

Town of Butternuts
Local Law No. 1 of the year 2021
Renewable Energy Systems Local Law

5 Be it enacted by the Town Board of Butternuts as follows:

Article I

Section 1. Title

10 This local law shall be known and may be cited as "Renewable Energy Systems Local Law of the Town of Butternuts, New York."

Section 2. Purpose and Intent

The purpose and intent of this local law is:

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- To promote the efficient use of solar and wind energy resources in such a manner that will ensure that the energy conversion systems will not adversely impact the fiscal stability, aesthetic qualities and other attributes of the Town of Butternuts.
 - The Town Board finds that this local law is in the public interest and will facilitate but regulate the development and operation of renewable energy systems based on

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 - The Town Board further finds that when appropriately regulated, solar and wind energy systems will be sited and developed in a manner that protects important natural and agricultural resources and scenic views. Furthermore, when developed on a limited basis on agricultural lands, these energy systems will provide an important revenue source that will allow agricultural uses to continue within the Town.

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 - To balance the need to improve energy sustainability through increased use of renewable energy systems with concerns for preservation of public health, welfare, and safety, as well as environmental quality, visual and aesthetic values, and the existing social and ecological stability of the Town

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 - To minimize any adverse impacts on the character of the Town, property values, scenic, historic, and environmental resources of the Town.

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 - These renewable energy regulations are intended to ensure these systems are appropriately designed, sited and installed, in a manner consistent with the Town of Butternuts Comprehensive Plan of 2013, specifically: Goals 25, 26, 27, 28, 29, 30, 31, 32, and 33; Strategies 1, 3, and 5; and Suggestion h. However, to the extent that a provision of this Local Law conflicts with any other local law of the Town, the provision of this Local Law shall apply.

Section 3. Authority

40 The Town Board of the Town of Butternuts enacts this Local Law under the authority granted by:

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- 1) Article IX of the New York State Constitution, sections 2(c)(6) and 10;
 - 2) New York Statute of Local Governments, sections 10(1) and (7);
 - 3) New York Municipal Home Rule Law, sections 10(1)(i) and (ii), and sections 10(1)(a) (6), (11), (12), and (14);
 - 4) New York Town Law section 130(1) (Building Code), section 130(3) (Electrical Code), section 130(5) (Fire Prevention), section 130(7) (Use of Streets and Highways), section 130(7-a) (Location of Driveways), section 130(11) (Peace, Good Order and

50 Safety), section 130(15) (Promotion of Public Welfare), section 130(15-a) (Excavated
Lands), section 130(16) (Unsafe Buildings), section 130(19) (Trespass), and section
130(25) (Building Lines); and
5) New York Town Law section 64(17-a) (Protection of Aesthetic Interests), and section
64(23) (General Power).

55 **Article II**
Wind Energy Conversion Systems (WECS)

Section 1. Definitions

60 As used in this article, the following terms and conditions shall have the meanings
indicated:

65 **ACCESSORY FACILITIES or EQUIPMENT:** Any structure other than a wind
turbine, including WECS buildings, MET towers, overhead and underground electrical
lines, guy wires, access roads or other facility related to the use and purpose of
deriving energy from a wind turbine.

70 **APPLICANT:** Any individual, corporation, municipal corporation, municipal
corporation-private entity cooperation, estate, trust-partnership, joint-stock company,
association of two or more persons, limited liability company or other entity submitting
an application to the Town of Butternuts for a WECS permit, and its successors and
assignees.

75 **APPLICATION:** The form approved by the Board, together with all necessary
and appropriate documentation that an applicant submits in order to receive a WECS
permit

BOARD: The Town Board of the Town of Butternuts

80 **DECOMMISSIONING PLAN:** A plan that includes all of the elements set forth in
Section 5 of this article.

85 **ENVIRONMENTAL LAWS:** Any law (including common law), statute, regulation,
ordinance, order, code, guidance standard recognized by regulatory authorities, or
other legal requirement relating to protection of the environment, hazardous
material(s), and/or worker health and safety adopted by any applicable federal, state,
or local governmental authority.

90 **HAZARDOUS MATERIAL(S):** Any pollutant, contaminant, hazardous or toxic
substance, waste, and any other material (a) subject to regulation or governed by any
Environmental Law; and (b) the presence, or discharge of, or exposure to which could
result in liability as a result of its impact or potential impact on human health or the
environment; and including asbestos and asbestos containing material; petroleum,
petroleum products and waste oil; any flammable explosives, radioactive materials, or
toxic mold.

95 **NACELLE:** The portion of the wind turbine that connects the rotor to the support
tower, and houses the generator, gearbox, drive train, and braking system.

100 NON-PARTICIPANT: A parcel of land which is not subject to any lease, good
neighbor agreement or other contract with the Applicant which authorizes WECS
development by the Applicant

105 RESIDENCE: A building used by humans as a permanent or seasonal home for
habitation.

RIGHT OF WAY: A strip of land acquired by reservation, dedication, forced
dedication, prescription, or condemnation and intended to be occupied by a road,
crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary
storm sewer, and other similar uses.

110 SENSITIVE SITE: A Sensitive Site shall be any of the following:

- (1) all school property
- (2) the following, as defined by water's edge at the time a WECS Permit
application is submitted: Butternut Creek
- 115 (3) Enterprise TE Products Pipeline Company LLC gas pipeline

TOTAL HEIGHT: The height of the wind turbine, measured from the tip of the
turbine blade when vertically aligned above the nacelle.

120 TOWER FACILITY: Site where one or more wind turbines will be located,
including all accessory facilities or equipment.

TOWN: Town of Butternuts, New York.

125 WECS BUILDING: Substations, operations and maintenance buildings, battery
storage facilities and other WECS-related buildings.

130 WIND TURBINE: Any tower, pole, or other structure, whether attached to a
building, guyed, or freestanding, designed to be used for the support of a rotor that
consists of blades and hub, as well as a nacelle and generator for producing electricity.

135 WIND ENERGY CONVERSION SYSTEM (WECS): Shall mean any
mechanism including a wind turbine designed for the purpose of converting wind
energy into electrical energy and all accessory facilities related thereto. A WECS may
be:

- a. Commercial - A WECS that primarily produces energy for off-site sale
or consumption, or any WECS that has a capacity of 200 kilowatts or more.
- b. Non-commercial - A WECS that is incidental and subordinate to
another use on the same parcel and which primarily produces energy for on-site
consumption; provided, however, that if such parcel uses the WECS for net-
metering with a utility company, such WECS may be considered non-
commercial as long as it generates less than 110% of the on-site needs of the
parcel.

145 WIND MEASUREMENT TOWER or METEOROLOGICAL TOWER (MET
TOWER): A tower used solely for the measure of meteorological data such as

temperature, wind speed, and wind direction.

Section 2. Requirements for Non-commercial WECS

150 Non-commercial WECS shall be permitted within the Town upon showing compliance
with this Local Law and receipt of a building permit. In addition to any other building permit
requirements, the following shall apply to non-commercial WECS:

- 155 (1) If any license, approval, permit, certification, or any type of registration or similar
type of endorsement is required from any other agency, receipt of such agency
approvals shall be a pre-condition to the building permit
- (2) All wind turbine towers for Non-commercial WECS shall be subject to the following
160 setback: 1.5 times the Total Height, from adjacent property lines, right of ways,
easements, public ways, power lines (not to include individual residential feed
lines), and any pre-existing structures, as certified by a New York State
Licensed Professional Engineer.
- (3) The minimum distance between the ground and any part of the rotor blade shall be
no less than fifteen (15) feet.
- (4) An emergency telephone number shall be provided to the Town.
- 165 (5) All guy wires or cables shall be marked with high-visibility orange or yellow sleeves
from the ground to a point at least twelve (12) feet above the ground. Setbacks
for any anchor point for guy wires or cables shall be a distance of thirty (30) feet
from any adjacent property lines.
- (6) WECS shall be sufficiently secure so as to prevent access by unauthorized
170 individuals.
- (7) The color of the WECS shall be a single, non-reflective matte finished color or
other industry standard color which minimizes negative visual impact.
- (8) Except to assure human safety during construction of the WECS or as required by
175 the Federal Aviation Administration (FAA), no WECS are to be artificially lit, no
WECS shall use stroboscopic lighting and any WECS lighting shall be angled
downward so that no direct light shall leave the property. All lighting impacts,
including nighttime dark sky impacts, shall be absolutely minimized to the extent
possible.

