

Hoffman Falls Wind Project

Case No. 23-00038

900-2.25 Exhibit 24

Local Laws and Ordinances

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EXHIBIT 24 LOCAL LAWS AND ORDINANCES

Section 94-c of the Executive Law, and its implementing regulations (16 NYCRR § 900-1 through 900-15) provides for the review of major renewable energy facilities in New York State and establishes a unified proceeding instead of requiring a developer to apply for numerous state and local permits. 94-c expressly states that no municipality or political subdivision or any agency thereof may require any approval, consent, permit, certificate, contract, agreement or other condition for the development, design, construction, operation or decommissioning of a major renewable energy facility with respect to which an application for a siting permit under Section 94-c has been filed (see N.Y. Exec. Law § 94-c(6)(a)). Therefore, to the extent that local municipalities require site plan approvals, special use permits, building permits, or any approval, consent, permit, certificate, contract, agreement, or other condition with respect to the Facility such review and approval is expressly preempted by 94-c. This includes approvals by Town Boards, Planning Boards, or other Town employees with respect to local requirements for the Facility. For example, a requirement that the Planning Board approve the height of wind turbines would be pre-empted by 94-c. Similarly, a requirement to enter into any agreements with the local municipality (e.g., Road Use Agreements or Decommissioning Agreements) would also be pre-empted, unless expressly authorized by the Office of Renewable Energy Siting (ORES or the Office).

However, local substantive requirements not otherwise requiring local review or approvals (i.e., setbacks, height limits, and sound limits) will still be applied to the Facility by the Office. Executive Law § 94-c(5)(e) provides that a final Siting Permit may only be issued if the Office makes a finding that the proposed Facility, together with any applicable Uniform Standard Conditions (USCs), Site Specific Conditions (SSCs), and compliance filings set forth in the Permit would comply with applicable laws and regulations. In making this determination, the Office may elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed Facility, it is unreasonably burdensome in view of the Climate Leadership and Community Protection Act (CLCPA) targets and the environmental benefits of the proposed Facility. The Applicant has designed the Facility to conform to all such local substantive requirements, except for those requirements identified below for which the Applicant requests the Office elect not to apply. See Appendix 24-E Statement of Justification.

CONSULTATION WITH LOCAL MUNICIPALITIES

The Applicant's intentions are to design a Facility that assists New York State in achieving its renewable energy production and greenhouse gas emission reduction goals, while minimizing environmental impacts and balancing reasonable local concerns. See Exhibit 17 for a discussion of the Facility's consistency with energy planning objectives. The Applicant intends to operate the Facility and establish itself as a long-term respected member of the local community, and this intent has been implemented through ongoing stakeholder engagement and responsiveness in the Facility design. See Exhibit 2, Appendix 2-A, and Appendix 2-B for a summary of local engagement and outreach efforts.

The proposed Hoffman Falls Wind Project (the Facility) will be located in Madison County, New York, within the Towns of Eaton, Fenner, Nelson and Smithfield. Beginning in 2020 during early-stage development, and continuing throughout the pre-application process, the Applicant has consulted with the Towns of Eaton, Fenner, Nelson and Smithfield. Outreach has included open houses and town meetings, as further identified in Exhibit 2, Appendix 2-A and 2-B. The Applicant conferred with the Towns on a range of issues, including identifying relevant substantive local laws and ordinances that could apply to the Facility. As a result, the Applicant has identified substantive local laws, ordinances, and other regulations, standards, and/or requirements that may be applicable to the construction, operation, or decommissioning of the Facility. This Application reflects the local laws as they existed at the time of the Application submission and is intended to identify the areas of local codes relevant to the proposed Facility. It should be noted that as of the filing of this application the Towns of Nelson and Fenner are contemplating adopting new local laws regulating wind energy facilities and the Town of Nelson has adopted moratoriums suspending Town review of any applications for commercial wind energy facilities, while they review their existing laws.

The Town of Nelson originally adopted regulations for Wind Energy Facilities in 2011. In July 2021 the Town adopted a one-year moratorium on the establishment of commercial wind energy facilities, then adopted another six-month moratorium in June 2022, then adopted a nine (9) month moratorium in February 2023 and adopted another nine (9) month moratorium in November 2023. The Town of Nelson has been contemplating modifications to the Town's zoning laws for over two years with no significant or clear progress evident.¹ In addition, in 2023, the Town of Fenner adopted a Comprehensive Plan which identified the need to reassess the Town's wind law and adopt new wind laws in light of the proposed Hoffman Falls Wind Project, however, to date, the Town of Fenner has not adopted an updated wind energy law.

Moratoriums by their nature are procedural laws which suspend the Town's review and approval authority of development applications, and are therefore pre-empted by 94-c. Moreover, such moratoriums are contrary to the CLCPA targets and would only work to delay construction of projects for which the State has already issued comprehensive regulations governing their construction and operation. Given that the Towns of Nelson and Fenner have not updated their wind laws, and that the Town of Nelson's moratorium is procedural, this Application identifies the substantive provisions of the Towns' existing wind laws.

On or about September 12, 2023, the Applicant sent letters to the Towns of Eaton, Fenner, Nelson and Smithfield identifying substantive local laws and providing an overview of the Facility's compliance with substantive provisions of applicable local laws and what laws, if any, Hoffman Falls Wind may seek to waive under Section 94-c. Given that the Towns of Eaton, Nelson and Fenner had not updated their wind laws, this overview identified substantive provisions of the Towns' existing wind laws in September 2023. In follow up to the letters, the Applicant met with the Town of Nelson on October 9, 2023, the Towns of Eaton and Smithfield on October 10, 2023, and the Town of Fenner on October 13, 2023, to further discuss the Project and local laws applicable to the Facility. In follow-up to the meetings in October, on November 7, 2023, the Applicant sent a letter to the Towns summarizing the information provided during the October meetings

¹ Moratoriums must be of reasonable duration, and moratoriums on wind facilities greater than two-years have been found "curious and suspicious" in at least one proceeding. [Ecogen, LLC v. Town of Italy, 438 F. Supp. 2d 149](#)

and responding to common questions asked by the Towns during the meetings regarding the Project. Documentation of the Applicant's local engagement and outreach efforts is provided in Exhibit 2, Appendix 2-A and 2-B.

It should also be noted that the Town of Eaton, after multiple moratoriums recently passed, in December 2023, a new Wind Energy Facilities law, which includes the same provisions as the Town of Smithfield Wind Energy Facilities law. Prior to the Town of Eaton adopting this new law, the Applicant further consulted with the Town and identified those provisions in the new law that would require a waiver from ORES, as the provisions would be unreasonably burdensome on the Facility. Exhibit 2, Appendix 2-A and 2-B.

Throughout the design of the Facility the Applicant has worked to reduce the number of waivers needed to construct and operate the Facility and ensure that the requests are the minimum necessary.

(a) List of Substantive Local Ordinances/Laws Applicable to Facility Construction and Operation

The Applicant has designed the Facility in conformance with all local substantive requirements, to the extent practicable, except for those substantive requirements identified in Section I below, for which the Applicant seeks a waiver from ORES. Below is a list of substantive local laws and ordinances that may be applicable to the construction and operation of the Facility. See Appendices 24-A through 24-D for copies of the local laws and ordinances that include the substantive provisions described below.²

Town of Eaton

- Local Law No. 4 of 2023 A Local Law Amending Chapter 120 of the Town of Eaton Code to Regulate Commercial Wind Energy Facilities within the Town of Eaton
 - Section 120-23.15(A)(1)
 - Section 120-23.15(D)(1-8, 10-16, 18, 20-21)
 - Section 120-23.15(E)(1-6)
 - Section 120-23.15(F)(1-2)
 - Section 120-23.15(G)(1-2)
 - Section 120-23.15(I)(1-3)
 - Section 120-23.15(P)
 - Section 120-23.15(S)
- Flood Damage Prevention Local Law (Chapter 95, Flood Damage Prevention).
- Administration and enforcement of the New York State Uniform Fire Prevention and Building Code Local Law (Chapter 90, Fire Prevention and Building Construction)

Town of Fenner

- Town of Fenner Land Use Regulations (Local Law 1997-1 as amended)
- Local Law No. 2000-1 (amending local law 1997-1)(establishing Zoning District C)

² This section will include all substantive local laws and ordinances enacted up to the time of Application.

- Local Law No. 2001-1 (amending local law 1997-1)(expanding Zoning District C)
- Local Law No. 1 of 2005 (amending local law 1997-1)³

In addition, the following local laws have been identified as the collector substation, point of interconnect (POI) substation, and Operations & Maintenance (O&M) building are proposed to be located in the Town of Fenner.

- Sanitary Disposal Requirements
- Local Law No. 1 of 2017 (Fence Regulations)
- Subdivision Regulations

To accommodate these Facility components, Hoffman Falls Wind intends to subdivide the parcel that contains the substation to create three separate parcels: one parcel will remain with the current landowner as a part of the existing larger parcel, one parcel will include the switchyard which will be transferred to National Grid after Facility construction, and one parcel will include the 3-breaker ring bus, which will be owned by the Applicant. Hoffman Falls Wind also intends to subdivide a second parcel within the Town of Fenner that contains the O&M building to create two separate parcels: one parcel will remain with the current landowner, and one parcel will include the O&M building which will be owned by the Applicant. See Exhibit 3 and Figures 3-1 and 3-12 for further details on the locations of Facility components.

The Town of Fenner has adopted the Town of Fenner Subdivision Regulations (dated September 1, 1994). The procedural requirements of the Town's Subdivision Regulations are supplanted by Section 94-c (Articles 1-5, 7-8). According to the Subdivision Regulations, the subdivisions proposed are considered minor subdivisions because they consist of less than four lots fronting an existing road. Article 2, Definitions. The substantive Subdivision Regulation requirements are found in Article 6. However, most of the substantive requirements do not apply to the subdivision or O&M building because they apply to major subdivisions or residential dwellings, not to public utility uses. For example, Section 610 applies to minor roads, which are defined as roads intended to serve residential properties. The subdivisions will not include any residential properties, making this requirement inapplicable. Regardless, the Applicant reviewed Article 6 of the Town of Fenner Subdivision Regulations and the following substantive provisions may apply:

- Article 6, Section 625(3) (applicable to O&M building only)
- Article 6, Section 630(1) and (3) (applicable to O&M building only)
- Article 6, Section 635(3)
- Article 6, Section 640(1)
- Article 6, Section 640(2)
- Article 6, Section 640(5)
- Article 6, Section 640(6)
- Article 6, Section 645

³ This law added parcels to District C but does not contain any changes to substantive requirements related to commercial wind facilities.

Town of Nelson

- Local Law No. 2 of 2011, to enact the Town of Nelson Land Use Development and Zoning Map
 - Section 404.2 Scenic Vista I Scenic Highway Overlay District
 - Section 403.1 Uses and Activities in Rural Zone R
 - Section 512 Wind Energy Facilities
 - Section 600 General Development Environmental Standards
 - 601 Regulation of Surface Modification and Soil Disturbance
 - 602 Stormwater Management
 - 614 Access Driveway Standards
- Administration and enforcement of the New York State Uniform Fire Prevention and Building Code Local Law (Article X of Land Use Development Law)

Town of Smithfield

- Building And Development Control Local Law Town of Smithfield (as amended By Local Laws 1992-2, 1993-2, 1995-1, 1995-2, 2004-1, 2005-1, 2006-2, 2007-1, 2010-1)
 - Article IV Section 4.1(b) Sanitary Facilities
 - Article VI-A Administration and Enforcement of State Codes
 - Article X Driveways
- Local Law No. 2 of 2023 to Amend the Town of Smithfield Building and Development Control Law to Enact a New Article Regulating Wind Energy Facilities within the Town of Smithfield
 - Section 1100-5(A)(1)
 - Section 1100-5(D)(1-8, 10-16, 18, 20-21)
 - Section 1100-5(E)(1-6)
 - Section 1100-5(F)(1-2)
 - Section 1100-5(G)(1-2)
 - Section 1100-5(I)(1-3)
 - Section 1100-5(P)
 - Section 1100-5(S)
 - Section 1100-6(A and C)

Madison County

In Madison County, as in much of New York State, zoning authority is held by towns, villages, and cities. Madison County does not have any applicable laws, ordinances, regulations, standards or other requirements applicable to the construction or operation of the Facility. Therefore, the Applicant has not identified any substantive provisions for Madison County. To the extent that Madison County requires driveway permits, special hauling permits or highway work utility permits the Applicant is requesting that ORES expressly authorize the County to issue such permits.

