

# Local Law Filing

Revised 6/12/2006

Town of Hornby, Steuben County, New York

Local Law No. 2 of the year 2006

A local law amending, repealing and supplementing the Town of Hornby Zoning Ordinance Article 13 - Section 13.19, referencing Wind Energy Conversion Systems, with the addition of definitions and standards for the construction of such Wind Energy Conversion Projects within the Town.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF HORNBY, STEUBEN COUNTY, NEW YORK, AS FOLLOWS:

## Section 13.19 - A: INTENT AND PURPOSE

The purpose of these supplemental requirements and standards is to regulate the development of a Wind Energy Conversion Project (wind turbines) and related structures in the Town of Hornby. This law is to be consistent with the general purposes stated in the Comprehensive Plan of the Town, to accommodate the necessary infrastructure for the provision of commercial wind-powered electricity generation facilities so that they may be developed in a manner hereby deemed to be compatible with the general health, welfare and safety of the residents of the Town of Hornby. Furthermore, this local law is enacted to address the visual, aesthetic and land use compatibility aspects of Wind Energy Conversion Units, and more specifically to:

1. – Encourage the location of Wind Energy Conversion Units in areas where adverse impacts on the community are minimized.
2. – Encourage the configuration of Wind Energy Conversion Units in a way that minimizes adverse visual impact of the towers.
3. – Encourage the co-location or shared use of proposed and existing Wind Energy Conversion Unit sites.

## Section 13.19 - B: Authority, Delegation, Requirement and Fees

- a. This law is enacted pursuant to New York State Town Law Article 16 and Municipal Home Rule Law Section 10.
- b. The Town Planning Board is hereby authorized to approve, approve with conditions, or disapprove Wind Energy Conversion Project applications in accordance with Section 12 Article 1 of the Town of Hornby Zoning Ordinance and Section 274-a of the New York State Town Law.
- c. No wind energy conversion system or any portion thereof shall be located or operated in the Town unless and in accordance with a permit duly issued by the Town Planning Board under this local law.

d. The Town Planning Board shall determine on a case by case basis, based upon the specific aspects of the application and the complexity of the application, whether an independent professional Engineer or consultant will be required to assist in the review of an application. If so determined that such independent professional or consulting services are required, the applicant shall be responsible for any and all fees associated with such services. The costs of such services shall be limited to the reasonable standard fees for such independent third as determined upon review of such fees charged by such consultant in the Town and surrounding municipalities to the Town. Upon submission of the application, the Town shall obtain a good faith estimate of the fees to be charged by said independent third party consultant and advise the applicant of said estimate of fees to which the applicant shall remit an amount to the Town equal to such estimate within 15 days of such demand. These funds shall be held by the Town in trust to reimburse and be drawn upon by the Town when the Town incurs and pays the appropriate voucher for such third party services. Should the fees for such third party consultant exceed said estimated amount, the applicant shall immediately deliver and file with the Town an additional sum in an amount equal to the original estimated amount, or such sum as deemed appropriate and necessary to cover the remaining charges anticipated to be incurred by the Town thereafter. Any funds held in trust following completion of said third party review, shall be returned to the applicant upon presentation of a duly executed voucher seeking the same. If the applicant fails to pay any and all such fees incurred relative to such independent third party services or the estimated fees to be deposited in trust with the town prior to the date such fees are demanded to be paid by the Town to the Town, such failure shall constitute a withdrawal of the applicant's application under this local law and thereafter such application shall be considered null and void by the town for all purposes relative thereto.

#### Section 13.19 - C: PROCEDURE

1. – A completed application for siting a Wind Energy Conversion Project shall be submitted to the Town Clerk at least fifteen (15) days prior to the regular meeting of the Town Planning Board. The Applicant his, or her duly authorized representative shall attend the meeting of the Planning Board to discuss the application.

2. – Within sixty-two (62) days after the Town Planning Board meeting where the completed application is submitted to the Town, as determined to be complete by the Town Planning Board, a public hearing shall be held. Notice of such public hearing shall be published in the official newspaper of the Town at least ten (10) days prior to the date thereof. The Applicant shall give notice in writing by certified mail to all property owners of record of the land immediately adjacent to the proposed parcel (or parcels) where the site is proposed. The Applicant shall mail these notices at least ten (10) days in advance of the public hearing scheduled in the matter, and file with the Town Clerk the United States Post Office receipts as proof of such notification being made prior to the public hearing date.