180 Section 3. Requirements for Commercial WECS

A. Upon receipt of a WECS permit, a Commercial WECS shall be permitted within the
Town. All applicants for a WECS permit shall, in addition to the other requirements in the
Town Code, comply with the procedures set forth in this Article II. The Board is the officially
designated agency or body of the community that is authorized to review, analyze, evaluate,
185 and make decisions with respect to granting, granting with conditions, or denying WECS
permits for commercial WECS and facilities (except where the application is subject entirely to
Article 10 of the Public Service Law).

B. An application for a WECS permit shall be signed on behalf of the Applicant by the
190 person preparing the same and with knowledge of the contents and representations made
therein and attesting to the truth and completeness of the information. The Applicant shall
provide proof that the landowner, if different than the Applicant, consents to the filing of the
application or the Applicant shall provide a copy of the agreement between the Applicant and
the landowner authorizing the Applicant to use the landowner's property as proposed in the
195 Application. At the discretion of the Board, any false or misleading statement in the

application may subject the Applicant to denial of the application without further consideration or opportunity for correction.

200 C. Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the Board.

205 D. Completed applications for siting commercial WECS shall be submitted to the Town Clerk at least ten (10) days prior to the regular meeting of the Board. The Applicant shall attend any Board meeting where it wishes the application to be considered. Applications shall not be deemed complete until all requirements herein have been satisfied and a SEQR decision has been issued or a Draft EIS has been accepted and is satisfactory.

210 E. Upon a majority vote of the Board, the Board may hold a public hearing on the Commercial WECS application, if one is not otherwise required.

F. The decision of the Board on the application shall be filed in the office of the Town Clerk and a copy thereof mailed to the Applicant.

215 G. All professional support, services, and costs incurred by the Town as part of this process, including application, construction oversight, and operation, shall be borne by the applicant.

Section 4. Application Requirements

220 A plan for the proposed development of a WECS shall be submitted with the application and such plan shall show and include:

225 A. Name and address of the Applicant, name of the project, boundary lines of parcel that project will be located on, a location map showing proposed site's location, date, north arrow, and scale of the plan.

B. Application fee (non-refundable) of \$750.

230 C. Name and address of all owners of record of abutting parcels and those within fifteen hundred (1500) feet of the property lines of the parcel where development is proposed.

235 D. A map showing all existing lot lines, easements and right of ways, and a sketch plan showing proposed road access including provisions for paving, if any, proposed transmission lines, guy wires and accessory facilities, and location of all existing and proposed utility systems to the utility.

E. A survey of any parcel where any portion of the WECS will be located, a copy of which shall be provided to the owners of the surveyed land.

240 F. A map showing existing and proposed topography at five-foot contour intervals.

G. A landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features including size and type of plant material and erosion control measures.

245 H. Completed State Environmental Quality Review Act (SEQRA), Full Environmental
Assessment Form (EAF), and Egotist County GML 239 referral form.

250 I. A visual impact study, which shall include a computerized photographic simulation
demonstrating any visual impacts from strategic vantage points. The study results should
255 assess how the visual impact may vary based on nighttime or daytime, seasonal conditions
and vegetation (leaves on trees vs. leaves off trees). Color photographs assessing the
visibility from key viewpoints, existing tree lines, and proposed elevations shall be submitted.
Pictures shall be digitally enhanced to simulate the appearance of the as-built above ground
260 site facilities as they would appear from distances within at least a ten (10) mile radius of such
wind turbines. Pictures from specific locations may be required by the Board and all pictures
shall be no smaller than 5"X 7" and provided in hard, color copy as well as digitally. The
visual analysis shall also indicate the color treatment of the WECS and related components,
and any visual screening incorporated into the project that is intended to lessen the WECS
visual prominence.

J. Documentation of the proposed intent as well as a justification for the height of any
wind turbines and justification for any clearing of brush or trees that is required.

K. A preliminary report prepared by the Applicant describing:

- 265 1) Surrounding topography in relation to the capabilities for generation of
electricity by wind,
2) Required improvements for construction activities, including those within the
public's right of way or land controlled by the Town,
270 3) Proposed mitigation measures for visual impacts and other environmental
impacts of the WECS, if any,
4) Proposed safety measures to mitigate wind turbine failure.

L. An elevation amp showing each wind turbine's height and design including a cross-
275 section of the structure and components of the nacelle; each wind turbine's compliance with
applicable structural standards; and the WECS' nameplate capacity. A copy of all
manufacturers' specifications for wind turbines to be installed shall be included.

M. A description of the general geographic areas that would be acceptable for wind
280 projects within the Town; furthermore, demonstration that the proposed site is the most
appropriate site within the immediate area for the location of the WECS.

N. If the WECS is a "major electric generating facility" subject to Article 10 of the Public
Service Law and its accompanying regulations, all documents and information required to be
285 provided to the Town, as well as any document or information provided to the Public Service
Commission or other public agency which is specifically requested by the Town.

O. A report showing soil logs, soil profile analysis, and storm water run-off calculations
for the area being disturbed.

290 P. Plans to prevent the pollution of surface or groundwater, erosion of soil both during
and after construction, excessive runoff, and flooding of other properties, as applicable.
There shall be pre-construction and post-construction drainage calculations for the site
completed by a certified engineer. From this the engineer must show how there will be no

295 increase in runoff from the site, or how such runoff is sufficiently mitigated. With climate
change and increasing rainfall in mind, increasing the capacity of the site to minimize runoff is
encouraged.

Q. Insurance certificates in compliance with Section 5(l).

300 R. If the property of the proposed WECS is to be leased, legal consent between all
parties, specifying the use(s) of the land for the duration of the project, including easements
and other agreements, shall be submitted, but may be in memo or summary form.

305 S. Appropriate geotechnical, vibration, structural safety, and noise studies prepared by
qualified professionals.

310 T. Demonstrated compliance with, or inapplicability of, any Town road maintenance or
road use local laws, which may include, but shall not be limited to, a proposed road use
agreement.

315 U. If any license, approval, permit, certification, or any type of registration or similar
type of endorsement is required from any other agency, the applicant shall notify the Board of
such requirement and the Board shall coordinate the review as deemed appropriate. Before
any digging or excavation occurs, all underground utilities shall be properly marked. Applicant
shall comply with all "Dig Safely NY" regulations including 16NYCRR Part 753 during
construction and decommissioning. A copy of any such license, approval, permit, certificate
or registration shall be provided to the Board prior to approval of any WECS permit.

320 V. Map plan plotted to scale, prepared by an architect, landscape architect, civil
engineer, surveyor, land planner or other competent person, including thereon the following
information:

- 325 1) Preliminary architectural or engineering plans including elevations showing
the use, location and dimensions of proposed buildings and open spaces.
- 330 2) A map plan showing the proposed activity including the location, dimensions
and square footage of WECS Buildings, other buildings on the Tower
Sites, location and dimensions of driveways, ingress and egress from the
property, driveway intersections with streets, parking areas and
maneuvering areas.
- 335 3) A storm drainage and grading plan for analysis of proposed handling of
surface water runoff and erosion control, including, where applicable
under State or Federal Requirements, a Storm Water Notice of Intent and
a Storm Water Pollution Prevention Plan.
- 340 4) A plan showing utilities and utility easements including method of sewage
disposal in detail.
- 5) Plans for all signs to be erected including dimensions, elevations and sign
locations.
- 6) A landscape plan, prepared by a professional landscape architect or other
competent person employed by a commercial garden center, showing
landscaping to be installed and maintained in front, side and rear yards
as developed, including shade trees, deciduous shrubs, evergreens,
defined areas of well-kept grassed areas and ground cover. All such

landscaping, grassed areas and ground cover areas shall be maintained in a healthy growing condition at all times.

345 7) Plan of lighting for the exterior of structures and for any interior roadway,
driveway, parking area, and off-street loading area. The lighting plan
shall show compliance with the following standards: except (a) to assure
350 human safety during construction of the WECS, (b) to assure safe entry
to and exit from the wind turbines by Applicant's employees and
contractors during operation, or (c) as required by the Federal Aviation
Administration (FAA), no wind turbines shall be artificially lit, no wind
turbines shall use stroboscopic lighting and all lighting shall be angled
355 downward so that no direct light leaves the site and so minimizes light
pollution. No WECS Buildings shall be artificially lit at nighttime except to
the minimum extent necessary for operations or security such that no
direct light shall leave the site.

8) A proposed construction and implementation schedule, and schedule of hours
of operation.

360 W. A complaint resolution plan for the Applicant to address and resolve complaints
regarding the WECS from local residents. The plan may utilize an independent mediator or
arbitrator and shall include a time limit for acting on a complaint. The Applicant shall make
every reasonable effort to resolve any complaint.