Local Ordinances/Laws Applicable to Road Use

As part of the construction and operation of the Facility the Applicant will need to:

1. Transport personnel, parts, equipment, and materials on the municipal roads, including oversized and overweight vehicles (e.g., turbine deliveries). Additional details regarding the proposed haul routes are included in Exhibit 16 and Appendix 16-A.
2. Perform work in municipal roads, including widening roads, installing temporary turning radii, and make certain roads improvements (e.g., driveway entrances and culvert repairs/replacements). Additional details regarding the proposed road improvements are included in Exhibit 16 and Appendix 16-A.
3. Place underground and overhead electrical collection and communication cables, conduit and other wires and cables in close proximity to or under or across certain municipal roads, including the placement of footings, foundations, towers, poles, crossarms, guy lines and anchors, circuit breakers, junction boxes and other machinery and equipment related to the underground and overhead lines. Additional details regarding the installation of underground and overhead electrical collection and communication cables are included in Exhibit 5 and Exhibit 21. The Applicant has or will obtain all necessary real property rights from underlying landowners as outlined in Exhibit 4.

Therefore, the Applicant has identified substantive local laws applicable to the use of municipal roads during construction and operation of the Facility. Again, the procedural provisions of these local laws, which require permits and approvals are pre-empted by 94-c unless expressly authorized by the Office.

The Applicant anticipates negotiating Road Use Agreements (RUAs) with each of the Towns and will continue to consult with the Towns regarding the use of Town roads. See Appendix 2-A for information on consultations conducted to date on this topic. However, in the absence of a RUA, as with other provisions of local law, the Town's review and approval authority is limited by Section 94-c, and Hoffman Falls Wind is requesting that ORES retain its authority with respect to review and approval of the above identified uses of Town roads should the Applicant and the Town(s) not enter a RUA. Final details regarding the use of Town roads and whether the Applicant entered any RUAs will be provided as part of the Applicant's Final Traffic Control Plan submitted pursuant to 19 NYCRR § 900-10.2(8).

Town of Eaton

Section 120-29 of the Town Code requires the location of new driveways for ingress and egress "shall be cleared with the appropriate highway department for approval of the location, and their recommendations concerning appropriate stormwater management structures must be complied with." This Section is procedural and does not contain any substantive provisions. The locations of driveway entrances are identified in Exhibit 16 and Appendix 16-A.

In addition the Town of Eaton Wind law includes the following provision regarding haul routes (§ 120-23.15(F), which states, "[t]raffic Routes (1) Construction of WECS pose potential risks because of the large size construction vehicles, hauled materials along with their impact on traffic safety and their physical impact

on local roads. Construction and delivery vehicles for WECS and for associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include: (a) minimizing traffic impacts from construction and delivery vehicles, including impacts on local residential areas; (b) minimizing WECS related traffic during times of school bus activity; (c) minimizing wear and tear on local roads; and (d) minimizing impacts on local business operations. (e) Special use permit conditions may limit WECS-related traffic to specific routes, and include a plan for disseminating traffic route information to the public. (2) The applicant is responsible for repair of all damages to Town Roads occurring during the construction or maintenance of a WECS to be addressed in a Road Use Agreement, which shall be a condition precedent to issuance of any WECS permit. A cash security (as determined by the Town Board) shall be posted prior to the issuance of any WECS permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to local roads." The Facility will be designed to comply with the traffic route requirements of Section 120-23.15(F)(1)(a-d). The remaining provisions of this section are procedural and supplanted by 94-c.

The Applicant did not identify any other applicable substantive local laws relating to uses identified above in the Town of Eaton.

Town of Fenner

The Town of Fenner Land Use Regulations Section 603 of the Town Code requires the location of new driveways "be approved by the appropriated highway department with jurisdiction over the subject roadway." This Section is procedural and does not contain any substantive provisions. The locations of driveway entrances are identified in Exhibit 16 and Appendix 16-A.

The Definitions section of the Land Use Regulations (Appendix I) does state that "the culverts for driveways need to have corrugate 15-gauge steel, a minimum 15" in width or what is designated by the Highway Superintendent." Although it is unclear exactly what this requirement is in reference to as it is contained at the end of the Definitions section of the local law, the Applicant has designed the Facility to meet this requirement. The Applicant did not identify any other applicable substantive local laws relating to uses identified above in the Town of Fenner.

Town of Nelson

The Town of Nelson Land Use and Development Law includes standards for access driveways in Section 614. The Applicant will comply with the substantive provisions of Section 614. The Applicant did not identify any other applicable substantive local laws relating to uses identified above in the Town of Nelson.

Town of Smithfield

Article X of the Town of Smithfield Building and Development Control Law contains regulations for the construction of driveways allowing access to roads within the Town of Smithfield. Section 10.4 contains design regulations for commercial driveways, Section 10.5 contains driveway drainage regulations, Section

10.6 includes location and layout requirements, and Section 10.11 contains construction standards and regulations. The Facility will comply with these substantive sections of Article X for any access roads which will enter Town roads. The locations of driveway entrances are identified in Exhibit 16 and Appendix 16-A. The procedural provisions of this Article which require applications, permits and other approvals and reviews are supplanted by Section 94-c. In addition the Town of Smithfield Wind Law includes the following provision regarding haul routes (§ 1100-5 F), which states, "[t]raffic Routes (1) Construction of WECS pose potential risks because of the large size construction vehicles, hauled materials along with their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and for associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include: (a) minimizing traffic impacts from construction and delivery vehicles, including impacts on local residential areas; (b) minimizing WECS related traffic during times of school bus activity; (c) minimizing wear and tear on local roads; and (d) minimizing impacts on local business operations. (e) Special use permit conditions may limit WECS-related traffic to specific routes, and include a plan for disseminating traffic route information to the public. (2) The applicant is responsible for repair of all damages to Town Roads occurring during the construction or maintenance of a WECS to be addressed in a Road Use Agreement, which shall be a condition precedent to issuance of any WECS permit. A cash security (as determined by the Town Board) shall be posted prior to the issuance of any WECS permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to local roads." The Facility will be designed to comply with the traffic route requirements of Section 1100-5(F)(1)(a-d). The remaining provisions of this section are procedural and supplanted by 94-c. The Applicant did not identify any other applicable substantive local laws relating to uses identified above in the Town of Smithfield.

For each of the Towns, the Applicant intends to comply with the substantive standards of these local laws during the construction and operation of the Facility by either entering into road use agreements with the local municipalities or complying with the substantive provisions of the above identified laws, except as noted. However, to the extent that the Applicant and the local municipalities cannot agree upon a road use agreement or any requirements or conditions of applicable substantive local laws with respect to road use, the Applicant reserves its right to seek approvals from the Office, and waivers, if necessary, to the extent that such provisions become unreasonably burdensome as they are applied to the construction of the Facility. For example, to the extent a municipality refuses to allow the Applicant to use a necessary haul route for the delivery of turbine components, the Applicant requests that the Office retain the authority to approve said haul route, as part of the Applicant's Traffic Control Plan submitted pursuant to 19 NYCRR § 900-10.2(8).

Finally, the Applicant is unaware of any Town law directly related to the crossing of municipal roads with project infrastructure (underground or overhead). New York State Highway Law §149 does grant Towns the authority to grant permission for an "overhead or underground crossing" provided that such crossing "shall be so laid, set or constructed as not to interrupt or interfere with public travel upon the highway, and upon the further condition that the applicant will replace the earth removed and leave the highway in all respects in as good condition as before ... construction of such crossings, and that such applicant will keep such ... crossing in repair and save the town harmless from all damages which may accrue by reason of

their location in the highway, and that upon notice by the town superintendent the applicant will make the repairs required for the protection or preservation of the highway.”

The Applicant will comply with the above identified substantive provisions of New York State Highway Law §149 for the crossing of any municipal roads.

(b) List of Substantive Local Ordinances/Laws Related to Use of Water, Sewer, or Telecommunication Lines

The Facility will not be connecting to any water, sewer, telecommunication or steam lines in public rights of ways. As previously noted, the Facility’s O&M building will be served by individual water and septic systems. No new off-site telecommunications lines will be required for the Facility. With respect to the Town’s Sanitary Disposal Requirements, the Town adopted these requirements in 1968 to regulate private and public sewage disposal facilities in the Town. These regulations would therefore be applicable to any individual septic system installed at the O&M building. The Town’s regulations require that any sewage disposal installation be designed and built according to the Town requirements and current sanitary regulations of New York State. Although the requirement to obtain a construction permit from the Town is supplanted by Section 94-c, the Applicant will work with ORES and the Town Sanitary Inspector to ensure any septic installed at the Facility meets with local and State sanitary standards prior to the installation of any septic system. To the extent that Madison County requires the Applicant to obtain permits for any septic systems, the Applicant will also work with the County to ensure any County requirements are also met.

(c) List of Substantive Local Ordinances/Laws That the Applicant Requests the Office Not Apply

At this time, the Applicant anticipates complying with all substantive local laws and ordinances to the greatest extent practicable. However, the Applicant is requesting a waiver of the sections of local laws identified below and further outlined in Appendix 24-E.

Town of Eaton

Town of Eaton Code Chapter 120, Article VC

§ 120-23.15. REGULATIONS.

- D. Standards for WECS
 - 16. Construction Hours
- G. Setbacks and Noise Standards for WECS
 - (a) From property lines
 - (b) From public road and highways
- I. Decommissioning
- S. Made in America Requirements

Town of Fenner

Town of Fenner Land Use Regulations as amended by Local Law No. 2000-1 and 2001-1
Sections IV. and VI. Land Use Prohibition (District C)

Section V. Land Use Schedule (Note h. setback to property lines)
Section V. Land Use Schedule (Lot Dimensions and Height Requirements)
Section VII. 606.31(E) (Sound Limits)

Town of Fenner Subdivision Regulations

- Article 6 Section 640.1**
- Article 6 Section 640.2**
- Article 6 Section 640.5**
- Article 6 Section 640.6**
- Article 6 Section 645**

Town of Nelson

Town of Nelson Land Use Development and Zoning Map

Article IV Zoning District Regulations

404.2 Scenic Vista I Scenic Highway Overlay District

Article V Supplemental Regulations Applicable to Particular Uses

- 512.1 (B) Minimum road frontage shall be 450 feet.
- 512.1 (E) Setbacks
- 512.2 (D) Sound
- 512.2. (E) Visual Impacts

Town of Smithfield

Local Law No. 2 of 2023 to Amend the Town of Smithfield Building and Development Control Law to Enact a New Article Regulating Wind Energy Facilities within the Town of Smithfield

Section 1100-5

- D. Standards for WECS
 - 16. Construction Hours
- G. Setbacks and Noise Standards for WECS
 - (a) From Property Lines
- I. Decommissioning
- S. Made in America Requirements

(d) Summary Table of Substantive Local Requirements

Table 24-2 provides a list of all applicable substantive requirements to the Facility and a description of how the Applicant plans to adhere to those requirements.