3. – Within sixty-two (62) days of the close of the public hearing, the Town Planning Board shall approve, conditionally approve, or disapprove the application. The time in which the Planning Board may render its decision may be extended by mutual consent of the Applicant and the Planning Board. The decision of the Town Planning Board on the application shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy thereof mailed to the Applicant.

## Section 13.19 – D: APPLICATION REQUIREMENTS

The Applicant for the proposed development of a Wind Energy Conversion Project shall submit fifteen (15) copies of the application and site plan showing the following information, unless such information requirements are waived by the Town Planning Board for good cause shown. In addition, the Town Planning Board may request any and all additional information the Town Planning Board might deem necessary for review of such application, but such additional requested information must be reasonable in scope and relevant to the application being reviewed:

1. – Name of the project, a map indicating boundary lines of the parcel (or parcels) that the project will include and the proposed site location(s), date, North arrow and scale of the plan. The maps shall include an overall map of the project, as well as individual site maps for each proposed Wind Energy Conversion Unit location
2. - Name and address of the owner(s) of record of the parcel(s) where the project is proposed to be sited, Name and address of the project sponsor and the seal, including the name and address, of the engineer, architect, or surveyor preparing, or assisting in the preparation of, the site plan.
3. – Name and addresses of all owners of record, as indicated in the Steuben County Clerk’s office, of all adjacent property owners to the project and all property owners of any and all parcels within the property setback requirements as specified in Section 13:19 E of this local law
4. – A map showing all existing lot lines, easements and rights of way, and a sketch plan showing proposed road access, including provisions for paving, if any, proposed transmission lines and accessory facilities, and location of all existing and proposed utility systems to the project.
5. – A survey of the land to be leased, if applicable.
6. – A map showing existing microwave and communication links within the project boundaries.
7. – A map showing existing and proposed topography at ten-foot contour intervals.
8. – A landscape plan showing all existing natural land features, trees, forest cover and all proposed permanent changes to these features, including size and type of plant material and erosion control measures to be included in the project upon completion.
9. – A fully completed State Environmental Quality Review Act (SEQRA) Environmental Assessment Form (EAF).
10. – A visual impact study assessing the visibility of the project from key viewpoints relative to such project, existing tree lines, and proposed elevations. This study shall be digitally enhanced to simulate the appearance of the as-built project as such completed project would appear from distances specified by the Planning Board within a five (5) mile radius of the location of such project, or any portion thereof. Additional pictures from specific locations may be required by the Town Planning Board, and all such pictures shall be in color and no smaller than 5” X 7”.
11. – Documentation of the proposed intent and capacity of energy generation to be derived from the completed project.

12. – Preliminary report prepared by the applicant describing:

- a. Surrounding topography in relation to the capabilities for generation of electricity by wind and why the project site was selected for development.
- b. Required improvements for construction activities, including those within the public right of way or land controlled by the Town of Hornby.
- c. Proposed mitigation measures for visual impacts of any and all components, structures, and materials related to the Wind Energy Conversion Project including, but not limited to, Wind Energy Conversion Units, substation(s), meteorological (MET) towers, support structures and access roads.
- d. Proposed safety measures to mitigate any potential Wind Energy Conversion Unit failure.
- e. Documentation and justification for any proposed land clearing around structures within the project.

13. – Elevation map showing the Wind Energy Conversion Unit's height and design, including a cross-section of the structure and components of the nacelle; statement of compliance documenting the unit's compliance with applicable structural standards; and the Wind Energy Conversion Unit's abilities in terms of producing energy.