365 X. A report detailing the potential impacts of ice-throw and blade-throw on structures
and property within the Town, including proposed safety measures to mitigate such impacts.

Y. A noise analysis prepared by a qualified acoustical consultant documenting the
noise levels associated with each proposed WECS. The noise analysis shall provide pre-
370 existing ambient noise levels, including low frequency noise levels. The study shall document
noise levels at participant and non-participant residences, as well as Sensitive Sites, and
model estimated changes resulting from the Applicant's WECS project, including in the low
frequency range of sound.

375 Z. A shadow flicker study, identifying locations where shadow flicker may be caused by
the WECS and the expected duration of the flicker at these locations. The study shall identify
areas where shadow flicker may interfere with occupants of residences, schools, businesses,
and other occupied building and describe measures that will be taken to eliminate or mitigate
impacts of the flicker. Adequate mitigation measures include, but are not limited to, temporary
380 turbine shutdowns during periods that produce flicker, and shielding or blocking measures
(such as landscape plantings and window treatments) for those that submit complaints for
exposures which exceed the annual limit as described in Section 5(b)(10) of this Article.

AA. A study evaluating possible impacts to birds, bats, and other wildlife, including any
385 threatened or endangered species. Based on the results of the study, the Applicant shall
present a plan for mitigating any significant, negative impacts to such wildlife and indicate any
and all state or federal permits or approvals, including any incidental take permits, the
Applicant is required to, or intends to, obtain.

390 BB. A report identifying active water supply wells or water supply intakes on parcels
within 1500 feet of any sites where blasting may occur.

395 CC. A post-construction monitoring and compliance plan (PCMC Plan) for the purpose
of certifying WECS project compliance. The PCMC Plan shall require the Applicant to present
data reports to the Town showing its compliance with the requirements of this local law, any
unanticipated impacts (positive and negative) to the environment, participants and non-
participants, wildlife (including any threatened or endangered species), water quality in the
project area, wetlands and stormwater erosion controls at each of the following intervals
400 following completion of construction of the WECS: six months, one year, two years, five
years, and every five years thereafter.

Section 5. Standards for Design

Every commercial WECS shall be subject to the following requirements:

405 A. Location -- Applicants for a WECS permit shall locate, erect, and site WECS in
accordance with the following requirements:

(1) WECS shall be located in a manner that minimizes significant negative
impacts on existing microwave communications links. No WECS shall be installed in
any location along the major axis of an existing microwave communications link where,
410 when considering any mitigation strategies of Applicant, its operation is still likely to
produce significant electromagnetic interference in the links operation.

(2) WECS shall be located in a manner that minimizes significant negative
impacts on existing fixed broadcast, or reception antenna (including residential
reception antenna) for radio (including amateur short wave), television, or wireless
415 phone or other personal communications systems. No portion of a WECS shall be
installed in any location where, when considering any mitigation strategies of
Applicant, its proximity with existing fixed broadcast, or reception antenna (including
residential reception antenna) for radio, television, or wireless phone or other personal
communication systems is still likely to produce significant interference with signal
420 transmission or reception.

(3) WECS shall be located in a manner that minimizes significant negative
impacts on bird and bat species, including local populations and migrating populations.
No portion of a WECS shall be installed in any location where, when considering any
mitigation strategies of Applicant, there are still likely to be significant, negative
425 impacts on birds or bats. The Applicant shall present and implement a plan for such
mitigation pursuant to Section 4(AA) of this Article.

(4) With respect to the potential negative impacts described in this Section 5(A),
Applicant shall present and implement a plan for mitigation.

(5) WECS shall be located in a manner consistent with all applicable State and
430 Federal wetlands law and regulations.

B. Construction, Notice and Safety Considerations

(1) An emergency telephone number shall be provided to the Board and posted
at any WECS Building and on the Applicant's website, if any, so that the appropriate
435 people may be contacted should any WECS need immediate attention.

(2) All guy wires or cables shall be marked with high-visibility orange or yellow
sleeves from the ground to a point at least twelve (12) feet above the ground.
Setbacks for any anchor point for guy wires or cables shall be a distance of fifty (50)
feet from any Non-Participant.

440 (3) A caution sign shall be placed at the primary entrance of each parcel where a

Tower Facility is located. Signs shall be four (4) to six (6) feet high, i.e., at eye level. Said signs shall be a minimum of one foot square and no larger than two square feet in size and shall have the words "CAUTION: WIND TURBINES IN USE" printed thereon. In addition, the Applicant's name, address, and telephone number shall be printed thereon.

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(4) WECS shall be sufficiently secure so as to prevent access by unauthorized individuals.

(5) Each wind turbine shall conform to the following specifications:

(a) WECS shall use tubular towers.

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(b) The color of all WECS shall be a single, non-reflective matte finished color or other industry standard color which minimizes negative visual impact.

(c) Each wind turbine within a WECS shall be generally uniform in size and geometry.

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(6) All WECS shall be equipped with manual and automatic overspeed controls, whose design and fabrication, together with the design and fabrication of its rotors, shall conform to good engineering practices as certified by its manufacturer. Such controls shall be designed to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components.

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(7) No communication antennas may be affixed to or made part of any commercial WECS. No advertising shall be depicted on any part of any commercial WECS.

(8) The Applicant's complaint resolution plan to address and resolve complaints regarding any WECS located within the Tower Facility from local residents shall be provided to the Board, posted on the Applicant's website, if any, and provided to any resident upon request.

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(9) All WECS shall be located in a manner that minimizes the risk to public health and safety posed by ice-throw and blade-throw. All WECS shall be equipped with a nacelle-mounted ice sensor, a shaft vibration sensor or other available technology capable of directly or indirectly detecting blade ice formation. Such sensor(s) or technology shall cause the automatic shutdown of a WECS when blade ice buildup is detected at levels that pose a substantial risk to public health and safety. Ice and blade throw incidents occurring at a Tower Facility shall be promptly reported by the Applicant to the Board.

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(10) No Non-Participant residence, school, business, or other occupied building shall be subject to more than fifteen (15) hours of shadow flicker annually.

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(11) The level of noise produced during WECS operation shall not:

(a) exceed a maximum noise limit of 45 dBA Leq (8-hour) at any Non-Participant residence and 55 dBA Leq (8-hour) for any participant residence.

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(b) exceed a limit of 40 dBA L (night-outside), annual equivalent continuous average nighttime sound level from the WECS outside any Non-Participant residence, and a limit of 50 dBA L (night-outside), annual equivalent continuous average nighttime sound level from the WECS outside any participant residence.

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(c) produce any audible prominent tones, as defined under ANSI S12.9 Part 4-2005 Annex C at any Non-Participant residence.

(d) exceed a maximum noise limit of 65 dB Leq at the full octave frequency bands of 16, 31.5, and 63 Hertz outside of any Non-

490 Participant residence in accordance with Annex D of ANSI
standard S12.9-2005/Part 4 (Sounds with strong low-frequency
content [infrasound]).

(e) produce human perceptible vibrations inside any Non-Participant
residence that exceed the limits for residential use recommended
495 in ANSI Standard S2.71-1983 (August 6, 2012) "Guide of
evaluation of human exposure to vibration in buildings."

(f) exceed a limit of 40 dBA Leq (1-hour) at the outside of any Non-
Participant residence from any WECS Building.

500 C. Setbacks. Each Wind Turbine that is part of a Commercial WECS shall be setback
as follows, measured from the center of the Wind Turbine. If more than one setback applies,
the most restrictive setback will control:

(1) 1.25 times Total Height, or more, from any Non-Participant boundary
property line.

505 (2) 1.5 times Total Height, or more, from the center of any public roadway.

(3) 2.0 times Total Height, or 1500 feet, whichever is greater, from any Non-
Participant residence, measured from the exterior of such residence.

(4) 1.5 times Total Height, or more, from any Non-Participant commercial, retail
or industrial Building. "Building" for the purposes of this subsection shall mean any
510 structure with at least three walls and a roof that is used for commercial, retail or
industrial purposes.

(5) 2.0 times Total Height, or 1500 feet, whichever is greater, from a Sensitive
Site.

515 D. Lighting. WECS shall not be artificially lighted except as described in Section 4(V)7
of this Article. Other lighting impacts, including dark sky impacts, shall be minimized so that
no direct light leaves the site.

520 E. Utility Service. All WECS collection lines, including those running to and from on-
site collection substations, shall be underground to the maximum extent practicable given
topography and other constraints.

F. Height

525 (1) The minimum distance between the ground and any part of the commercial
WECS rotor blade shall be no less than thirty (30) feet.

(2) No WECS or Met Tower shall have a total height of more than 676 feet.