Table 24-1. List of Applicable Substantive Requirements to the Facility and Plans to Adhere to the Requirements

Local Substantive Law	Compliance
<i>Town of Eaton</i> <i>Local Law No. 4 of 2023 – A Local Law Amending Chapter 120 of the Town of Eaton Code to</i>	

Regulate Commercial Wind Energy Facilities within the Town of Eaton

<p>§ 120-23.15 Wind Energy Conversions Systems (WECS) A. Permits Required; Transfer; Modifications.</p> <p>(1) Districts where allowed. Subject to the issuance of site plan approval and a special use permit and other requirements as set forth herein, WECS shall be a permitted use in all areas of the Town of Eaton except within the Residential District No. 2 (RD-2). WECS are a prohibited use in the Residential District No. 2.</p>	<p>The Facility will be designed to comply with this requirement. The Facility is not proposed to be located in the RD-2 district. The other provisions of this section are procedural and supplanted by 94-c. See Exhibit 3 for further information on zoning districts.</p>
<p>§ 120-23.15 D. (1) All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 3, Exhibit 5, and Exhibit 21 for further information on the Facility's transmission lines.</p>
<p>§ 120-23.15 D. (2) No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECS and telecommunications facilities.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 20 for further information.</p>
<p>§ 120-23.15 D. (3) To minimize any visual impacts associated with WECS, no advertising signs are allowed on any part of the WECS, including fencing and support structures.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 8 for further information.</p>
<p>§ 120-23.15 D. (4) Lighting of tower. No tower shall be lit except to comply with FAA requirements.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 8 for further details on WTG lighting.</p>
<p>§ 120-23.15 D. (5) Minimum downward directed security lighting for ground level facilities shall be allowed as approved on the site plan.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 8 for further information.</p>

<p>§ 120-23.15 D. (6) All applicants shall use measures to reduce the visual impact of WECS to the extent possible. WECS shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished white or gray in color. WECS within multiple WECS project shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the project, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 8 for further information.</p>
<p>§ 120-23.15 D. (7) The use of guy wires is permitted in connection with small WECS and wind measurement towers only.</p>	<p>The Facility will be designed to comply with this requirement. WTGs will not have guy wires.</p>
<p>§ 120-23.15 D. (8) All solid waste and hazardous waste and construction debris shall be removed from the project site and managed in a maimer consistent with all appropriate rules and regulations.</p>	<p>The Facility will be designed to comply with this requirement. Hoffman Wind will dispose of waste as authorized by State and Federal law. See Exhibit 23 for further discussion on waste removal.</p>
<p>§ 120-23.15 D. (9) Sign-off from First Responders/Emergency Medical Service providers shall be provided</p>	<p>The requirement to obtain "sign off" from First Responders/Emergency Medical Service providers is procedural, nevertheless the Applicant has consulted with local First Responders/Emergency Medical Service provides are part of the 94-c application process. See Exhibit 6 for further information.</p>
<p>§ 120-23.15 D. (10) 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 when feasible. The use of previously developed areas will be given priority wherever possible.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 3 for further details on land use and specially-designated areas surrounding the Facility.</p>

<p>§ 120-23.15 D. (11) WECS shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity, particularly bird and bat species, including those that may be listed by the U.S. Fish & Wildlife Service as threatened or endangered and those listed as threatened, endangered, and species of concern by the NYS officials.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 12 for further information on the Facility's impact to wildlife.</p>
<p>§ 120-23.15 D. (12) Wind energy conversion systems shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations. A plan for clearing and/or grading of the site and a stormwater pollution prevention plan (SWPPP) for the site. The SWPPP shall be filed and recorded in the Madison County Clerk's Office (indexed against the property) by the applicant following Planning Board approval (prior to commencement of construction) and shall provide for access to the Town of Eaton in the event of a default of the operator's obligations under the SWPPP. The SWPPP shall include a security amount approved by the Town's Consulting Engineer and shall remain in place until decommissioning is complete.</p>	<p>The Facility will be designed in a manner consistent with all applicable state and Federal wetlands laws and regulations. The 94-c Application includes a preliminary stormwater pollution prevention plan (SWPPP) for the site. The remaining requirements of this section are procedural and are otherwise supplanted by Section 94-c and the NYS Department of Environmental Conservation's authority under the State Pollutant Discharge Elimination System (SPDES) Permit. See Exhibit 14 for further details on wetland impacts.</p>
<p>§ 120-23.15 D. (13) Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.</p>	<p>The Facility will be designed to comply with this requirement. See Appendix 13-C for further information.</p>
<p>§ 120-23.15 D. (14) The maximum Total Height of any WECS shall be Six Hundred Eighty (680) feet. However, in all instances, the Applicant shall be required to demonstrate that the requested height of the WECS is necessary to achieve the project's objectives.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 5 for further information.</p>
<p>§ 120-23.15 D. (15) Any substation used in conjunction with a WECS shall be sited in a manner that will have the least intrusive impact upon adjacent residences and shall be sheltered and/or screened with a physical barrier and/or vegetation in a manner to eliminate its views from such residences. The Planning Board shall assess such siting in accordance with the requirements of this Section and the Town's Comprehensive Plan.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 8 for further information.</p>

<p>§ 120-23.15 D. (16) Construction of the WECS shall be limited to the hours of 7 AM to 7 PM, Monday through Friday.</p>	<p>The Applicant is seeking a waiver of this provision. See waiver request.</p>
<p>§ 120-23.15 D. (18) Following construction/installation of the WECS, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust and demonstrating established growth. The Applicant shall provide an Operations and Maintenance Plan which shall include provisions for reseeding and established growth.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 120-23.15 D. (20) Any WECS project shall meet and comply with the latest version of the National Electric Code for the life of the project. If it is determined that a WECS is causing stray voltage issues, the operator shall immediately take the necessary corrective action to eliminate these problems including relocation or removal of the facilities, ore resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for revocation of the Special Use Permit for the specific WECS causing the problems. Fines for non-compliance will be set by the Town Board and assessed accordingly.</p>	<p>The Facility will be designed to comply with the latest version of the National Electric Code.</p>
<p>§ 120-23.15 (D). (21) To the greatest extent possible WECS, together with all above ground facilities, underground cables and wires, and all permanent access roads shall be positioned along existing fence lines, hedge rows or tree rows and/or as near the edge of any fields as possible to minimize the disruption to pastureland or tillable land unless, otherwise allowed by the property owner(s). Following construction, the site shall be graded and seeded and restores to its preconstruction condition or better unless, otherwise allowed by the property owner(s). During construction, the developer shall be required to act consistent with Agricultural Consistency Review under Agriculture and Markets Law, and best agricultural and forestry practices to ensure construction integrity of the site.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 120-23.15 E. (1) Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.</p>	<p>The Facility will be designed to comply with this requirement.</p>

<p>§ 120-23.15 E. (2) Appropriate warning signs shall be posted. At least one sign shall be posted at least 100 feet from the base of the tower on the tower access road/route warning of electrical shock or high voltage. A sign shall be posted on the entry area 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. The Planning Board may require additional signage based on safety needs.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 120-23.15 E. (3) No climbing pegs or tower ladders shall be located closer than 12 feet to the ground level at the base of the structure for freestanding single pole or guyed towers.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 120-23.15 E. (4) The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 120-23.15 E. (5) WECS shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 6 for further details.</p>
<p>§ 120-23.15 E. (6) Existing snowmobile and/or ATV trails shall be posted, where reasonably necessary, to warn of potential ice throw dangers from the WECS.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 6 for further details.</p>
<p>§ 120-23.15 F. Traffic Routes (1) Construction of WECS pose potential risks because of the large size construction vehicles, hauled materials along with their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and for associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include:</p> <ul style="list-style-type: none"> (a) minimizing traffic impacts from construction and delivery vehicles, including impacts on local residential areas; (b) minimizing WECS related traffic during times of school bus activity; (c) minimizing wear and tear on local roads; and (d) minimizing impacts on local business operations. 	<p>The Facility will be designed to comply with the traffic route requirements of Section 1100-5(F). The Applicant intends to enter into a Road Use Agreement with the Town to address use of the Town roads during construction or maintenance of the Facility. Exhibit 16 includes further details related to traffic routes and traffic impact minimization.</p>

<p>(e) Special use permit conditions may limit WECS-related traffic to specific routes, and include a plan for disseminating traffic route information to the public.</p>	
<p>(2) The applicant is responsible for repair of all damages to Town Roads occurring during the construction or maintenance of a WECS to be addressed in a Road Use Agreement, which shall be a condition precedent to issuance of any WECS permit. A cash security (as determined by the Town Board) shall be posted prior to the issuance of any WECS permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to local roads.</p>	<p>See Exhibit 16 for further details.</p>
<p>§ 120-23.15 G. (1)(a) From property lines. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any non-participant's property line, excluding adjoining lot lines of the project participants.</p>	<p>The Applicant is seeking a waiver of this provision. See waiver request.</p>
<p>§ 120-23.15 G. (1)(b) From public road and highways. A minimum distance of 2.0 times the Total Height of turbine (including blades), from any public road and highway.</p>	<p>The Applicant is seeking a waiver of this provision. See waiver request.</p>
<p>§ 120-23.15 G. (1)(c) From public above-ground transmission lines. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any above-ground transmission line greater than 12 kilovolts.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 5 for further information on setback requirements.</p>

<p>§ 120-23.15 G. (1)(d) From another WECS turbine. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any other turbine. All power transmission lines from the tower to any building or other structure shall be located underground.</p>	<p>The Facility will be designed to comply with this requirement. Exhibit 5 for further information on setback requirements.</p>
<p>§ 120-23.15 G. (2)(a) The statistical sound pressure level generated by a WECS shall not exceed L10 - 50 dBA measured at the nearest residence located off the Site. Sites can include more than one parcel 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 five dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.</p>	<p>The Facility will be designed to comply with these sound requirements. See Exhibit 7 for further information.</p>
<p>§ 120-23.15 G. (2)(b) In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in § 14(B)(1) shall be reduced by five dBA. A Pure Tone is defined to exist if the 1/3 octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two contiguous 1/3 octave bands by five dBA for center frequencies of 500 Hz and above, by eight dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.</p>	<p>The Facility will be designed to comply with these sound requirements. See Exhibit 7 for further information.</p>
<p>§ 120-23.15 G. (2)(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 minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences. 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 30 mph at the ambient noise measurement location.</p>	<p>The Facility will be designed to comply with these sound requirements. See Exhibit 7 for further information.</p>
<p>§ 120-23.15 G. (2)(d) Any noise level falling between two whole decibels shall be the lower of the two.</p>	<p>The Facility will be designed to comply with these sound requirements. See Exhibit 7 for further information.</p>

<p>§ 120-23.15 I. Decommissioning.</p> <p>(1) If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense as per paragraph (3) below. This provision shall not apply if the applicant demonstrates to the reasonable satisfaction of the Town Board that it has been making good faith efforts to restore the WECS to an operable condition. Nothing in this provision shall limit the Town Board's ability to order a remedial action plan.</p>	<p>NYS Executive Law § 94-c (6) explicitly preempts local agency's authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, any requirement above to review or approve decommissioning activities or requirements is supplanted by Section 94-c. As part of the 94-c process, the Applicant has prepared a Decommissioning and Site Restoration Plan for site restoration in accordance with 19 NYCRR § 900-2.24 and § 900-6.6, which includes plans for removal of turbines in the event of abandonment.</p> <p>The Decommissioning and Site Restoration Plan therefore meets the requirements of this section and also meets the requirements of the Town law with respect to Section 1100-5 B(j).</p> <p>See Exhibit 23 for further information on decommissioning.</p>
<p>§ 120-23.15 I. (2) Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSEDA or by lack of income generation. The applicant shall make available to a designee (i.e. town engineer, project manager, etc.) appointed by the Town Board, all reports from the purchaser of energy from individual WECS, if requested to prove the WECS is functioning. This designee may also request periodic documentation reporting the power output generated by the WECS.</p>	<p>NYS Executive Law § 94-c (6) explicitly preempts local agency's authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, any requirement to review or approve decommissioning activities or requirements is supplanted by Section 94-c. See Exhibit 23 for further information on decommissioning.</p>

