeys neglects or refuses to comply with any provision of this ordinance, shall be guilty of an offense and upon conviction thereof; shall be subject to a fine of not more than \$250.00 or imprisonment for a period not more than six (6) months or both. Each week a violation is continued shall be deemed a separate offense.
- B. Any person owning, controlling, or managing any building, structure, or land who shall undertake a wind energy conversion facility in violation of this ordinance or in noncompliance with the terms and conditions of any Wind Energy Conversion System permit issued pursuant to this ordinance, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subjected to penalties per Section 730 subsection B of this ordinance.

SECTION 302 APPLICATION PROCEEDURE AND REQUIRED INFORMATION

Add:

- G. Wind Energy Systems: All additional information as required to complete a wind energy application per SECTIONS 724,727,728 or 729.

SECTION 504 PERMITTED ACCESSORY USES

Delete: Alternative Energy Systems

Add: Non-wind generated Alternative Energy Systems

SECTION 509 PERMITTED USES

Add: Agricultural Wind Energy Systems

SECTION 510 PERMITTED ACCESSORY USES

Delete: Alternative Energy Systems

Add: Non-wind generated Alternative Energy Systems

SECTION 511

Add: Commercial wind Energy Systems

Residential Wind Energy Systems

SECTION 515 PERMITTED USES

Add: Agricultural Wind Energy Systems

SECTION 516 PERMITTED ACCESSORY USES

Delete: Alternative Energy Systems

Add: Non-wind generated Alternative Energy Systems

SECTION 517 CONDITIONAL USES REQUIRING A SPECIAL PERMIT

Add: Commercial wind Energy System

Residential Wind Energy System

SECTION 522 PERMITTED ACCESSORY USES

Delete: Alternative Energy System

Add: Non-wind generated Alternative Energy System

SECTION 523 CONDITIONAL USES REQUIRING A SPECIAL PERMIT

Add: Residential Wind Energy System

SECTION 558 PERMITTED ACCESSORY USES

Delete: Alternative Energy System

Add: Non-wind generated Alternative Energy System

SECTION 565 PERMITTED ACCESSORY USES

Delete: Alternative Energy System

Add: Non-wind generated Alternative Energy System

SECTION 660 ALTERNATIVE ENERGY SYSTEMS

Delete:

- A. All wind energy towers shall be located so as to allow an open zone around the tower on the owner's property and of a radius at least equal to the height of the tower.

- C. Windmill blades shall clear the ground at their lowest point by at least twenty (20) feet.
- D. Height Exemption: The height limitations of this ordinance shall not apply to wind energy towers or solar collectors provided that such structures are erected only to such height as is necessary to accomplish the purpose for which they are intended, and that such structures do not obstruct solar access to neighboring properties.

Add:

- A. Refer to the appropriate SECTION 724, 725, 726, 727, 728, 729 and 730 for all Wind Energy Conversion System standards and requirements.
- C. The height limitations of this ordinance shall not apply to non-wind generated Alternative Energy Systems provided that such structures are erected only to such a height as is necessary to accomplish the purpose for which they are intended, and that such structures do not obstruct solar access to neighboring properties.
- D. Nothing in this Section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on the Site or any other property to reduce turbulence and increase wind flow to a Wind Energy Conversion System. Nothing in this Section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on other property not owned by the applicant to enhance solar access. Nothing in this Section shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the solar access or wind flow to any WECS. It shall be the sole responsibility of the facility operator or owner to acquire any necessary solar, wind flow or turbulence easements, or rights to remove vegetation.

#### SECTION 1004 APPLICATION FOR SITE PLAN APPROVAL

An application for a non-wind energy conversion system site plan approval shall be made in writing to the Zoning Enforcement Officer and shall be accompanied by information drawn from the following checklist. An application for a commercial, residential or agricultural wind energy system shall meet the application requirements of the appropriate wind energy application section 724, 725, 727, 728 or 729. The Planning Board may require additional information if necessary, to complete its review.

- A. Plan checklist for all non-wind energy conversion system site plans:

Reference -RESOLUTION 125-808 TO ADOPT LOCAL LAW 1 of 2008 - TOWN BOARD TOWN OF KENDALL  
RECESSED TOWN BOARD MEETING Thursday, August 28, 2008