G. Environmental Impact

530 (1) Scenic and View Impact -- Each of the WECS shall be of substantially the
same design, construction materials, finishing and color treatment as described in
Section 4(I), above. Visual screening intended to lessen the WECS visual prominence
shall be incorporated to the maximum extent possible.

535 (2) Access Roads -- Whenever possible, existing roadways shall be used for
access to the WECS site. In the case of constructing roadways, they shall be
constructed in a manner so that they are not conspicuous to the surrounding
environment and mitigate any increased runoff.

(3) Accessory Structures and Facilities -- Transmission facilities and WECS
Buildings shall be located behind existing ridges or vegetation, to screen from visibility;

otherwise, applicant shall provide a plan for adequate screening.

540 (4) Wildlife -- All potential impacts to local wildlife, especially threatened or
endangered species, resulting from the design and siting of all WECS must be
reviewed by all relevant state and federal regulatory agencies, with consideration of
input from local governmental agencies and non-profit organizations with relevant
expertise. The Applicant must obtain all; necessary state and federal wildlife
545 permissions and permits, including, but not limited to incidental take permits.

(5) Open Space -- All WECS shall be designed to minimize the impacts of land
clearing and the loss of open space areas. Land protected by conservation easements
shall be avoided.

550 (6) All trees on the parcel that would be impacted by construction or operation of
the facility with a diameter at breast height (dbh) over twelve (12) inches shall be
evaluated for preservation by an International Society of Arboriculture (ISA) certified
arborist and every effort shall be made to preserve those trees which are identified as
being worthy of preservation.

555 H. Operating Considerations.

(1) Building and Grounds Maintenance -- Upon completion of installation, the
site shall be returned as closely as possible to its natural state. Any damaged, spare
or unused parts, maintenance equipment, oil and all similar materials shall be removed
from the premises within thirty (30) days or kept at a covered, on-site storage facility.

560 (2) Ownership Changes -- If the ownership of a WECS operating under a WECS
Permit changes, the WECS permit shall remain in force and all conditions of the
WECS permit will continue to be obligations of succeeding owners. The Town Clerk
shall be notified and the ownership change registered with the Town. All signs required
under provisions of this Article shall be changed accordingly.

565 (3) Modifications -- Any and all substantial modifications, additions, or changes
to a WECS authorized to operate under this Article, whether structural or not, shall be
made by application to the Board except where modification is required for routine
maintenance and repairs which become necessary in the normal course of use of such
WECS or become necessary as a result of natural forces, such as wind or ice.
570 Additionally, any modification resulting in significant modifications to the public health,
safety, welfare, environment, of the Town or the visual or sound impacts of the project,
must be reviewed and approved by the Board.

I. Certification

575 (1) Post-Installation -- If any report supplied to the Town pursuant to the PCMC
Plan indicates non-compliance with the requirements of this local law or unanticipated
negative impacts, such report shall also be accompanied by a mitigation and
minimization plan (MM Plan) to bring the WECS into compliance as soon as possible
but in any case not longer than 120 days. The Applicant shall reimburse the Town for
580 all reasonable expenses incurred, including professional fees and costs, to monitor,
review, evaluate and advise the Town on the PCMC Plan, each MM Plan and the
Applicant's post-construction compliance in general. Such reimbursement shall be
made within 30 days of Applicant's receipt of an invoice for such costs and expenses
from the Town.

585 (2) Insurance/Liability -- Prior to the commencement of construction of the
WECS or Met Tower, the Applicant shall provide the Town proof, in the form of a
duplicate insurance policy or a certificate issued by an insurance company, of public

590 liability insurance, of a level to be determined by the Board in consultation with the
Town's insurer, to cover damage or injury which might result from the failure of a tower
or towers or any other part(s) of the generation or transmission facility. The public
liability insurance policy shall specifically include the Town and its officers, boards,
employees, committee members, attorneys, agents, and consultants as additional
named insured (using endorsement #CG2026). with coverage of at least \$2,000,000
595 per occurrence / \$4,000,000 aggregate (\$5,000,000 and \$10,000,000, respectively, for
WECS subject to Article 10 of the Public Service Law).

(3) National and State Standards -- The applicant shall show that all applicable
manufacturers, New York State and U.S. standards for the construction, operation, and
maintenance of the proposed wind turbine have been met or are being complied with.
Any WECS shall be built, operated, and maintained to the applicable industry
600 standards of the Institute of Electrical and Electronic Engineers (IEEE) and the
American National Standards Institute (ANSI). The Applicant shall furnish evidence,
over the signature of a professional engineer licensed to practice in the State of New
York, that such wind turbine is in compliance with such standards.

605 (4) Lightning Strike/Grounding -- The Applicant shall show that all applicable
manufacturers' specifications, New York State and U.S. standards for the construction,
operation, and maintenance of the WECS have been or are being complied with.

610 (5) Wind Speed/Wind Load -- Certification is required by a registered
professional engineer or manufacturer's certification that the tower design is sufficient
to withstand wind-load requirements for structures as established by the Building Code
of New York State.

(6) Continuing Obligations -- All requirements detailed in Section 4 shall remain
in force for the life of the WECS permit.

J. Blasting; Water Supply Protection

615 (1) The Applicant shall file a notice with the Town confirming that no wind turbine
or WECS Building will be located within 100 feet of an existing water supply well or
water supply intake.

(2) Blasting shall be prohibited within 500 feet of any known existing, active
water supply well or water supply intake on a Non-Participant parcel.

620 (3) If environmental or engineering constraints require blasting within 1000 feet
of a known existing, active water supply well on a Non-Participant parcel, the Applicant
will engage a qualified third party to collect pre- and post-blasting water samples at all
water wells within the above specified distances of blasting, provided the Applicant is
granted access by the property owner. These water samples will be sent to a New
625 York State Department of Health (NYSDOH) certified laboratory for potability testing.
The results of such tests and reports shall be made available to the Town upon
request.

630 (4) If environmental or engineering constraints require siting of collection lines or
access roads within 100 feet of a known existing, active water supply well, the
Certificate Holder shall perform the pre- and post-construction water potability testing
provided the Applicant is granted access by the property owner. These water samples
will be sent to a New York State Department of Health (NYSDOH) certified laboratory
for potability testing. The results of such tests and reports shall be made available to
the Town upon request.

635 (5) Should the NYSDOH-certified laboratory testing conclude that the water
supplied by an existing, active water supply well met federal and New York State

standards for potable water prior to construction, but failed to meet such standards post-construction, the Applicant shall cause a new water well to be constructed, in consultation with the property owner, at least 100 feet from collection lines and access roads, and at least 1000 feet from wind turbines, as practicable given siting constraints and landowner preferences. During the construction of any new water well as required by this sub-section, the Applicant shall supply the affected individuals on the property with potable water.

(6) All blasting shall be completed by a third party licensed blaster, holding the appropriate certificate of competency, in accordance with all applicable laws, regulations and best industry practices, including but not limited to: 12NYCRR Part 61, GEM-22 (Geotechnical Engineering Manual: Procedure for Blasting [as amended]), 12 NYCRR Part 39, 49 CFR 177, 29 CFR 1926 Subpart U, 12 NYCRR Part 53 and Section 203-3.02 (Unclassified Excavation and Disposal) of the Department of Transportation "Standard Specifications." In the event of a conflict between this section 5(J), applicable laws, regulations and best practices, the standard most protective of the environment, health and safety shall be applied.

K. WECS Buildings. Unless contrary standards are expressly required by NYSEG or another governmental authority, the following standards shall apply to WECS Buildings:

(1) Site plans for the property shall provide for the preservation of natural vegetation in large unbroken blocks that also allow contiguous open spaces and vegetative screening to be established when adjacent parcels are developed. Areas within 15 feet on each side of any substation or battery storage facility shall be cleared, and kept clear, of combustible vegetation and other combustible growth.

(2) No WECS Building shall be located on a Sensitive Site. The following setbacks shall be maintained: a minimum one hundred fifty (150) foot setback from the property lines of a Non-Participant parcel with a residence or a parcel with a Sensitive Site, a minimum one hundred (100) foot setback from the center of adjacent Town, County and State roads, and a minimum seventy-five (75) foot setback from all other adjacent property lines.

(3) WECS Buildings shall be constructed in accordance with all applicable provisions of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law the New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, each as currently in effect and as hereafter amended from time to time, and all applicable provisions of the codes, regulations, and industry standards as referenced in either of the foregoing. The Applicant shall obtain necessary local floodplain development permits if any WECS Building is proposed within special flood hazard areas.