<p>§ 120-23.15 I. (3) Decommissioning and Site Restoration Plan and Requirements.</p> <p>An application for a WECS permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.</p>	<p>As part of the 94-c process, the Applicant has prepared a Decommissioning and Site Restoration Plan for site restoration in accordance with 19 NYCRR § 900-2.24 and § 900-6.6.</p> <p>See waiver request with respect to specific requirements of this section.</p>
<p>§ 120-23.15 I. (3)(a) The plan shall provide for the removal from the Project Parcels, and lawful disposal or disposition of all Wind Turbines and other structures, hazardous materials, electrical facilities, and all foundations to a depth of not less than 36 inches below grade. The plan shall provide for the removal of all access roads that the owner of the Project Parcels wants removed. The plan shall provide for the restoration of the Project Parcels to farmland or forest land of similar condition to that which existed before construction of the WECS.</p>	<p>The Decommissioning and Site Restoration Plan meets the requirements of this section. See Exhibit 23 for further information on decommissioning.</p>
<p>§ 120-23.15 I. (3) (b) The plan shall provide for the decommissioning of the site upon the expiration or revocation of the WECS permit, or upon the abandonment of the WECS. The WECS shall be deemed abandoned if its operation is ceased for 12 consecutive months. The operator of the facility shall provide a report no later than the 31st day of January each year providing a summary report of the operation of the facility during the prior calendar year and its operational status as the immediately preceding 31st day of December.</p>	<p>As part of the 94-c process, the Applicant has prepared a Decommissioning and Site Restoration Plan for site restoration in accordance with 19 NYCRR § 900-2.24 and § 900-6.6., which includes plans for removal of turbines in the event of abandonment, however to the extent this requirement does not allow for continued operation with good cause after 12 months, the Applicant is seeking a waiver from this provision. See waiver request.</p> <p>NYS Executive Law § 94-c (6) explicitly preempts local agency's authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, any requirement to submit reports to the Town for review is supplanted by Section 94-c.</p>

<p>§ 120-23.15 I. (3)(c) The Plan shall include: (a) the estimated decommissioning cost in current dollars (such amount being subject to the approval of the Town Board); (b) how said estimate was determined; (c) the method of ensuring that funds will be available for decommissioning and restoration; (d) the method that will be used to keep the decommissioning costs current. The Town Board will make arrangements to ensure the fund amount is adjusted annually based on a suitable index such as the "Engineering News Report construction Costs Index" unless the wind developer supplies evidence to the reasonable satisfaction of the Town Board that market conditions have changed.</p>	<p>The Decommissioning and Site Restoration Plan meets the requirements of (a)-(d) of this Section.</p> <p>NYS Executive Law § 94-c (6) explicitly preempts local agency's authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, any requirement that the Town Board will adjust the decommissioning costs is supplanted by 94-c.</p> <p>See Exhibit 23 for further information on decommissioning.</p>
<p>§ 120-23.15 I. (3)(d) The plan shall include provisions for financial security to secure completion of decommissioning (removal of non-functional towers and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund payable to the Town of Smithfield, in a form approved by the Town Attorney, and in an amount to be determined by the Town Board for the period of the life of the facility. This fund shall be no less than 150% of the cost of full decommissioning (including salvage value) and restoration in the form of cash on deposit with the Town or cash held in escrow in a New York licensed-financial institution, pursuant to an agreement acceptable to the Town. All decommissioning funding requirements shall be met prior to commencement of construction.</p>	<p>The Applicant is seeking a waiver of this provision. See waiver request.</p>
<p>§ 120-23.15 I. (3)(e) The plan shall include written authorization from the WECS Permittee and all owners of all Project Parcels for the Town to access the Project Parcels and implement the decommissioning and site restoration plan, in the event the WECS Permittee fails to implement the plan. The written authorization shall be in a form approved by the Town.</p>	<p>NYS Executive Law § 94-c (6) explicitly preempts local agency's authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, the requirements of this section are supplanted by 94-c. See Exhibit 23 for further information on decommissioning.</p>

<p>§ 120-23.15 I. (3)(f) Use of Decommissioning Fund</p> <p>i. Any non-functional or inoperative WECS, or any WECS for which the Permit has been revoked, shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration plan within 120 days of the date on which the facility becomes non-functional or inoperative, as defined above, and weather permitting, or of the revocation of the permit.</p> <p>ii. If removal of the WECS is required and the applicant, permittee, or successor fails to remove the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the permittee, by accepting the permit, authorizes the Town Board to Contract for such removal and restoration and to pay for the removal and restoration from the posted decommissioning and site restoration fund.</p> <p>If the fund is not sufficient, the Town shall charge the permit holder for the costs over and above the amount of the fund.</p>	<p>The Decommissioning and Site Restoration Plan sets for the schedule for decommissioning schedule. To the extent this section requires decommissioning to be complete in 120 days the Applicant is seeking a waiver of section (i) of this provision. See waiver request.</p> <p>NYS Executive Law § 94-c (6) explicitly preempts local agency's authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, the requirements of section (ii) and (iii) are supplanted by 94-c. See Exhibit 23 for further information on decommissioning.</p>
<p>§ 120-23.15 P. The owner of every WECS constructed pursuant to this Section shall repair or replace all real or personal property, public or private, damaged during the construction of such facility attributable to the Applicant or its designee, employee or agent.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 120-23.15 S. All WECS shall be required to utilize components and materials made and manufactured in the United States of America.</p>	<p>The Applicant is seeking a waiver of this provision. See waiver request.</p>

Local Substantive Law	Compliance
<p>Town of Fenner Local Law No. 2000-1 and 2001-1</p>	
<p>Section V. The "Land Use Schedule" referred to in Section 203 of Local Law 1997-1 and included in Local Law 1997-1 as "Table</p>	<p>To the extent the Town's Land Use Schedule, Minimum Dimensions applies to the Operations and Maintenance facilities, the Facility will be designed to comply with these requirements.</p> <p>To the extent the Town's Land Use Schedule, Minimum Dimensions applies to the Interconnection</p>

1" and the "Notes for Table 1"

TABLE 1
LAND USE SCHEDULE
Minimum Dimensions

	Lot Area	Lot		Yards*			Maximum Structure Height Ft.	Notes (See Page)
		Frontage*** Ft.	Depth Ft.	Front Ft.	Side Ft.	Rear Ft.		
"DISTRICT "A"								
Single-family unit	1 acre**	200	200	50	40	50	35	a, b
Two-family unit	1.5 acre	200	200	50	40	50	35	b
Multi-family	1.5 acre							
	+ 10,000 sq. ft/unit	200	200	50	40	50	45	d, e
Farm	5 acres	200	200	50	40	50	None	c, g
DISTRICT "B"								
All "A" as above								
Mobile dwelling	1 acre	200	200	50	40	50	35	b
Mobile dwelling park*	5 acres	200	300	50	30	50		b, d, e, f
Individual Park Site	@ 10,000 sq. ft/unit	70	120	30	20	20	35	f
Business, professional, or Industrial, on separate lots	1 acre	200	200	50	40	50	35	b, d, e
DISTRICT "C"								
All "B", as above								

*Corner lots are considered to have two front yards along the two roadways and two side yards.
 **Acre = 43,560 sq. ft.
 ***Requirement of actual frontage along public highway, or if applicable, private access easement
 All non-farm accessory buildings shall conform to front and side yard requirements of the district in which they are located

Facilities the Applicant is seeking a waiver with respect to these requirements.

With respect to the minimum structure height of 35 feet, to the extent that requirement applies to structures at the Interconnection Facilities, a waiver from the height limit would be necessary.

See waiver request for more information.

Notes for Table 1

- a. Measured from the road right-of-way. Applies to each side of a lot that adjoins a public road.

An alternative front yard minimum dimension measurement is permissible from the center of road-ways where neither road right-of-way bounds nor surveys are available: (1) on three rod roads (generally, but not necessarily, Town roads) set buildings back at least 75 feet from the centerline of the road; and (2) on four rod roads (Generally, but not necessarily, County roads) set buildings back at least 83 feet from the centerline of the road.

Not applicable. According to Land Use Schedule Note A is applicable to Single-Family unit.

Notes for Table 1

- b. Where community water supply and sewer are used, one-half lot area and smaller bordering yards are permitted. Lot: 100 feet front x 150 feet depth. Yards: 30 feet front x 20 feet sides x 50 feet rear.

Not applicable. The Applicant is not proposing any community water supply or community sewer.

<p><u>Notes for Table 1</u></p> <p>c. Accessory farm buildings (silos, barns, etc.) are exempt from height limits.</p>	<p>Not applicable.</p>
<p><u>Notes for Table 1</u></p> <p>d. Requires a special use permit issued by the Planning Board.</p>	<p>This is a procedural requirement supplanted by Section 94-c.</p>
<p><u>Notes for Table 1</u></p> <p>e. A landscaped screening zone at least 15 feet wide shall be maintained by the owner of those sides of his lot that adjoin any residential property owned by another party.</p>	<p>The Facility will comply with these requirements. Although the Land Use Schedule does not include specific dimensions for public utility uses, the Applicant has proposed screening at the O&M facility and existing screening at the substation screens adjacent parcels.</p>
<p><u>Notes for Table 1</u></p> <p>f. Each mobile dwelling site shall connect to an access road within the mobile dwelling park, and the front yard of each lot shall be measured from the edge of this access road.</p>	<p>Not applicable.</p>
<p><u>Notes for Table 1</u></p> <p>g. Upon the issuance of a special permit by the Planning Board, not more than two units of supplementary housing for relatives or hired hands employed by the farm; each unit must be provided with an adequate sewage disposal system, does not require separate lots.</p>	<p>Not applicable.</p>
<p><u>Notes for Table 1</u></p> <p>h. The minimum setback distance between each production line commercial wind power electricity generation unit (wind turbine tower) and: all surrounding property lines, overhead utility line, any dwelling, and any other generation units, above-ground transmission facilities, and separate meteorological facilities, shall be equal to no less than 1.5 times the proposed structure height plus the rotor radius. The property line setback requirement may be reduced by the Planning Board a an incident of</p>	<p>The Facility has been designed to meet 1.5 times setback from overhead utility lines, any non-participating dwellings, and any other generation units, aboveground transmission facilities, and separate meteorological facilities. With respect to non-participating property lines, the Applicant has designed the Facility to meet the 1.5 times setback to the extent practicable, however</p>

<p>special permit review when the Planning Board finds that the following circumstances apply: the property line in questions a) separates two properties that are both in the "C" District, and b) either , i) both properties on each side of the boundary line in question will have electricity generation or transmission facilities constructed on them as part of the project under review, or ii) the owner of the property for which the reduced setback is sought executes and presents for recording a development easement satisfactory to the Town in which the reduced setback is consented to, and construction within, and use of the easement area is appropriately restricted.</p> <p>No experimental, homebuilt, or prototype wind turbines shall be allowed without documentation by the applicant of their maximum probably blade throw distance in the event of failure and determination by the Planning Board of appropriate setback distances on the basis of that documentation.⁴</p>	<p>waivers are needed for certain turbine locations.</p> <p>See waiver request for more information.</p>
<p>Section 301 - DISTRICT A The purpose of this district is to provide attractive built-up housing areas in rural settings that will maintain health via proper sewage disposal, safe water supply, and the minimum of nuisance indifferent land uses.</p> <p>Section 301.3 - USES REQUIRING A SPECIAL USE PERMIT</p> <p>G. Public utility uses.</p>	<p>The Facility complies with this provision. The Applicant proposes to locate the O&M building in District A along South Road.</p> <p>The Town of Fenner defines Public Utility Uses as "UTILITIES, PUBLIC AND/OR SEMI-PUBLIC: Distribution points, transmission lines and stations, sub-stations, storage yards, garages and other central buildings and/or related uses for the operation and provision of public and semi-public power, fuel, water and communications service licenses by the Public Service Commission"</p> <p>The requirement to obtain a special use permit is supplanted by Section 94-c and ORES has replaced some of the functions of the Public Service</p>

⁴ Note H was revised by Local Law No. 2001-1 (amending local law 1997-1). The language in this section is from the amended Local Law No. 2001-1.