14. – The Applicant shall provide shadow flicker and blade glint information for the area within the boundaries of the parcel upon which the project, or any portion thereof, is to be sited and for any additional area located within a radius of one mile beyond the boundaries of said parcel. Such information shall include a shadow flicker zone map and documentation of the non-reflective coating for the blades. Accompanying such information shall be the proposed schedule with which the non-reflecting coating for the blades shall be reapplied as based on the manufacturers suggested life of the coating product.

a. The Applicant shall also state the following:

1. Model and describe the zones within the project where shadow flicker is likely to affect existing residential structures, roadways and other similar areas of public or private use. The model shall represent the most probable scenarios of wind constancy, sunshine constancy, and wind direction and speed.
2. Identify the most likely locations of shadow flicker, estimate the expected duration of such shadow flicker at these locations per day, and calculate the potential total number of hours per year at each location such shadow flickers may occur.
3. Identify potential problem zones where shadow flicker may interfere with existing residences and roadways, and describe proposed measures to mitigate these problems – including but not limited to a change in siting of the unit, a change in operation of the unit, or grading or landscaping mitigation measures.

4. Provide tax identification numbers for all properties within the potential shadow flicker zones.
15. – The Applicant shall submit a lighting plan. This must include location and type of lighting, as well as the expected impact on residential property within a five-mile radius of the project and must be in compliance with FAA minimum lighting requirements.
16. – Description of the Applicant’s ten-year plan for the project that shall include the estimated market demand and long term project expansion needs within the Town associated with the project for the duration of the required ten year plan.
17. – Report showing soil logs and soil profile analysis for any area being disturbed as part of the project.
18. – Plans to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive runoff, and flooding of other properties, in compliance with Article 13 Section 10 of the Town of Hornby Zoning Ordinance. The plan shall outline the following:
  - a. – the impact the project will have on surface or ground water run-off erosion
  - b. – steps to mitigate any anticipated issues
  - c. – plans to revisit the project at no less than two-year intervals, for a period of four (4) years, to confirm the impact was as anticipated, and take corrective action if necessary,
19. – The Applicant shall, in consultation with the Town of Hornby Volunteer Fire Department and Steuben County Hazardous Response Teams, establish an Emergency Preparedness Plan, in the event of an emergency requiring immediate response or attention during the construction and operation of the Wind Energy Conversion Project or any portion thereof.
20. – The applicant shall present a spill containment response plan, to be implemented in the event of any environmental contamination resulting from, but not limited to, oil or other chemicals. A performance bond or other appropriate mechanism shall be required to deal with this situation.
21. – Proof of all required financial surety or other similar financial requirements relative to the project. Such proof may include, but is not limited to, proof of liability insurance, decommissioning funds, development mitigation funds and whatever other financial requirements relative to the application.

#### Section 13.19 – E: STANDARDS

Wind Energy Conversion Systems and all related structures thereto shall be permitted to be constructed within the town only upon receiving prior permit approval from the Town Planning Board. Such application for a permit shall only be granted if the application complies with the following requirements and such other reasonable conditions that the Town Planning Board requires as part of any conditional approval issued hereunder:

1. – Location – All Wind Energy Conversion Systems shall be located, erected and sited in accordance with the following requirements:

a. No individual Wind Energy Conversion Unit shall be installed in any location along the major axis of existing communications links or telephone transmission lines where the operation is likely to produce interference in said link's operation. If such problem is found to exist, such problem shall be resolved at the applicant's sole and complete expense to the satisfaction of the property owner and/or the Town Code Enforcement Officer.

b. No individual Wind Energy Conversion Unit shall be installed in any location where such unit's proximity with existing fixed broadcast, or reception antenna (including residential reception antenna or satellite system) for radio, television or wireless phone or other personal communication systems where unit would produce interference with signal transmission or reception. The applicant shall correct (or document significant progress toward corrective action on) any unforeseen interference to the satisfaction of the Code Enforcement Officer within thirty (30) days of any complaint being given to the applicant by the Code Enforcement officer or affected person. To correct such problem:

1. – The Applicant shall provide the affected person(s) with service equal to or better than the service that was interrupted, or an acceptable alternative to such service has been agreed to by the Code Enforcement Officer and the affected property owner.