(4) Battery storage systems and related equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 or CAN 9540 (Standard for Battery Energy Storage Systems and Equipment) with subcomponents meeting each of the following standards that are applicable based on the storage type (electrochemical, thermal, mechanical): a) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications); b) UL 1642 (Standard for Lithium Batteries); c) UL 1741 or UL 62109 (inverters and power converters); d) Certified under the applicable electrical, building, and fire prevention codes as required. e) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements. Battery storage systems,

components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

690 (5) Site access for WECS Buildings shall be maintained, including snow removal at a level acceptable to the local fire department and the local ambulance service.

Section 6. Abandonment of Use

695 A. All applications for a WECS Permit or a MET Tower shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the WECS or Met Tower. Prior to issuance of a building permit, the owner or operator of the WECS or Met Tower shall post a letter of credit or other suitable financial guarantee, as determined by the Town, in a face amount of not less than 120% of the estimated cost of complete decommissioning and removal to ensure proper, safe removal
700 of the WECS or Met Tower and accessory facilities in accordance with the decommissioning plan described below. The Applicant shall provide detail as to how said estimate was determined. Such guarantee shall not factor in salvage value of the facility materials. The amount of the financial guarantee shall be reviewed by the Applicant and the Board every five
705 years and may be changed based upon majority vote of the Board. The form of the guarantee must be reviewed and approved by the Town Attorney, and the guarantee must remain in effect until the system is fully removed and final inspection is completed by the Town of its designee. Prior to removal of a WECS or Met Tower, a demolition permit for removal activities shall be obtained from the Town or its designee.

710 (1) The Applicant shall submit a decommissioning plan that ensures that the site will be restored to a useful, nonhazardous condition, which plan shall be implemented without delay if: (1) the Applicant ceases operation of the WECS or Met Tower for a period of 18 months, (2) begins but does not complete construction of the project within 18 months after receiving WECS permit approval, or (3) the WECS permit for the WECS or Met Tower expires or is not renewed. The plan shall include
715 but not be limited to the following:

(a) WECS removal shall include removal of all aboveground equipment, and removal of foundations to a depth of four (4.0) feet below grade. Below ground accessory facilities, such as collection lines, are not required to be removed, unless otherwise required by applicable law. In addition, access
720 roads may be left in place if written consent is received by the Town from the landowner and the landowner agrees to properly maintain all storm water management, run-off and erosion controls. However, all WECS equipment or materials or accessory facilities installed underground must be fully removed and the land reclaimed where such equipment or materials will (i) interfere with or prevent continued compliance by the landowner with any Environmental
725 Laws, (ii) give rise to any liability to the Town or the landowner under any Environmental Laws, or (iii) form the basis of any claim, action, suit, proceeding, hearing or investigation under any Environmental Laws.

(b) Restoration of the surface grade and soil after removal of equipment.

730 (c) Revegetation of restored soil areas with native seed mixes, excluding any invasive species, with preference given to the landowner where possible.

(d) A reasonable timeframe for the completion of site restoration work.

(2) In the event that construction of the WECS or Met Tower has been started but is not completed and functioning within 18 months of the issuance of the final

735 WECS Permit approval, the Town may notify the Applicant to complete construction
and installation of the facility within 90 days. If the applicant fails to perform, the Town
may notify the owner and/or operator to implement the decommissioning plan. The
decommissioning plan must be completed within 180 days of such notification by the
Town.

740 (3) Upon cessation of activity of a fully constructed WECS or Met Tower for a
period of 18 months, the Town may notify the owner and/or operator of the facility to
implement the decommissioning plan. Within 140 days of notice being served, the
owner and/or operator shall either restore normal, active operation of the WECS or
Met Tower, or implement the decommissioning plan which must then be fully complete
745 within 12 months from the beginning of its implementation.

(4) Upon revocation, termination or non-renewal of the permit for a WECS or
Met Tower, the Applicant, owner and/or operator must fully complete the
decommissioning plan.

750 (5) If the owner and/or operator fails to fully implement the decommissioning
plan within the 12 month time period (or 180 days, in the case of (A)(2) above) and
restore the site as required, the Town may, at its own expense, provide for the
restoration of the site in accordance with the decommissioning plan and may, in
accordance with the law, recover all expenses incurred for such activities from the
letter of credit or other financial guarantee and from the defaulted owner and/or
755 operator. Any cost incurred by the Town which has not been fully paid by the owner
and/or operator shall be assessed against the property, shall (in addition to any other
available remedies) become a lien and tax upon said property, shall be added to and
become a part of the taxes to be levied and assessed thereon, and enforced and
collected with interest by the same officer and in the same manner as other taxes. The
760 decommissioning plan shall provide for the ability of the Town, or its assignee or
designee, to access the property owner's land in order to complete the
decommissioning if necessary.

765 **Section 7. Wind Measurement (MET) Towers**

A. Wind Site Assessment. As a wind site assessment is typically conducted to
determine the wind speeds and the feasibility of using particular sites, installation of MET
Towers shall be permitted in accordance with this Section.

770 B. Applications for MET Towers. A Permit application for a MET Tower shall include:

(1) Building permit application, including all materials required thereby.

775 (2) 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.

(3) 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.

780 (a) confirming that the property owner is familiar with the proposed
application(s) and

(b) authorizing the submission of the application.

(4) Address of each proposed MET Tower location, including Tax Map section,
block and lot number

785 (5) Proposed development map plan, including review for the property as described herein.

(6) Decommissioning Plan, including a letter of credit or other suitable financial guarantee, as determined by the Town, for removal.

790 (7) If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, evidence indicating the Applicant's receipt of such agency approvals.

C. Standards for MET Towers

795 (1) Setbacks. Each MET Tower shall be setback as follows, measured from the center of the MET Tower. If more than one setback applies the most restrictive setback shall control:

(a) 1.25 times Total Height, or more, from the nearest Non-Participant boundary property line.

(b) 2.0 times Total Height, or more, from the nearest Non-Participant residence, measured from the exterior of such residence.

800 (c) 1.50 times Total Height, or more, from the center of the roadway.

(d) 2.0 times Total Height from a Sensitive Site.

805 (e) 1.50 times Total Height, or more, from any Non-Participant commercial, retail or industrial Building. "Building" for the purposes of this subsection shall mean any structure with at least three walls and a roof that is used for commercial, retail, or industrial purposes.

(2) All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point at least twelve (12) feet above the ground. Setbacks for any anchor point for guy wires or cables shall be a distance of fifty (50) feet from any Non-Participant.

810 (3) MET Towers shall be sufficiently secure so as to prevent access by unauthorized individuals.

815 (4) Except to assure human safety during construction of the MET Tower or as required by the Federal Aviation Administration (FAA), no MET Towers shall be artificially lit, no MET Towers shall use stroboscopic lighting and all lighting shall be angled downward so that no direct light leaves the site and so minimizes light pollution. No MET Towers shall be artificially lit at nighttime except to the minimum extent necessary for operations or security such that no direct light shall leave the site.

(5) Special permits for MET Towers shall be issued for a period of up to three (3) years. Permits shall be renewable upon application to the Board.

820 (6) Upon expiration of the special permit, the MET Tower shall be fully removed and the land reclaimed in accordance with the Decommissioning Plan.

Article III
Solar Energy Production Facility (SEPF)

825 **Section 1. Definitions**

A. Definitions. As used in this article, the following terms and conditions shall have the meanings indicated:

830 ACCESSORY FACILITIES or EQUIPMENT: Any structure other than a wind turbine, including WECS buildings, MET towers, overhead and underground electrical lines, guy wires, access roads or other facility related to the use and purpose of

deriving energy from solar panels.

835 APPLICANT: Any individual, corporation, municipal corporation, municipal
corporation-private entity cooperation, estate, trust-partnership, joint-stock company,
association of two or more persons, limited liability company or other entity submitting
an application to the Town of Butternuts for an SEPF, and its successors and
assignees.

840 APPLICATION: The form approved by the Board, together with all necessary
and appropriate documentation that an applicant submits in order to receive an SEPF
permit.

845 BOARD: The Town Board of the Town of Butternuts

850 ENVIRONMENTAL LAWS: Any law (including common law), statute, regulation,
ordinance, order, code, guidance standard recognized by regulatory authorities, or
other legal requirement relating to protection of the environment, hazardous
material(s), and/or worker health and safety adopted by any applicable federal, state,
or local governmental authority.