	<p>Commission, however the analysis remains the same and wind facilities such as the Hoffman Falls Wind Project are considered public utilities. See <i>West Beekmantown Neighborhood Ass'n Inc. v. ZBA of Town of Beekmantown</i>, 53 A.d.3d 954 (3d Dep't 2008). The O&M building is central to the facilities operation and provision of power, and therefore is a special use permitted in District A as defined by the local law.</p> <p>See Exhibit 3 for further information on zoning districts.</p>
<p>Section VI.</p> <p>Section 303 -DISTRICT C</p> <p>The purpose of this district is to foster the development of the Town's wind power resource while preserving the farmlands and adjoining settlements as compatible adjoining uses.</p> <p>Section 303.1 -PRINCIPAL USES PERMITTED</p> <p>One and two-family dwellings built on a foundation, including modular dwellings.</p> <p>Farms and farm buildings for related agricultural activities</p> <p>Mobile dwellings on individual lots.</p> <p>Section 303.2 - ACCESSORY USES PERMITTED</p> <p>A. Same as Section 301.2</p> <p>B. Home businesses conducted by the residents.</p> <p>C. Accessory buildings necessary to the principal use and which do not include any activity commonly conducted as a separate business.</p> <p>Section 303.3 - USES REQUIRING A SPECIAL PERMIT</p> <p>A. Same as Section 301.3</p> <p>B. Mobile dwelling parks.</p> <p>C. All retail sales, eating, service and professional establishments.</p> <p>D. Day camps, guest or vacations homes for pay, private clubs and seasonal camps.</p>	<p>The Hoffman Falls Wind Project is not entirely proposed in District C and the Applicant has therefore sought a waiver of this provision.</p> <p>See waiver request for more information.</p>

<p>E. Commercial outdoor recreation such as ski runs, snowmobiles parks, miniature golf courses, driving ranges, race tracks and hunting and fishing preserves.</p> <p>F. More than one residence structure on a lot for a farm (See note (g) to Table 1).</p> <p>G. Wind power electricity generation and transmission facilities. (See note (h) to Table 1). -</p> <p>Section 303.4 - USES PROHIBITED</p> <p>All other uses prohibited in this district.</p>	
<p>Local Law No. 1 of 2017 (Fence Regulations)</p> <p>A. No fence, except an agricultural fence, as defined in Appendix I hereto, shall be erected on any lot or parcel within the Town of Fenner except upon the prior issuance of a building permit by the Code Enforcement Officer. No fee shall be required for the issuance of any such permit. Agricultural fences are exempt from the requirements of this section.</p> <p>B. Fences requiring a building permit under subsection A above shall comply with the following requirements and limitations:</p> <ol style="list-style-type: none"> 1. Maximum fence height from grade to the top of the fence shall be six feet in any front yard, and eight feet in any side or rear yard. Notwithstanding the foregoing, the maximum height for any fence enclosing a tennis court shall be twelve feet in height, provided that it complies with the applicable setback requirements set forth in paragraph "2" below. 2. No fence or portion thereof shall be erected less than five feet from a property line. Notwithstanding the foregoing, no fence shall be erected in such a manner and /or in such a location, as determined by the Code Enforcement Officer, so as to impair visibility for traffic or pedestrian safety. 3. The exterior (good) side of the fence shall face outward toward adjoining properties and / or roads, and with wiring, structural elements and / or other components of the fencing not designated for presentation to the public facing inward from the property lines. 4. No fence other than an agricultural fence shall be constructed in a highway right-of way. 	<p>The procedural provisions in Section A and B, to obtain a building permit, is supplanted by 94-c. The Applicant is proposing fencing around the substation. This style of fence complies with subsection B of the Town's Fence Regulations, however, please note that the 94-c regulations require fencing which encloses all mechanical equipment to be a minimum height of seven (7) feet. This requirement conflicts with the local law which requires a maximum fence height of six (6) feet in any front yard.</p>

<p>5. Electric fences shall be installed in accordance with all applicable code requirements.</p> <p>6. Underground low-voltage electric fences shall comply with the five-foot setback requirement.</p> <p>7. The Code Enforcement Officer may require that a property boundary survey be provided prior to the issuance of a building permit in any instance where the Code Enforcement Officer, in his judgment, is otherwise unable to accurately determine whether the proposed fence location is in accordance with all applicable setback requirements.</p>	
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Section VII.

Section 606.31- ADDITIONAL STANDARDS FOR GRANTING SPECIAL USE PERMITS FOR WIND POWER ELECTRICITY GENERATION AND TRANSMISSION FACILITIES

No special use permit shall be granted for commercial wind power electricity Generation and/or transmission facilities unless it is determined by the Planning Board that the proposed use meets all the following criteria, in addition to those general criteria listed in Section 606.3:

<p>A. No individual tower facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link’s operation.</p>	<p>The Facility has been designed to comply with this section. See Exhibit 20 for further information.</p>
<p>B. No individual tower facility shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or interference with signal transmission or reception.</p>	<p>The Facility has been designed to comply with this section. See Exhibit 20 for further information.</p>
<p>C. Use of nighttime, and overcast daytime condition, stroboscopic lighting to satisfy tower facility lighting requirements for the Federal Aviation Administration shall be subject to on-site field testing before the Planning Board as a prerequisite to that Board’s approval with specific respect to Section 606.3(D) as it applies to existing residential uses within 2000” of each tower for which such strobe lighting is proposed.</p>	<p>The Facility has been designed to comply with 19 NYCRR 900-2.9(d)(9)(c) which requires: For wind facilities, lighting shall be installed on turbines for aviation hazard marking as specified by FAA. The Applicant shall file a Notice for a Marking and Lighting Study of Aircraft Detection Lighting System(s) (ADLS) and dimmable lighting options with the FAA/Department of Defense (DOD) seeking a written determination approving the use of ADLS or other dimmable lighting option at the Project. If FAA/DOD determine that ADLS or dimmable lighting options</p>

	are not appropriate for the project, or if the applicant determines installation of ADLS or dimmable lighting options are not technically feasible, the applicant shall consider other means of minimizing lighting effects, such as use of low-intensity lighting, and synchronization of lighting activation with adjoining wind farms. See Exhibit 8 for further details.
D. No individual tower facility shall be installed in any location that would substantially detract from or block view of a portion of a recognized scenic viewshed, as viewed from any public road right-of-way or publicly owned land within the Town of Fenner, that extends beyond the border of the Town of Fenner	The Applicant does not anticipate that the construction of the Facility would substantially detract from or block any publicly accessible scenic viewsheds in the Town of Fenner. See Exhibit 8, Appendix A (Visual Impact Assessment). However, the Applicant is seeking a waiver of the Town's Scenic Vista I Scenic Overlay District requirements. See waiver request for more information.
E. Individual wind turbine towers shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed 50 dBA, measured at the boundaries of all the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of special use permit application	The Facility will need a waiver of this provision. See waiver request for more information.
F. No wind turbines shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components.	The Facility has been designed to comply with this section.
G. The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.	The Facility has been designed to comply with this section.
H. All power transmission lines from the wind generation electricity generation facilities to on-site substations shall be underground.	The Facility has been designed to comply with this section. The only overhead lines proposed by the Applicant are associated with the interconnection of the Facility's substation to the grid (see Appendix 5-B).
I. Procedures acceptable to the Planning Board for emergency shutdown of power generation units shall be established and posted prominently and permanently on at least one location on the road frontage of each individual unit site.	NYS Executive Law § 94-c (6) explicitly preempts local agency's authority to condition the development, design, construction, operation or decommissioning of

	major renewable energy facilities governed pursuant to Section 94-c. Therefore, any requirements for review or approval are supplanted by Section 94-c. The Facility has been designed to comply with this section. The Facility has been designed to comply with this section. The Facility will have a Safety Response Plan which will include procedures for emergency shutdowns. See Exhibit 6 for further information.
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Local Substantive Law	Compliance
Town of Fenner Land Use Regulations – Local Law 1997-1 as amended	
In addition, the following supplemental regulations referenced in Article 5 are potentially applicable to the Facility, including the Interconnection Facilities and O&M building: Section 503 – Sanitary Disposal Requirements Section 506 – Subdivision Regulations	The Facility will comply with the substantive provisions of these supplemental regulations to the extent they are applicable to the O&M facility and Interconnection Facilities.
Sanitary Disposal Requirements Town of Fenner (1968)	
See Section b above for the Applicant’s compliance with the Town’s Sanitary Disposal Requirements.	
Town of Fenner Subdivision Regulations (1994)	
Article 6 Section 625 – Water Supply 3. All individual wells shall meet the requirements of the New York State Department of Health of the satisfaction of the Planning Board.	The O&M Facility has been designed to comply with this section. See Section b above for the Applicant’s compliance with the Town’s Sanitary Disposal Requirements.
Article 6 Section 630 – Sewage Disposal 3. All sanitary sewage disposal systems shall meet the requirements of the New York State Department of Health.	The O&M Facility has been designed to comply with this section. See Section b above for the Applicant’s compliance with the Town’s Sanitary Disposal Requirements.
Article 6 Section 640.1 Location All lots shall abut by their full frontage on roads built to the Town’s road specifications.	The Applicant is seeking a waiver of this provision with respect to the Interconnection Facilities. See waiver request for more information.

	<p>The O&M Facility has been designed to comply with this section. See Exhibit 16 for further information.</p>
<p>Article 6 Section 640.2 – Dimensions</p> <p>The lot size, width, depth, shape, and area shall comply with the Town’s Land Use Ordinance. Excessive depth in relation to width (for example, such as to exchange the later creation of a second building lot at the front or rear) shall be avoided. A proportion of two and one-half to one (2 ½ : 1) will normally be considered the maximum.</p>	<p>The O&M Facility is proposed to be located in District A and the Interconnection Facilities are proposed to be located in District C.</p> <p>In District A, lots must comply with the following minimum lot size of one acre, a minimum lot frontage of 200 feet, and minimum lot depth of 200 feet; and a 45-foot structure height. The O&M Facility has been designed to comply with this section.</p> <p>In District C, lots must comply with the following: minimum lot size of one acre, a minimum lot frontage of 200 feet, and minimum lot depth of 200 feet; and a 35-foot maximum structure height.</p> <p>The Applicant is seeking a waiver for the lot frontage requirements for District C and the 35-foot height requirement of the Interconnection Facilities. See the waiver request for more information.</p>
<p>Article 6 Section 640.5 – Setback</p> <p>The provisions of the Town’s Land Use Ordinance shall apply regarding setback lines.</p>	<p>In District A, lots must comply with the following setbacks, a minimum 50-foot front yard, 50-foot rear yard and 40-foot side yards. The O&M Facility has been designed to comply with this section.</p> <p>In District C, lots must comply with the following setbacks, a minimum 50-foot front yard, 50-foot rear yard, and 40-foot side yards. The Applicant is seeking a waiver for the side yard setback requirements for District C. See waiver request for more information.</p>
<p>Article 6 Section 640.6 – Lot Lines</p> <p>Side lot lines shall be approximately at right angles to the road, or radial to curved roads. On large size lots and except when indicated by topography, lot lines shall be straight.</p>	<p>The Applicant is seeking a waiver of this provision with respect to the Interconnection Facilities. See waiver request for more information.</p> <p>The O&M Facility has been designed to comply with this section.</p>
<p>Article 6 Section 645 – Unique and Natural Features</p>	<p>The Applicant is seeking a waiver of the requirement to restore and regrade the site within</p>

<p>Unique physical features such as historic landmarks and sites, rock outcrops, hilltop lookouts, desirable natural contours, and similar features shall be preserved where possible. Also streams, lakes, ponds, and wetlands shall be left unaltered and protected by easements. All surfaces must be graded and restored within six (6) months of completion of subdivision so no unnatural mounds or depressions are left. Original topsoil moved during construction shall be returned and stabilized by approved methods. Damage to existing trees should be avoided.</p>	<p>6 months. See waiver request for more information. The Applicant will comply with the other provisions of this section.</p>
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Local Substantive Law	Compliance
<p>Town of Nelson Article IV Zoning District Regulations</p>	
<p>§ 404.2 Scenic Vista I Scenic Highway Overlay District. The scenic vista I scenic highway overlay district is designated on the Official Zoning Map of the Town of Nelson and comprises areas of the town where sweeping vistas of minimally developed ridges, valleys and rolling hills are visible from public highways. The intention of this overlay district is to preserve the Town's significant viewsheds and their corresponding viewing locations from designated scenic public highways (as denominated on the Official Zoning Map) by applying specific development standards (compatible with the underlying zoning designation) that serve to minimize visual impacts.</p> <p>It is the intent of these regulations to avoid overly obtrusive development in these locations that may result from any of the following conditions:</p> <ul style="list-style-type: none"> (a) The color of the structure(s) may not blend with the surrounding vegetation or structures; (b) Construction materials may reflect light (e.g. large unshaded windows, light colored and metal roofs; (c) Decorative or other lighting that brightens otherwise dark skies; (d) Structures that are bulky or out of scale with other background features, natural or man-made; (e) Structures with tall elements that protrude from their surroundings and are difficult to hide; (f) Landscaping that is inadequate to mute the visual impact of the structure(s); (g) Construction of buildings and/or structures that impair the view of a scenic vista from a scenic public highway. 	<p>Section 404.2 is largely procedural and is therefore supplanted by the review and approval process under Section 94-c. To the extent that the substantive requirements of Section 404.2 effectively prohibit turbines in the scenic vista I scenic highway overlay district, the Applicant is seeking a waiver of such restriction. See waiver request for more information.</p>