2. – If emergency service needs have been affected, such problem shall be remedied by the Applicant within 36 hours of notification being given to the Applicant by the Code Enforcement Officer or affected person .

c. No individual Wind Energy Conversion Unit shall be installed in any location where there is a recognized migratory flight path for birds or bats, or at a location where birds or bats commonly congregate, unless the Applicant shall demonstrate the operation of the Wind Energy Conversion Unit will not have a significant adverse impact on such migratory or resident birds or bats.

d. All Wind Energy Conversion Units shall only be located, installed, or constructed on the subject parcel in accordance with the following set backs:

1. A distance not less than that equal to the tip height of the wind energy conversion unit as measured from any and all public roadways or above ground power lines in the vicinity of said unit, to the base of such unit.

2. A distance not less than 1200 feet from any existing residential building.

3. A distance not less than that equal to the tip height of the wind energy conversion unit as measured from the property lines of the parcel on which said unit is to be sited.

4. Waiver - The Town Zoning Board of Appeals is authorized to grant a waiver to the setback requirements of subparagraph d of this section in accordance with Article 16 and Appendix A of the Town of Hornby Zoning Ordinance, only if

said Board is in receipt of a written, notarized consent form from the property owner impacted thereby.

2. Noise. The level of noise produced by or from the operation of the Wind Energy Conversion System shall not be persistent in excess of 45 decibels (dbA) for more than 25 minutes in duration measured at a distance of 1000 feet from the base of the wind energy conversion unit or that portion of the wind energy conversion system causing the noise level that is in violation of these requirements.

### 3. – Emergency Shutdown / Safety Operations

a. The Applicant shall file emergency contact information, including but not limited to a telephone number and unique ID number, for each wind energy conversion unit with the Town Clerk, and post at the entrance of each access road to such wind energy conversion unit so the appropriate people may be contacted should any Wind Energy Conversion Unit need immediate attention or care.

b. Each Wind Energy Conversion Unit shall have an automatic manufacturer certified or engineer certified braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components or nacelle.

### 4. – Lighting

a. No Wind Energy Conversion Unit shall be artificially lighted unless such lighting is required by a local, state or federal statute, rule or regulation. The use of nighttime and overcast daytime condition stroboscopic lighting shall be the minimum required by law to satisfy the lighting requirements as issued by the Federal Aviation Administration.

b. Light shields, if commercially available, or other devices to block downward lighting shall be used to minimize the amount of light visible at ground level. The Applicant shall submit a study of the potential impact of the proposed lighting, as well as any required alterations as determined and required for approval hereunder, on the area surrounding the subject project

c. Prior notification of any changes in the lighting plan for the project must be communicated to the Town Planning Board prior to installation of such new lighting scheme, and such alterations shall only be approved for installation for good cause shown or in order to bring such project into compliance with any and all statutory and regulatory requirements.

d. If the minimum lighting requirement, as determined by applicable federal, state or local rules, regulations or statutes change during the course of operation of the wind energy conversion system, the applicant shall alter the lighting plan and install such lighting in the wind energy conversion system that that is at a level equal to such revised minimum requirements.

5. – Utility Service

a. All power transmission lines servicing the project or any portion thereof shall be underground to a minimum depth of forty-eight (48) inches or to such depth as required by the Uniform State Fire Prevention and Building Code whichever is greater.

i. If this standard is deemed to be technically infeasible, rationale and alternative solutions and designs shall be submitted with the completed application for review and approval by the town planning board. Such approval shall be granted if such alternative is deemed acceptable by the Town Planning Board based upon substantial evidence in the record ensuring such alternative provides the level of protection and safety afforded by the standard set forth in paragraph a of this subparagraph.

b. In the unlikely event of a stray voltage occurrence, the applicant shall be notified, and corrective action shall be taken immediately by the applicant fully remedying such occurrence.

6. – Blade Sweep – The minimum height of the lowest part of the blade sweep area shall be thirty (30) feet above the highest existing major structure or tree within a one-hundred-fifty (150) foot radius of the base of the wind energy conversion unit. The total tip height for each wind energy conversion unit cannot exceed five-hundred (500) feet as measured from the base of the unit to the tip of the unit's longest blade.

7. – Access Roads

a. In an effort to minimize curb cuts, existing roadways shall be used for access to the site whenever possible.

b. If existing roadways are not practicable to be utilized for such access, any necessary new roadway, shall be constructed in a way so that they are level to the surrounding environment. Unless the landowner upon which such new access road is located signs a waiver requesting such property not be gated, new access roads constructed from existing roadways shall be gated and locked near the vicinity of the intersection of the access road and the existing roadway with breakaway gates allowing emergency access to the roadway.