855 HAZARDOUS MATERIAL(S): Any pollutant, contaminant, hazardous or toxic
substance, waste, and any other material (a) subject to regulation or governed by any
Environmental Law; and (b) the presence, or discharge of, or exposure to which could
result in liability as a result of its impact or potential impact on human health or the
environment; and including asbestos and asbestos containing material; petroleum,
petroleum products and waste oil; any flammable explosives, radioactive materials, or
toxic mold.

860 NON-PARTICIPANT: A parcel of land which is not subject to any lease, good
neighbor agreement or other contract with the Applicant which authorizes WECS
development by the Applicant

865 RESIDENCE: A building used by humans as a permanent or seasonal home for
habitation.

870 RIGHT OF WAY: A strip of land acquired by reservation, dedication, forced
dedication, prescription, or condemnation and intended to be occupied by a road,
crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary
storm sewer, and other similar uses.

875 SENSITIVE SITE: A Sensitive Site shall be any of the following:
(1) all school property
(2) the following, as defined by water's edge at the time a WECS Permit
application is submitted: Butternut Creek
(3) Enterprise TE Products Pipeline Company LLC gas pipeline

880 SEPF BUILDING: Substations, operations and maintenance buildings, battery
storage facilities and other SEPF-related buildings

SEPF PERMIT: The official document or permit by which an Applicant is allowed to construct and use a Commercial SEPF as granted or issued by the Town.

885 SOLAR ENERGY PRODUCTION FACILITY (SEPF): Shall mean any mechanism designed for the purpose of converting solar energy into electrical energy and all equipment related thereto. A SEPF may be:

(1) Commercial -- A SEPF that primarily produces energy for off-site sale or consumption, or any SEPF that has a capacity of 200 kilowatts or more.

890 (2) Non-commercial -- A SEPF that is incidental and subordinate to another use on the same parcel and which primarily produces energy for on-site consumption; provided, however, that if such parcel uses the SEPF for net-metering with a utility company, such SEPF may be considered non-commercial as long as it generates less than 110% of the on-site needs of the parcel.

895

Section 2. Non-Commercial SEPFs.

A. A Non-Commercial SEPF may be constructed pursuant to a NYS unified solar permit ("Standard Permit") only and without the necessity of special permits, so long as the SEPF meets the criteria set forth in this Article III; provided, however, that a Non-Commercial SEPF shall not be located on any Sensitive Sites. Non-Commercial SEPFs shall be permitted within the Town upon showing compliance with this Local Law and Receipt of the Standard Permit. In addition to any other Standard Permit requirements, the following shall apply to Non-Commercial SEPFs:

905 (1) A Non-Commercial SEPF use shall be limited to one or more roof-, wall- and/or ground-mounted solar collector devices and solar-related equipment.

(2) Solar carports shall be permitted over existing and proposed parking facilities.

910 (3) Roof-Mounted SEPFs: SEPFs mounted on a roof shall not exceed any maximum height restrictions that may be applicable within the Town. Panels facing the front yard must be mounted at an angle that is no greater than 20 degrees greater than the angle of the roof's surface with a maximum distance of 24 inches between the roof and the highest edge of the system..

915 (4) Ground-Mounted SEPFs: SEPFs mounted on the ground shall adhere to any applicable height and setback requirements but under no circumstances shall the top of the ground-mounted SEPF be higher than 20 feet off the ground. Systems are limited to 20% lot coverage. All such systems installed in residential neighborhoods or on residential parcels of less than five acres shall be installed in the side or rear yards.

920 (5) Installations shall be compliant with all New York State requirements, including but not limited to, those set forth in Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code.

(6) If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, receipt of such agency approvals shall be a pre-condition to the building permit.

925 Section 3. Commercial SEPFs; SEPF Permit Required.

A. A Commercial SEPF shall be constructed pursuant to a SEPF Permit from the Board, so long as the SEPF meets the criteria set forth in this Article, subject to obtaining all other necessary approvals including SEPF Permit review. The Board is the officially designated agency or body of the community that is authorized to review, analyze, evaluate, and make decisions with respect to granting or denying special permits for SEPFs and

930

facilities (except where the application is subject entirely to Article 10 of the Public Service Law).

935 B. An application for an SEPF Permit for a Commercial SEPF shall be signed on behalf
of the Applicant by the person preparing the same and with knowledge of the contents and
representations made therein and attesting to the truth and completeness of the information.
The Applicant shall provide proof that the landowner, if different from the Applicant, consents
940 to the filing of the Application or the Applicant shall provide a copy of the agreement between
the Applicant and the landowner authorizing the Applicant to use the landowner's property as
proposed in the Application. At the discretion of the Board, any false or misleading statement
in the Application may subject the Applicant to denial of the Application without further
consideration or opportunity for correction. Applications shall not be deemed complete until
all requirements herein have been satisfied and a SEQR decision has been issued or a Draft
EIS has been accepted and is satisfactory.

945 C. Applications not meeting the requirements stated herein or which are otherwise
incomplete may be rejected by the Board.

D. Completed applications for siting SEPFs shall be submitted to the Town Clerk at
least ten (10) days prior to the regular meeting of the Board. The Applicant shall attend any
950 Board meeting where it wishes the Application to be considered.

E. The decision of the Board on the Application shall be filed in the office of the Town
Clerk and a copy thereof mailed to the Applicant.

955 F. Upon a majority vote of the Board, the Board may hold a public hearing on the
Commercial SEPF Application if one is not otherwise required.

960 G. All professional support, services, and costs incurred by the Town as part of this
process, including application, construction oversight, and operation, shall be borne by the
applicant.

Section 4. SEPF Permit Application Requirements

A plan for the proposed development of a Commercial SEPF shall be submitted with the
application and such plan shall show and include:

965 A. Name and address of the owner of the parcel where development is proposed, seal
of the engineer, architect, or surveyor preparing the plan. Name of project, boundary lines of
parcel that project will be located on, a location map showing proposed site's location, date,
north arrow, and scale of the plan.

970 B. Application fee (non-refundable) of \$750

975 C. Name and address of all owners of record of abutting parcels and those within
fifteen hundred (1500) feet of the property lines of parcel where development is proposed.

D. A map showing all existing lot lines, easements and right of ways, and a sketch
plan showing proposed road access including provisions for paving, if any, proposed
transmission lines and accessory facilities, and location of all existing and proposed utility
systems to the facility.

980

E. A survey of any parcel where any portion of the SEPF will be located, a copy of which shall be provided to the owners of the surveyed land.

985

F. A map showing existing and proposed topography at five-foot contour intervals.

G. A landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features including size and type of plan material and erosion control measures.

990

H. Completed State Environmental Quality Review Act (SEQRA), Full Environmental Assessment Form (EAF), and Egotist County GML 239 referral form.

995

I. Photography assessing the visibility from key viewpoints, existing tree lines, and proposed elevations. Pictures shall be digitally enhanced to simulate the appearance of the as-built above ground site facilities as they would appear from distances within a three (3) mile radius of such SEPF. Pictures from specific locations may be required by the Board and all pictures shall be no smaller than 5"X7" and provided in hard, color copy and digitally.

1000

J. Documentation of the proposed intent and capacity of energy generation as well as a justification for any clearing required.

1005

K. Preliminary report prepared by Applicant describing:

(1) Surrounding topography in relation to the capabilities for generation of electricity by the sun,

(2) Required improvements for construction activities, including those within the public's right of way or and controlled by the Town,

(3) Proposed mitigation measures for visual impacts and other environmental impacts of each SEPF.

1010

L. Elevation map showing each solar panel's height and design including a cross-section of the structure.

1015

M. A description of the general geographic areas that would be acceptable for solar projects within the Town; furthermore, demonstration that the proposed site is the most appropriate site within the immediate area for the location of the SEPF. A copy of all manufacturers' specifications for SEPFs shall be included.

1020

N. Description of the Applicant's long range plans which project market demand and long range facility expansion needs within the Town.

1025

O. If the SEPF is a "major electric generating facility" subject to Article 10 of the Public Service Law and its accompanying regulations, all documents and information required to be provided to the Town, as well as any document or information provided to the Public Service Commission or other public agency which is specifically requested by the Town.

P. Report showing quality and storm water run-off calculations for the area being disturbed.

Q. Insurance Certificates meeting the requirements of this Article below.

1030

R. Plans to prevent the erosion of soil both during and after construction, excessive runoff, and flooding of other properties, as applicable. There shall be pre-construction and post-construction drainage calculations for the site completed by a certified engineer. From this the engineer must show how there will be no increase in runoff from the site. With climate change and increasing rainfall in mind, increasing the capacity of the site to minimize runoff is encouraged.

1035

S. If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.

1040

T. Demonstrated compliance with, or inapplicability of, any Town road maintenance or road use local laws, which may include, but shall not be limited to, a proposed road use agreement.