Local Substantive Law	Compliance
<p>(1) No person shall commence or conduct any of the following regulated activities upon any lot within the scenic vista / scenic highway overlay district except upon the prior issuance of a special use permit by the Planning Board:</p> <ul style="list-style-type: none"> (a) Construction of new buildings or structures, or additions or modifications to existing buildings or structures. (b) Any surface modification requiring Planning Board approval pursuant to section 601 of this local law as it applies to quarries. (c) Extraction of Natural Products. (d) Removal of trees from an area of one acre or more, unless such removal is in accordance with a forest management plan or is part of an agricultural operation. <p>(2) No application for a special use permit for a regulated activity within the scenic vista / scenic highway overlay district shall be granted unless:</p> <ul style="list-style-type: none"> (a) The applicant has demonstrated, and the Planning Board has found that the development activity will not have a substantial adverse effect upon the scenic vista as viewed from any public highway. This shall be demonstrated by the applicant through the use of computer-generated photos depicting the proposed development. (b) Cutting of trees will be minimized and will not adversely impact the visual quality of the scenic vista. <p>The applicant has demonstrated, and the Planning Board has found, that there is no reasonable alternative for the proposed development activity to be located on a portion of the site not containing a scenic vista or in a location that will not impair the view from a scenic public highway.</p>	
<p>Town of Nelson Section 403 Use Regulations for Basic Districts</p>	
<p>§ 403.1 Use and Activities in Rural Zone: R. B. The following uses are permitted upon review by the Planning Board and after issuance of a Special Permit by the Planning Board: 22. Commercial Wind Energy Facility</p>	<p>The Facility has been designed to comply with this section. The proposed Facility is located within the Rural</p>

Local Substantive Law	Compliance
	Zone R. See Exhibit 3 for further details on zoning districts.
Town of Nelson Article V Supplemental Regulations Applicable to Particular Uses – Section 512 Wind Energy Facilities	
§ 512.1 The following lot size, dimension and construction standards apply to commercial wind energy facilities only. B. Minimum lot size shall be five (5) acres.	The Facility has been designed to comply with this section. See Exhibit 5 for further information.
§ 512.1 C. Minimum road frontage shall be found hundred fifty (450) feet.	The parcel hosting the turbine in the Town of Nelson does not have existing road frontage. See waiver request for more information.
§ 512.1 D. Minimum lot depth shall be found hundred and fifty (450) feet.	The Applicant has designed the Facility to meet this requirement. See Exhibit 5 for further information.
<p>§ 512.1 E. Setbacks. (1) The minimum setback distance between each production line commercial wind power electricity generation unit (wind turbine tower) and all surrounding street and property lines, overhead utility lines, any dwellings, and any other generation units, aboveground transmission facilities, and separate meteorological facilities, shall be equal to no less than 1.5 times the proposed structure height plus the rotor radius. The property line setback requirement may be reduced by the Planning Board as an incident of special permit review when the Planning Board finds that the following circumstances apply: The property line in question:</p> <ul style="list-style-type: none"> a) Separates two properties that are both part of a commercial wind-powered electricity generation facility; and b) Either: <ul style="list-style-type: none"> i. Both properties on each side of the boundary line in question will have electricity generation or transmission facilities constructed on them as part of the project under review; or ii. The owner of the property for which the reduced setback is sought executes and presents for recording a development easement satisfactory to the Town in which the reduced setback is consented to, and construction within, and use of, the easement area is appropriately restricted. 	<p>The Applicant is seeking a waiver of the 1.5 times setback to non-participating property lines.</p> <p>See waiver request for more information.</p>

Local Substantive Law	Compliance
<p>§ 512.1 (2) No experimental, home-built, or prototype wind turbines shall be allowed without documentation by the applicant of their maximum probable blade throw distance in the event of failure, and a determination by the Planning Board of appropriate setback distances on the basis of that documentation.</p>	<p>The Facility has been designed to comply with this section.</p>
<p>§ 512.2 No special use permit shall be granted for commercial wind power electricity generation and/or transmission facilities unless it is determined by the Planning Board that the proposed use meets all of the following criteria, in addition to those criteria generally applicable to special uses: A. No individual tower facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.</p>	<p>The Facility has been designed to comply with this section. See Exhibit 20 for further information.</p>
<p>§ 512.2 B. No Individual tower facility shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception.</p>	<p>The Facility has been designed to comply with this section. See Exhibit 20 for further information.</p>
<p>§ 512.2 C. Use of nighttime, and overcast daytime condition, stroboscopic lighting to satisfy tower facility lighting requirements for the Federal Aviation Administration shall be subject to on-site field testing before the Planning Board as a prerequisite to that Board's approval as it applies to existing residential uses within 2,000 feet of each tower for which such strobe lighting is proposed.</p>	<p>The Facility has been designed to comply with this section. The requirement for Planning Board approval is supplanted by 94-c but the Facility will comply with FAA lighting requirements. See Exhibit 8 for further information.</p>
<p>§ 512.2 D. No individual tower facility shall be installed in any location that would substantially detract from or block view of a portion of a recognized scenic viewshed, as viewed from any public road right-of-way or publicly owned land within the Town of Nelson, or that extends beyond the border of the Town of Nelson.</p>	<p>The Applicant does not anticipate that the construction of the Facility would substantially detract from or block any publicly accessible scenic viewsheds in the Town of Nelson. However, the Applicant is seeking a waiver of the Town's Scenic Vista I Scenic Overlay District requirements. See waiver request for more information.</p>
<p>§ 512.2 E. Individual wind turbine towers shall be located within relation to property lines so that the level of noise produced during wind turbine operations shall not exceed 50 dbA, measured at the boundaries of all of the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site</p>	<p>The Facility will need a waiver of this provision. See waiver request for more information.</p>

Local Substantive Law	Compliance
parcel as those boundaries exist at the time of special use permit application.	
§ 512.2 F. No wind turbines shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components.	The Facility has been designed to comply with this section.
§ 512.2 G. The minimum distance between the ground and any part of the rotor blade system shall be 30 feet.	The Facility has been designed to comply with this section.
§ 512.2 H. All power transmission lines from the wind generation electricity generation facilities to on-site substations shall be underground.	The Facility has been designed to comply with this section. See Exhibit 3 for further information.
§ 512.2 I. Procedures acceptable to the Planning Board for emergency shutdown of power generation units shall be established and posted prominently and permanently on at least one location on the road frontage of each individual unit site.	The Facility has been designed to comply with this section. The Facility will have a Safety Response Plan which will include procedures for emergency shutdowns. This plan will be provided to the Towns and local emergency responders. See Exhibit 6 for further information.
§ 512.2 K. A form of security, acceptable to and approved by the Planning Board and the attorney for the Town, shall be provided to ensure that the towers and related facilities will be removed in accordance with the provisions of this local law upon the cessation of their use.	The Facility has been designed to comply with this section. The 94-c Application includes a decommissioning plan and estimate, and the Applicant will work with the Town and ORES on an acceptable form of security.
Town of Nelson Article VI Development Standards Applicable in all Districts Section 601 Regulation of Surface Modification and Soil Disturbance	
<p>Surface Modification includes any earth work or grading activity which alters the existing topography and/or removes the natural vegetative ground cover such that the ground and soil materials are left exposed to erosion by wind and/or rain. The term specifically excludes agricultural and planned horticultural activities.</p> <p>601.1 No surface modification shall be carried out in any district that leaves soil exposed without vegetative or other cover for more than 60 days. All such surface modifications shall be performed with erosion and sedimentation controls in place in accordance with standards and practices approved by the New York State Department of Environmental Conservation.</p>	The Facility has been designed to comply with this section.

Local Substantive Law	Compliance
601.2 All areas of disturbed soil shall be temporarily or permanently stabilized with seed and mulch or other soil stabilization practices within 14 days of final grading or temporary cessation of site activities.	The Facility has been designed to comply with this section.
601.3 Any removal or addition of soil for non-agricultural purposes which results in the disturbance of the ground surface over an area of one acre or more shall require prior site plan approval from the Planning Board and permit coverage under the New York State Department of Environmental Conservation Special Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activities.	The Facility has been designed to comply with this section.
601.4 A topographic survey, grading plan and erosion and sedimentation control plan are required for any surface modification or soil disturbance subject to site plan approval. No disturbance of drainage ways that affect other properties, protected wetlands, regulated water bodies, or designated floodplains shall be permitted without the prior approval of the relevant regulatory agency having jurisdiction over the site.	The Facility has been designed to comply with this section. See Exhibits 13 and 14 for further information.
<p>Section 614 Access Driveway Standards</p> <p>614.1 Residential driveways servicing a private home or other single or multiple family residence, shall have a gravel or paved surface not less than ten (10) feet. in width over a gravel base of not less than six (6) inches in depth. Maximum grade shall be 12%.</p>	The Facility has been designed to comply with this section. See Exhibit 5 and Appendix 5-A for further information.
614.2 Commercial driveways servicing a commercial establishment, industry, governmental or educational institution, private utility, hospital, church, apartment building or other comparable traffic generating facility, shall have a gravel or paved surface not less than twelve (12) feet. in width over a gravel base of not less than nine (9) inches in depth. Maximum grade shall be 10%.	The Facility has been designed to comply with this section. See Exhibit 5 and Appendix 5-A for further information.
614.3 No driveway, commercial or residential, shall have a grade in excess of 3% within twenty (20) feet of the edge of pavement of the public road or the entrance to a garage. All driveways, commercial and residential, shall provide adequate turning radii for vehicles entering and exiting the public road.	The Facility has been designed to comply with this section. See Exhibit 5 and Appendix 5-A for further information.

Local Substantive Law	Compliance
<p>614.4 All driveways shall be located on the property road frontage at a place that provides the maximum visibility at the intersecting highway. The location should meet the minimum stopping sight distance criteria (NYSDOT) for the highway's posted speed limit. All driveways should intersect the highway at right angles. All driveway locations are subject to approval by the highway superintendent for the jurisdiction with control over the highway (NYSDOT, Madison County Highway, Town of Nelson)</p>	<p>The Facility has been designed to comply with this section. See Exhibit 5 and Appendix 5-A for further information.</p>
<p>614.5 Driveway drainage should not flow directly onto the adjacent highway surface. All driveway drainage ditches shall be designed and protected against erosion in accordance with New York Standards and Specification for Erosion and Sediment Control. The need for and the sizing of driveway culverts for roadside drainage ditches shall be determined by the highway superintendent for the jurisdiction with control over the highway. Driveways shall not be located closer than five feet to the side property line.</p>	<p>The Facility has been designed to comply with this section. See Exhibit 5 and Appendix 5-A for further information.</p>

Local Substantive Law	Compliance
<p>Town of Smithfield Building And Development Control Local Law Town of Smithfield</p>	
<p>ARTICLE IV SUPPLEMENTARY REGULATIONS § 4.1 Sanitary Facilities (a) All residential, commercial and industrial structures shall have and maintain adequate and sanitary water supplies and sewage disposal systems in accordance with state and local regulations, to include indoor plumbing and adequate and approved septic system or connection to public sewer.</p>	<p>The wind turbines will not include sanitary water or sewage disposal systems; however, the Facility will have an operations and maintenance facility with water and sewage to be located in the Town of Fenner.</p>
<p>§ 4.1 Sanitary Facilities (b) On all premises, any storage or garbage, offal or other noxious domestic wastes that could create a public health nuisance by attracting, feeding or harboring rodents, insects or other animals or by creating an <i>offensive</i> odor, shall be stored in a sanitary manner in covered containers and removed from the premises in a regular periodic basis.</p>	<p>The Facility will comply with these requirements.</p>
<p>ARTICLE VI-A ADMINISTRATION AND ENFORCEMENT OF STATE CODES</p>	<p>The Facility will comply with the New York State Uniform Fire Prevention and Building Code. The procedural provisions of this Article which require applications, permits and other approvals and reviews are supplanted</p>

Local Substantive Law	Compliance
	by Section 94-c. However, the Applicant will work with the Town to enter an arrangement for the Town to perform the review, approval, inspection, and compliance certification, including arrangements made to pay for the costs thereof including the costs for any consultant services necessary due to the complex nature of such facilities.
ARTICLE X DRIVEWAYS	The Facility will comply with substantive provisions of this Article for any access roads which will enter Town Roads. The procedural provisions of this Article which require applications, permits and other approvals and reviews are supplanted by Section 94-c. However, the Applicant will work with the Town to enter into a Road Use Agreement which will provide for the review and approval of driveways.
<i>Town of Smithfield</i> <i>Local Law No. 2 of 2013, to Amend the Town of Smithfield Building and Development Control Law to Enact a New Article Regulating Wind Energy Facilities within the Town of Smithfield</i>	
<p>§ 1100-5. Wind Energy Conversions Systems (WECS) A. Permits Required; Transfer; Modifications.</p> <p>(1) Districts where allowed. Subject to the issuance of site plan approval and a special use permit and other requirements as set forth herein, WECS shall be a permitted use in all areas of the Town of Smithfield except within the Peterboro Hamlet district and the Hamlet Buffer District. WECS is a prohibited use in the Peterboro Hamlet District and the Hamlet Buffer District.</p>	With respect to Section 1100-5(A)(1) no WECS are proposed in the Peterboro Hamlet District and the Hamlet Buffer District. The other provisions of this section are procedural and supplanted by 94-c.
§ 1100-5 D. (1) All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.	The Facility will be designed to comply with this requirement. See Exhibit 3 for further information.
§ 1100-5 D. (2) No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECS and telecommunications facilities.	The Facility will be designed to comply with this requirement. See Exhibit 20 for further information.
§ 1100-5 D. (3) In order to minimize any visual impacts associated with WECS, no advertising signs are allowed on any part of the WECS, including fencing and support structures.	The Facility will be designed to comply with this requirement. See Exhibit 8 for further information.

Local Substantive Law	Compliance
§ 1100-5 D. (4) Lighting of tower. No tower shall be lit except to comply with FAA requirements.	The Facility will be designed to comply with this requirement. See Exhibit 8 for further information.
§ 1100-5 D. (6) All applicants shall use measures to reduce the visual impact of WECS to the extent possible. WECS shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished white or gray in color. WECS within multiple WECS project shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the project, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.	The Facility will be designed to comply with this requirement. See Exhibit 8 for further information.
§ 1100-5 D. (7) The use of guy wires is permitted in connection with small WECS and wind measurement towers only.	The Facility will be designed to comply with this requirement. WTGs will not contain guy wires.
§ 1100-5 D. (8) All solid waste and hazardous waste and construction debris shall be removed from the project site and managed in a maimer consistent with all appropriate rules and regulations.	The Facility will be designed to comply with this requirement. See Exhibit 23 for further discussion on waste removal.
§ 1100-5 D. (9) Sign-off from First Responders/Emergency Medical Service providers shall be provided	The requirement to obtain "sign off" from First Responders/Emergency Medical Service providers is procedural, nevertheless the Applicant has consulted with local First Responders/Emergency Medical Service provides are part of the 94-c application process. See Exhibit 6 for further information.
§ 1100-5 D. (10) 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 when feasible. The use of previously developed areas will be given priority wherever possible.	The Facility will be designed to comply with this requirement. See Exhibit 3 for further details on land use and specially-designated areas surrounding the Facility.
§ 1100-5 D. (11) WECS shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity, particularly bird and bat species, including those that may be listed by the U.S. Fish & Wildlife Service as threatened or endangered and those listed as threatened, endangered, and species of concern by the NYS officials.	The Facility will be designed to comply with this requirement. See Exhibits 11 and 12 for further information.
§ 1100-5 D. (12) Wind energy conversion systems shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations. A plan for clearing and/or grading of the site and a stormwater pollution prevention plan (SWPPP) for the site. The SWPPP shall be filed and recorded in the Madison County Clerk's Office (indexed against the property) by the applicant following Planning	The Facility will be designed in a manner consistent with all applicable state and Federal wetlands laws and regulations. The 94-c Application includes a preliminary stormwater pollution prevention plan (SWPPP) for the site. The remaining requirements

Local Substantive Law	Compliance
<p>Board approval (prior to commencement of construction) and shall provide for access to the Town of Smithfield in the event of a default of the operator’s obligations under the SWPPP. The SWPPP shall include a security amount approved by the Town’s Consulting Engineer and shall remain in place until decommissioning is complete.</p>	<p>of this section are procedural and are otherwise supplanted by Section 94-c and the NYS Department of Environmental Conservation’s authority under the State Pollutant Discharge Elimination System (SPDES) Permit. See Exhibit 14 for further information.</p>
<p>§ 1100-5 D. (13) Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.</p>	<p>The Facility will be designed to comply with this requirement. See Appendix 13-C for further information.</p>
<p>§ 1100-5 D. (14) The maximum Total Height of any WECS shall be Six Hundred Eighty (680) feet. However, in all instances, the Applicant shall be required to demonstrate that the requested height of the WECS is necessary to achieve the project’s objectives.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 5 for further information.</p>
<p>§ 1100-5 D. (15) Any substation used in conjunction with a WECS shall be sited in a manner that will have the least intrusive impact upon adjacent residences and shall be sheltered and/or screened with a physical barrier and/or vegetation in a manner to eliminate its views from such residences. The Planning Board shall assess such siting in accordance with the requirements of this Section and the Town’s Comprehensive Plan.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 8 for further information.</p>
<p>§ 1100-5 D. (16) Construction of the WECS shall be limited to the hours of 7 AM to 7 PM, Monday through Friday.</p>	<p>The Applicant is seeking a waiver of this provision. See waiver request.</p>
<p>§ 1100-5 D. (18) Following construction/installation of the WECS, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust and demonstrating established growth. The Applicant shall provide an Operations and Maintenance Plan which shall include provisions for reseeded and established growth.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 1100-5 D. (20) Any WECS project shall meet and comply with the latest version of the National Electric Code for the life of the project. If it is determined that a WECS is causing stray voltage issues, the operator shall immediately take the necessary corrective action to eliminate these problems including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for revocation of the Special Use Permit for the specific WECS causing the problems. Fines for non-compliance will be set by the Town Board and assessed accordingly.</p>	<p>The Facility will be designed to comply with the latest version of the National Electric Code.</p>
<p>§ 1100-5 (D). (21) To the greatest extent possible WECS, together with all above ground facilities, underground cables</p>	<p>The Facility will be designed to comply with this requirement. See</p>

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<p>and wires, and all permanent access roads shall be positioned along existing fence lines, hedge rows or tree rows and/or as near the edge of any fields as possible to minimize the disruption to pastureland or tillable land unless, otherwise allowed by the property owner(s). Following construction, the site shall be graded and seeded and restored to its preconstruction condition or better unless, otherwise allowed by the property owner(s). During construction, the developer shall be required to act consistent with Agricultural Consistency Review under Agriculture and Markets Law, and best agricultural and forestry practices to ensure construction integrity of the site.</p>	<p>Exhibits 3 and 15 for further information.</p>
<p>§ 1100-5 E. (1) Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 6 for further information.</p>
<p>§ 1100-5 E. (2) Appropriate warning signs shall be posted. At least one (1) sign shall be posted at least 100 feet from the base of the tower on the tower access road/route warning of electrical shock or high voltage. A sign shall be posted on the entry area 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. The Planning Board may require additional signage based on safety needs.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 6 for further information.</p>
<p>§ 1100-5 E. (3) No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 1100-5 E. (4) The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet.</p>	<p>The Facility will be designed to comply with this requirement.</p>
<p>§ 1100-5 E. (5) WECS shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 6 for further information.</p>
<p>§ 1100-5 E. (6) Existing snowmobile and/or ATV trails shall be posted, where reasonably necessary, to warn of potential ice throw dangers from the WECS.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 6 for further information.</p>
<p>§ 1100-5 F. Traffic Routes (1) Construction of WECS pose potential risks because of the large size construction vehicles, hauled materials along with their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and for associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include: (a) minimizing traffic impacts from construction and delivery vehicles, including impacts on local residential areas;</p>	<p>The Facility will be designed to comply with the traffic route requirements of Section 1100-5(F). The Applicant intends to enter into a Road Use Agreement with the Town to address use of the Town roads during construction or maintenance of the Facility. See Exhibit 16 for further information.</p>

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<p>(b) minimizing WECS related traffic during times of school bus activity;</p> <p>(c) minimizing wear and tear on local roads; and</p> <p>(d) minimizing impacts on local business operations.</p> <p>(e) Special use permit conditions may limit WECS-related traffic to specific routes, and include a plan for disseminating traffic route information to the public.</p> <p>(2) The applicant is responsible for repair of all damages to Town Roads occurring during the construction or maintenance of a WECS to be addressed in a Road Use Agreement, which shall be a condition precedent to issuance of any WECS permit. A cash security (as determined by the Town Board) shall be posted prior to the issuance of any WECS permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to local roads.</p>	
<p>§ 1100-5 G. (1)(a) From property lines. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any non-participant's property line, excluding adjoining lot lines of the project participants.</p>	<p>The Applicant is seeking a waiver of this provision. See waiver request.</p>
<p>§ 1100-5 G. (1)(b) From public road and highways. A minimum distance of 2.0 times the Total Height of turbine (including blades), from any public road and highway.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 5 for further information.</p>
<p>§ 1100-5 G. (1)(c) From public above-ground transmission lines. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any above-ground transmission line greater than 12 kilovolts.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 5 for further information.</p>
<p>§ 1100-5 G. (1)(d) From another WECS turbine. A minimum distance of 2.0 times the Total Height of turbine (including blades) from any other turbine. All power transmission lines from the tower to any building or other structure shall be located underground.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 5 for further information.</p>
<p>§ 1100-5 G. (2)(a) The statistical sound pressure level generated by a WECS shall not exceed L10 - 50 dBA measured at the nearest residence located off the Site. Sites can include more than one parcel 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 five dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.</p>	<p>The Facility will be designed to comply with these sound requirements. See Exhibit 7 for further information.</p>
<p>§ 1100-5 G. (2)(b) In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in § 14(B)(1) shall be reduced by five dBA. A Pure Tone is defined to exist if the 1/3 octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of</p>	<p>The Facility will be designed to comply with these sound requirements. See Exhibit 7 for further information.</p>

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<p>the sound pressure levels of the two contiguous 1/3 octave bands by five dBA for center frequencies of 500 Hz and above, by eight dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 125 Hz.</p>	
<p>§ 1100-5 G. (2)(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 minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences. 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 30 mph at the ambient noise measurement location.</p>	<p>The Facility will be designed to comply with these sound requirements. See Exhibit 7 for further information.</p>
<p>§ 1100-5 G. (2)(d) Any noise level falling between two whole decibels shall be the lower of the two.</p>	<p>The Facility will be designed to comply with these sound requirements. See Exhibit 7 for further information.</p>
<p>§ 1100-5 I. Decommissioning. (1) If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense as per paragraph (3) below. This provision shall not apply if the applicant demonstrates to the reasonable satisfaction of the Town Board that it has been making good faith efforts to restore the WECS to an operable condition. Nothing in this provision shall limit the Town Board's ability to order a remedial action plan.</p>	<p>NYS Executive Law § 94-c (6) explicitly preempts local agency's authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, any requirement above to review or approve decommissioning activities or requirements is supplanted by Section 94-c. As part of the 94-c process, the Applicant has prepared a Decommissioning and Site Restoration Plan for site restoration in accordance with 19 NYCRR § 900-2.24 and § 900-6.6, which includes plans for removal of turbines in the event of abandonment.</p> <p>The Decommissioning and Site Restoration Plan therefore meets the requirements of this section and also</p>