1045

U. If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, the Applicant shall notify the Board of such requirement and the Board shall coordinate the review as deemed appropriate. A copy of any such license, approval, permit, certificate or registration shall be provided to the Board prior to approval of any special permit.

1050

V. A post-construction monitoring and compliance plan (PCMC Plan) for the purpose of certifying SEPF project compliance. The PCMC Plan shall require the Applicant to present data reports to the Town showing its compliance with the requirements of this local law, any unanticipated impacts (positive and negative) to the environment, participants and non-participants, wildlife (including any threatened or endangered species), water quality in the project area, wetlands and stormwater erosion controls at each of the following intervals following completion of construction of the SEPF: six months, one year, two years, five years, and every five years thereafter.

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Section 5. Requirements for Commercial SEPFs

A Commercial SEPF shall comply with the following standards:

A. Minimum lot area. The minimum lot area for a Commercial SEPF shall be 5 acres, or 6 acres for every megawatt of capacity, whichever is more.

1065

B. Maximum lot coverage. The total coverage of a lot with freestanding solar panels cannot exceed sixty-percent (60%) lot coverage. The total coverage by freestanding solar panels on prime farmland or farmland of statewide importance cannot exceed 50% of the area of prime farmland or farmland of statewide importance on the parcel. Lot coverage shall be defined as the area measured from the outer edge(s) of the arrays, inverters, batteries, storage cells and all other mechanical equipment used to create, store or transfer solar energy, exclusive of fencing and roadways.

1070

C. Height and setback restrictions. The maximum height for freestanding solar panels located on the ground or attached to a framework located on the ground shall not exceed 25 feet in height above the ground at their highest tilted position.

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1080 D. Buffer and setback restrictions. Unless contrary standards are expressly required
by NYSEG or another governmental authority, the following standards shall apply to
Commercial SEPFs, including SEPF Buildings:

1085 (1) Site plans for the property shall provide for the preservation of natural
vegetation in large unbroken blocks that also allow contiguous open spaces and
vegetative screening to be established when adjacent parcels are developed. Areas
within 15 feet on each side of any substation or battery storage facility shall be cleared,
and kept clear, of combustible vegetation and other combustible growth.

1090 (2) No Commercial SEPF shall be located on a Sensitive Site. The following
setbacks shall be maintained: a minimum one hundred fifty (150) foot setback from
residential, agricultural and Sensitive Site property lines, a minimum one hundred
(100) foot setback from the center of adjacent Town, County and State roads, and a
minimum seventy-five (75) foot setback from all other adjacent property lines shall be
maintained.

1095 (3) A buffer of natural and undisturbed vegetation, supplemented with evergreen
plantings which shall be at least 10 feet in height and no less than 8 feet apart, shall be
provided around all SEPF equipment to provide screening from such adjacent roads
and parcels. Visibility of the SEPF equipment from any adjacent property or road shall
be at least 50% screened by such vegetative screening.

1100 (4) SEPF Buildings shall be constructed in accordance with all applicable
provisions of the New York State Uniform Fire Prevention and Building Code adopted
pursuant to Article 18 of the Executive Law of New York State Energy Conservation
Construction Code adopted pursuant to Article 11 of the Energy Law, each as currently
in effect and as hereafter amended from time to time, and all applicable provisions of
the codes, regulations, and industry standards as referenced in each of the foregoing.
The Applicant shall obtain necessary local floodplain development permits if any SEPF
1105 Building is proposed within special flood hazard areas.

1110 (5) Battery storage systems and related equipment shall be listed by a
Nationally Recognized Testing Laboratory to UL 9540 or CAN 9540 (Standard for
Battery Energy Storage Systems and Equipment) with subcomponents meeting each
of the following standards that are applicable based on the storage type
(electrochemical, thermal, mechanical): a) UL 1973 (Standard for Batteries for Use in
Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications); b) UL 1642
(Standard for Lithium Batteries); c) UL 1741 or UL 62109 (inverters and power
converters); d) Certified under the applicable electrical, building, and fire prevention
codes as required. e) Alternatively, field evaluation by an approved testing laboratory
1115 for compliance with UL 9540 and applicable codes, regulations and safety standards
may be used to meet system certification requirements. Battery storage systems,
components, and associated ancillary equipment shall have required working space
clearances, and electrical circuitry shall be within weatherproof enclosures marked with
the environmental rating suitable for the type of exposure in compliance with NFPA 70.

1120 (6) Site access for SEPF Buildings shall be maintained, including snow removal
at a level acceptable to the local fire department and the local ambulance service.

1125 (7) All trees on the parcel that would be impacted by construction or operation of
the facility with a diameter at breast height (dbh) over twelve (12) inches shall be
evaluated for preservation by an International Society of Arboriculture (ISA) certified
arborist and every effort shall be made to preserve those trees which are identified as
being worthy of preservation.

E. Design standards. The Applicant shall submit a map plan which depicts and includes the elements found herein, as well as the following:

1130 (1) Ground cover under and between the rows of solar panels shall be low-maintenance, drought-resistant, native, non-fertilizer-dependent, pollinator friendly flora.

1135 (2) Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction. Paths of ingress and egress to the SEPF shall be shown on the plan.

(3) All on-site utility and transmission lines shall, to the extent feasible, be placed underground. If the Applicant seeks above-ground utilities or transmission lines, sufficient proof of infeasibility must be provided.

1140 (4) All SEPFs shall be designed and located in order to prevent reflective glare toward any inhabited buildings on adjacent properties as well as adjacent street rights-of-way.

1145 (5) All solar panels shall be completely enclosed by a minimum eight-foot-high fence that is of a type that is consistent with the surrounding neighborhood and the use of the property, as reasonably determined by the Board. All mechanical equipment of a SEPF, including any structure for batteries or storage cells, shall be completely enclosed by a minimum eight-foot-high anchored min-mesh chain-link fence with two-foot tip out and a self-locking gate. All such fences shall contain five-inch-high by sixteen-inch-wide grade-level cutouts every 75 feet to permit small animals to move freely into and out of the site. Landscape screening shall be provided in accordance with the landscaping provisions of this section.

1150 (6) The Applicant for a SEPF connected to the utility grid shall provide a "proof of concept" letter from the local utility company acknowledging the SEPF will be interconnected to the utility grid in order to see electricity to the public utility entity.

1155 (7) All debris, materials and/or mulch generated by site clearing or construction shall be removed from the site and disposed of properly.

(8) All lighting shall be depicted and minimized with no direct light leaving the site.

1160 (9) Fire access roads and access for fire apparatus equipment shall be provided, as approved by the Town Fire Marshall or other entity primarily responsible for fire protection of that area.

(10) All stormwater and drainage shall be contained on site in accordance with the Town standards and approval of a Storm Water Pollution Prevention Plan.

(11) A plan for soil or material removed.

1165 (12) for any SEPF to be constructed adjacent to a Sensitive Site, the map plan shall account for such sensitive areas and provide mitigation to the extent reasonably necessary as determined by the Board.

(13) The design of an SEPF as required by this section shall be prepared and sealed by a registered design professional.

1170 (14) Map plan plotted to scale, prepared by an architect, landscape architect, civil engineer, surveyor, land planner or other competent person, including thereon the following information:

(a) Preliminary architectural or engineering plans including elevations showing the use, location and dimensions of proposed buildings and open space.

1175 (b) A map plan showing the proposed activity including the location,

dimensions and square footage of proposed buildings, location and dimensions of driveways, ingress and egress from the property, driveway intersections with streets, parking areas and maneuvering areas.

- 1180 (c) A storm drainage and grading plan for analysis of proposed handling of surface water runoff and erosion control, including, where applicable under State or Federal requirements, a Storm Water Notice of Intent and a Storm Water Pollution Prevention Plan.
- 1185 (d) A plan showing utilities and utility easements including method of sewage disposal in detail.
- (e) Plans for all signs to be erected including dimensions, elevations and sign locations.
- 1190 (f) A landscape plan, prepared by a professional landscape architect or other competent person employed by a commercial garden center, showing landscaping to be installed and maintained in front, side, and rear yards as developed, including shade trees, deciduous shrubs, evergreens, defined areas of well-kept grassed areas and ground cover. All such landscaping, grassed areas and ground cover areas shall be maintained in a healthy growing condition at all times.
- 1195 (g) Plan of lighting for the exterior of structures and for any interior roadway, driveway, parking area, and off-street loading area keeping in mind that no direct light shall leave the site.
- 1200 (h) A proposed construction and implementation schedule, and schedule of hours of operation.