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	meets the requirements of the Town law with respect to Section 1100-5 B(j). See Exhibit 23 for further information.
<p>§ 1100-5 I. (2) Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSEDA or by lack of income generation. The applicant shall make available to a designee (i.e. town engineer, project manager, etc.) appointed by the Town Board, all reports from the purchaser of energy from individual WECS, if requested to prove the WECS is functioning. This designee may also request periodic documentation reporting the power output generated by the WECS.</p>	<p>NYS Executive Law § 94-c (6) explicitly preempts local agency's authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, any requirement to review or approve decommissioning activities or requirements is supplanted by Section 94-c.</p>
<p>§ 1100-5 I. (3) Decommissioning and Site Restoration Plan and Requirements. An application for a WECS permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.</p>	<p>As part of the 94-c process, the Applicant has prepared a Decommissioning and Site Restoration Plan for site restoration in accordance with 19 NYCRR § 900-2.24 and § 900-6.6.</p>
<p>§ 1100-5 I. (3)(a) The plan shall provide for the removal from the Project Parcels, and lawful disposal or disposition of all Wind Turbines and other structures, hazardous materials, electrical facilities, and all foundations to a depth of not less than 36 inches below grade. The plan shall provide for the removal of all access roads that the owner of the Project Parcels wants removed. The plan shall provide for the restoration of the Project Parcels to farmland or forest land of similar condition to that which existed before construction of the WECS.</p>	<p>The Decommissioning and Site Restoration Plan meets the requirements of this section. See Exhibit 23 for further information.</p>
<p>§ 1100-5 I. (3) (b) The plan shall provide for the decommissioning of the site upon the expiration or revocation of the WECS permit, or upon the abandonment of the WECS. The WECS shall be deemed abandoned if its operation is ceased for 12 consecutive months. The operator of the facility shall provide a report no later than the 31st day of January each year providing a summary report of the operation of the facility during the prior calendar year and its operational status as the immediately preceding 31st day of December.</p>	<p>As part of the 94-c process, the Applicant has prepared a Decommissioning and Site Restoration Plan for site restoration in accordance with 19 NYCRR § 900-2.24 and § 900-6.6., which includes plans for removal of turbines in the event of abandonment, however to the extent this requirement does not allow for continued operation with good cause after 12 months, the Applicant is seeking a waiver from this provision. See waiver request.</p>

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	<p>NYS Executive Law § 94-c (6) explicitly preempts local agency’s authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, any requirement to submit reports to the Town for review is supplanted by Section 94-c.</p>
<p>§ 1100-5 I. (3)(c) The Plan shall include: (a) the estimated decommissioning cost in current dollars (such amount being subject to the approval of the Town Board); (b) how said estimate was determined; (c) the method of ensuring that funds will be available for decommissioning and restoration; (d) the method that will be used to keep the decommissioning costs current. The Town Board will make arrangements to ensure the fund amount is adjusted annually based on a suitable index such as the "Engineering News Report construction Costs Index" unless the wind developer supplies evidence to the reasonable satisfaction of the Town Board that market conditions have changed.</p>	<p>The Decommissioning and Site Restoration Plan meets the requirements of (a)-(d) of this Section.</p> <p>NYS Executive Law § 94-c (6) explicitly preempts local agency’s authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, any requirement that the Town Board will adjust the decommissioning costs is supplanted by 94-c.</p>
<p>§ 1100-5 I. (3)(d) The plan shall include provisions for financial security to secure completion of decommissioning (removal of non-functional towers and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund payable to the Town of Smithfield, in a form approved by the Town Attorney, and in an amount to be determined by the Town Board for the period of the life of the facility. This fund shall be no less than 150% of the cost of full decommissioning (including salvage value) and restoration in the form of cash on deposit with the Town or cash held in escrow in a New York licensed-financial institution, pursuant to an agreement acceptable to the Town. All decommissioning funding requirements shall be met prior to commencement of construction.</p>	<p>The Applicant is seeking a waiver of this provision. See waiver request.</p>
<p>§ 1100-5 I. (3)(e) The plan shall include written authorization from the WECS Permittee and all owners of all Project Parcels for the Town to access the Project Parcels and implement the decommissioning and site restoration plan, in the event the WECS Permittee fails to implement the plan. The written authorization shall be in a form approved by the Town.</p>	<p>NYS Executive Law § 94-c (6) explicitly preempts local agency’s authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, the requirements of this section are supplanted by 94-c.</p>

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<p>§ 1100-5 I. (3)(f) Use of Decommissioning Fund</p> <p>i. Any non-functional or inoperative WECS, or any WECS for which the Permit has been revoked, shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration plan within 120 days of the date on which the facility becomes non-functional or inoperative, as defined above, and weather permitting, or of the revocation of the permit.</p> <p>ii. If removal of the WECS is required and the applicant, permittee, or successor fails to remove the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the permittee, by accepting the permit, authorizes the Town Board to Contract for such removal and restoration and to pay for the removal and restoration from the posted decommissioning and site restoration fund.</p> <p>iii. If the fund is not sufficient, the Town shall charge the permit holder for the costs over and above the amount of the fund.</p>	<p>The Decommissioning and Site Restoration Plan sets for the schedule for decommissioning schedule. To the extent this section requires decommissioning to be complete in 120 days the Applicant is seeking a waiver of section (i) of this provision.</p> <p>NYS Executive Law § 94-c (6) explicitly preempts local agency's authority to condition the development design, construction, operation or decommissioning of major renewable energy facilities governed pursuant to Section 94-c. Therefore, the requirements of section (ii) and (iii) are supplanted by 94-c.</p>
<p>§ 1100-5 P. The owner of every WECS constructed pursuant to this Section shall repair or replace all real or personal property, public or private, damaged during the construction of such facility attributable to the Applicant or its designee, employee or agent.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 4 for further information on real property.</p>
<p>§ 1100-5 S. All WECS shall be required to utilize components and materials made and manufactured in the United States of America.</p>	<p>The Applicant is seeking a waiver of this provision. See waiver request.</p>
<p>§ 1100-6 C. (1) The distance between a Wind Measurement Tower and the property line shall be at least one point five (1.5) times the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.</p>	<p>The Facility will be designed to comply with this requirement. See Exhibit 5 for further information.</p>

(e) Identification of Municipal Agency Qualified to Review, Approve, Inspect, and Certify Compliance with Uniform Code

Each of the Towns have enacted and adopted local laws for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code ("Uniform Code"):

- Local Law No 2 of the year 2002, Updating the Code Enforcement Program in the Town of Fenner

- Local Law No 2 of the year 2020, Amend Article X of the Town of Nelson Land Use and Development Law providing for Regulations for Administration and Enforcement of the Building Code of NYS
- Building and Development Control Local Law Town of Smithfield, Article VI-A Administration and Enforcement of State Codes
- Town of Eaton Code Chapter 90, Fire Prevention and Building Code

These local laws are procedural and establish the local municipality's code enforcement program including establishing a Code Enforcement Officer ("CEO"), outlining the procedural processes for obtaining building permits and certificates of occupancy and outlining the construction inspection process. These procedural processes are pre-empted by 94-c, and therefore the Applicant is not required to obtain building permits or certificates of occupancy from the local municipalities. However, the Facility will comply with the Uniform Code and the municipal officers for the Towns are responsible for reviewing and certifying compliance with the Uniform Code, to the extent the Uniform Code is applicable.

The Uniform Code has limited applicability to wind facilities. Wind facilities that are not associated with a building or other structure regulated by the Uniform Code do not meet the definition of a "building" provided in Article 18 of the New York State Executive Law (§372 and §378). Connection through a utility company's power grid is not considered a direct connection between a turbine and a building. Therefore, the applicability of the Uniform Code to the Facility is limited and does not extend to installation or assembly of turbine components. In addition, construction trailers used as temporary offices for monitoring construction at a construction site are also exempt from the Uniform Code. Therefore, the applicability of the Uniform Code is largely limited with respect to wind facilities.

Due to the complex nature of the Facility, the Applicant may potentially arrange with the Towns to pay for consultant services for the review, approval, inspection, and compliance certification for work required to comply with the Uniform Code, if necessary. The Applicant will work with the Towns prior to construction to identify the appropriate individuals to conduct this review.

Table 24-2 below, provides the name and contact information of the identified local official to review and approve the Facility building plans.

Table 24-1. Local Contact Information for Review and Approval of Building Permits

Town	Contact Information
Eaton	Larry Cesario Town of Eaton Offices, 35 Cedar Street, P.O. Box 66, Morrisville, NY 13408 Phone: (315)-684-9179
Fenner	Jeff Edgerton Town of Fenner Offices, 3151 Fenner East Road, Cazenovia, NY 13035

	Phone: (315)-655-2705
Nelson	Jeff Edgerton Nelson Town Hall, 4085 Nelson Road Cazenovia, NY 13035 Phone: (315)-655-8582 ext 5
Smithfield	Larry Cesario Smithfield Town Hall, 5255 Pleasant Valley Road, Peterboro, NY 13035 Phone: (716)-471-3816

Alternatively, the Applicant may request to submit the building plans for the Department of State, in order to obtain compliance with the Uniform Code, and the substation provision of any applicable local electrical, plumbing or building code. In that case the Application would arrange for the Department’s review, approval, inspection, and compliance certification, including any arrangement to pay for the costs of any necessary consultant services.

(f) Zoning Designation

Town of Eaton

Zoning regulations were adopted in the Town of Eaton in 1997, and subsequently amended by local laws most recently in 2020. The Town of Eaton is divided into the following three zoning districts: Agricultural/Residential/Commercial (ARC), Agricultural/Residential/Commercial District No. 2 (ARC2), and Residential District No. 2 (RD-2). Wind energy conversion systems are prohibited in RD-2. All portions of the Facility Site which intersect the Town of Eaton are located within the ARC zoning district.

Town of Fenner

Zoning regulations were adopted in the Town of Fenner in 1997, and subsequently amended by local laws most recently in 2010. The Town of Fenner is divided into the following two zoning districts: District A and District B. Portions of the Facility Site which intersect the Town of Fenner are located within both the District A and District B zoning districts.

The Town of Fenner created a third district, District C, in 2000, in response to the proposed Fenner Wind Farm project. District C was created to “foster the development of the Town’s windpower resource while preserving the farmlands and adjoining settlements as compatible adjoining uses.” District C includes just those parcels hosting wind turbines for the Fenner Wind Farm and has been amended twice, once in 2001 and again in 2005 to encompass all parcels hosting Fenner Wind Farm components. The Town has not expanded District C to include parcels hosting the proposed Facility. See above for further details on the Applicant’s waiver request and compliance with the Town of Fenner’s zoning districts.

Town of Nelson

Zoning regulations were adopted in the Town of Nelson in 2011. The Town of Nelson is divided into the following six zoning districts: Rural (R), Neighborhood (N), Nelson Corridor (NC), Erieville Hamlet (EH), Waterfront Zone (WF), and Business Commercial (BC). In addition to these six zoning districts, there is also one overlay district that exists in the Town of Nelson; The Scenic Vista | Scenic Highway overlay district. All portions of the Facility Site located within the Town of Nelson are within the R zoning district, and portions of the Facility Site fall within the town's scenic overlay district.

Town of Smithfield

The Town of Smithfield has adopted a Building and Development Control Local Law, originally adopted in 1992, and recently amended to provide for the regulation of Wind Energy Facilities within the Town (Local Law No. 2 of the year 2023). The law does not provide for zoning districts but does regulate certain uses within the Town. Wind energy conversions systems are permitted with site plan approval and special use permit in all areas of the Town of Smithfield except within the Peterboro Hamlet (which is located in the Town of Smithfield) and the Hamlet Buffer District. Portions of the Facility Site are located within the Town of Smithfield and are outside the Peterboro Hamlet and the Hamlet Buffer District.