1205 F. Signs. A sign not to exceed 2.25 square feet shall be attached to a fence adjacent to the main access gate and shall list the facility name, owner and phone number. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations. An emergency telephone number shall be posted at any SEPF Building and on the Applicant's website, if any, so that the appropriate people may be contacted should any SEPF need immediate attention.

1210 G. Other Approvals. If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, such additional agency approvals shall be a condition to the Town's issuance of a special permit.

H. Operating Considerations

1215 (1) Building and Grounds Maintenance -- Upon completion of installation the site shall be returned as close as possible to its natural state. Any damaged, spare or unused parts, maintenance equipment, oil and all similar materials shall be removed from the premises within thirty (30) days or kept at a covered, on-site storage facility.

1220 (2) Ownership Changes -- If the ownership of a commercial SEPF operating under a special permit changes, the SEPF Permit shall remain in force and all conditions of the SEPF Permit will continue to be obligations of succeeding owners. The Town Clerk shall be notified and the ownership change registered with the Town. All signs required under provisions of this Article shall be changed accordingly.

(3) Modifications -- Subject to all of the applicable sections herein, any and all substantial modifications, additions, or changes to a SEPF authorized to operate under

1225 this Article, whether structural or not, shall be made by application to the Board except
where modification is required for routine maintenance and repairs which become
1230 necessary in the normal course of use of such SEPF or become necessary as a result
of natural forces, such as wind or ice. Additionally, any modification resulting in
significant modifications to the public health, safety, welfare, environment, of the Town
or the visual or sound impacts of the project, must be reviewed and approved by the
Board.

I. Certifications

1235 (1) Post-Installation -- If any report supplied to the Town pursuant to the PCMC
Plan indicates non-compliance with the requirements of this local law or unanticipated
negative impacts, such report shall also be accompanied by a mitigation and
minimization plan (MM Plan) to bring the SEPF into compliance as soon as possible
but in any case not longer than 120 days. The Applicant shall reimburse the Town for
1240 all reasonable expenses incurred, including professional fees and costs, to monitor,
review, evaluate and advise the Town on the PCMC Plan, each MM Plan and the
Applicant's post-construction compliance in general. Such reimbursement shall be
made within 30 days of Applicant's receipt of an invoice for such costs and expenses
from the Town.

1245 (2) Insurance/Liability -- Prior to the commencement of construction of the
SEPF, the Applicant shall provide the Town proof, in the form of a duplicate insurance
policy or a certificate issued by an insurance company, of public liability insurance, of a
level to be determined by the Board in consultation with the Town's insurer, to cover
damage or injury which might result from the failure of an SEPF or any other part(s) of
the generation or transmission facility. The public liability insurance policy shall
1250 specifically include the Town and its officers, boards, employees, committee members,
attorneys, agents, and consultants as additional named insured (using endorsement
#CG2026). with coverage of at least \$2,000,000 per occurrence / \$4,000,000
aggregate (\$5,000,000 and \$10,000,000, respectively, for SEPF subject to Article 10 of
the Public Service Law).

1255 (3) National and State Standards -- The applicant shall show that all applicable
manufacturers, New York State and U.S. standards for the construction, operation, and
maintenance of the proposed SEPF have been met or are being complied with. Any
SEPF shall be built, operated, and maintained to the applicable industry standards of
the Institute of Electrical and Electronic Engineers (IEEE) and the American National
1260 Standards Institute (ANSI). The Applicant shall furnish evidence, over the signature of
a professional engineer licensed to practice in the State of New York, that such SEPF
is in compliance with such standards.

(4) Continuing Obligations -- All requirements detailed in Section 6 shall remain
in force for the life of the SEPF Permit.

1265

Section 7. Abandonment.

A. All applications for a SEPF shall be accompanied by a decommissioning plan to be
implemented upon abandonment, or cessation of activity, or in conjunction with removal of the
1270 SEPF. Prior to issuance of a building permit, the owner or operator of the facility or structure
shall post a letter of credit or other suitable financial guarantee, as determined by the Town, in
a face amount of not less than 120% of the estimated cost of complete decommissioning and
removal to ensure proper, safe removal of the facility and related structures in accordance

1275 with the decommissioning plan described below. The Applicant shall provide detail as to how
said estimate was determined. Such guarantee shall not factor in salvage value of the facility
materials. The form of the guarantee must be reviewed and approved by the Town Attorney,
and the guarantee must remain in effect until the system is fully removed and final inspection
is completed by the Town or its designee. Prior to removal of a SEPF, a demolition permit for
removal activities shall be obtained from the Town or its designee.

1280 (1) The Applicant shall submit a decommissioning plan that ensures that the
site will be restored to a useful, nonhazardous condition, which plan shall be
implemented without delay if: (1) the Applicant ceases operation of the SEPF for a
period of 18 months, (2) begins but does not complete construction of the project
within 18 months after receiving final special permit approval, or (3) the special permit
1285 for the SEPF expires or is not renewed. The plan shall include but not be limited to the
following:

(a) SEPF removal shall include removal of all aboveground equipment,
and removal of foundations to a depth of four (4.0) feet below grade. Below
ground accessory facilities, such as collection lines, are not required to be
1290 removed, unless otherwise required by applicable law. In addition, access
roads may be left in place if written consent is received by the Town from the
landowner and the landowner agrees to properly maintain all storm water
management, run-off and erosion controls. However, all SEPF equipment or
materials or accessory facilities installed underground must be fully removed
1295 and the land reclaimed where such equipment or materials will (i) interfere with
or prevent continued compliance by the landowner with any Environmental
Laws, (ii) give rise to any liability to the Town or the landowner under any
Environmental Laws, or (iii) form the basis of any claim, action, suit, proceeding,
hearing or investigation under any Environmental Laws.

1300 (b) Restoration of the surface grade and soil after removal of equipment.

(c) Revegetation of restored soil areas with native seed mixes, excluding
any invasive species, with preference given to the landowner where possible.

(d) The results of soil tests showing that no contamination has occurred
due to the presence of SEPFs,

1305 (e) The plan shall include a reasonable timeframe for the completion of
site restoration work.

(f) Proper and lawful disposal of solar panels.

(2) In the event that construction of the SEPF has been started but is not
1310 completed and functioning within 18 months of the issuance of the final SEPF Permit
approval, the Town may notify the Applicant, operator and/or owner to complete
construction and installation of the facility within 90 days. If the applicant fails to
perform, the Town may notify the owner and/or operator to implement the
decommissioning plan. The decommissioning plan must be completed within 180
days of such notification by the Town.

1315 (3) Upon cessation of activity of a fully constructed SEPF for a period of 18
months, the Town may notify the owner and/or operator of the facility to implement the
decommissioning plan. Within 120 days of notice being served, the owner and/or
operator shall either restore normal, active operation of the SEPF, or implement the
decommissioning plan which must then be fully complete within 12 months from the
1320 beginning of its implementation.

(4) Upon revocation, termination or non-renewal of the permit for a SEPF, the
Applicant, owner and/or operator must fully complete the decommissioning plan.

1325 (5) If the Applicant, owner and/or operator fails to fully implement the decommissioning
plan within the 12 month time period (or 180 days, in the case of (A)(2) above) and restore
the site as required, the Town may, at its own expense, provide for the restoration of the site
in accordance with the decommissioning plan and may, in accordance with the law, recover
all expenses incurred for such activities from the letter of credit or other financial guarantee
and from the defaulted owner and/or operator. Any cost incurred by the Town which has not
1330 been fully paid by the owner and/or operator shall be assessed against the property, shall (in
addition to any other available remedies) become a lien and tax upon said property, shall be
added to and become a part of the taxes to be levied and assessed thereon, and enforced and
collected with interest by the same officer and in the same manner as other taxes. The
decommissioning plan shall provide for the ability of the Town, or its assignee or designee, to
1335 access the property owner's land in order to complete the decommissioning if necessary.

Article IV Separability

1340 The provisions of this local law are separable and if any provision, clause, sentence,
subsection, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any
person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall
not affect or impair any of the remaining provisions, clauses, sentences, subsections, word, or
parts of this local law or their application to other persons or circumstances. It is hereby
1345 declared to be the legislative intent that this local law would have been adopted if such illegal,
invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been
included therein, and as if such person or circumstance, to which the local law of part thereof
is held in applicable, had been specifically exempt therefrom.

Article V Repealer

1350 All Ordinances, Local Laws and parts thereof inconsistent with this Local Law are hereby
repealed.

Article VI Effective Date

1355 This local law shall take effective immediately upon filing with the New York State Secretary of
State in accordance with Section 27 of Municipal Home Rule Law.