8. – Accessory Structures / Facilities – Transmission facilities and/or buildings shall be located along roadways, below ridgelines or behind vegetation to screen such facilities and/or buildings from visibility. If such a facility or building is to be located in or along the side of an open field, the facility or building shall be landscaped in such a way as to blend such facility or building in with the surrounding environment.

9. – Security – To secure each and every Wind Energy Conversion Unit so constructed within the Town, each such unit shall:

a. Not have any climbing device of any kind attached to the Wind Energy Conversion Unit closer than fifteen (15) feet from the ground, and

b. Have a locked anti-climbing device installed on the unit.



10. – Shadow Flicker – The wind energy conversion system shall be designed such that shadow flicker from an individual wind energy conversion unit will not fall on any specific area of a roadway or a portion of a residential structure in excess of twenty five (25) hours per year. If an individual residence is being impacted by multiple wind energy conversion unit, the cumulative affect of said impact shall not exceed twenty five (25) hours per year. If shadow flicker exceeds these conditions, the source wind energy conversion unit shall be shut down until the offending condition is remedied. See Section 13.19 – D: 14.

11. – Environmental Contamination by Oil or Other Chemicals - The applicant of a wind energy conversion system, after such application has been approved and before a permit is issued, shall submit the maximum amount letter of credit or other mechanism necessary to ensure the clean-up of any contamination according to DEC requirements. The Town Board and the attorney for the Town shall judge the letter of credit or other surety as adequate and satisfactory before such a permit is granted.

12. – Below-Grade Foundations – The foundation top of each Wind Energy Conversion Unit shall be buried to a depth of four (4) feet below ground, or to the specifications of the New York State Department of Agriculture and Markets guidelines, whichever is greater, to enable use of the land for farming/agriculture during the life of the project.

13. – Road Mitigation- To be approved, the applicant shall submit and deposit with the Town a sum of money equal to an amount determined by the Town Board to offset the estimated direct and indirect adverse impacts on the Town’s Highway system anticipated to be incurred by the Town as a result of the approval of such application.

14. --Decommissioning and Restoration – Upon approval and prior to the construction of any portion of such wind energy conversion system, each approved wind energy conversion system shall require a decommissioning plan and related financial surety be filed with the town.

a. Such plan and surety shall include the following:

- (1.) The anticipated life of the project,
- (2.) The estimated decommissioning cost in current dollars,
- (3.) The method and schedule for updating the costs of decommissioning and restoration,
- (4.) The method of ensuring that funds will be available for decommissioning and restoration, and
- (5.) The anticipated manner in which the project will be decommissioned and the site restored.

b. Prior to approval, the application shall be referred to the Town Board for determination of any financial surety required under this subparagraph.

c. The applicant shall provide an appropriate and adequate demolition bond or similar financial surety such as a letter of credit or cash, to be utilized by the Town in removing the Wind Energy Conversion System in the event the Applicant fails to do so as required under this subparagraph. Proof of this bond or similar surety shall be filed with the Town

Clerk each year, and recalculated in an amount reflecting the then current estimated costs for decommissioning such system.

d. The Applicant, shall notify the Code Enforcement Officer within thirty (30) days of the discontinuance of use of the Wind Energy Conversion System or any portion thereof.

(1) Should the applicant fail to notify the Town Code Enforcement Officer as required under subparagraph 14 subdivision d of this section, the applicant shall be subject to all penalties provided under this local law and following additional penalties:

a. \$200.00 per day from the time the applicant should have notified the Code Enforcement Officer under subparagraph 14 subdivision d of this section and the date the wind energy conversion system or portion thereof is removed or made operational as set forth under subparagraph (f) of this section.

e. Should the wind energy conversion system or any portion thereof not operate for a total period of 60 days within any 90 day period, the Town shall notify the applicant that such offending wind energy conversion system or portion thereof shall be removed or made operational as provided in subparagraph 14 subdivision f of this section.

f. The Applicant shall remove any discontinued, decommissioned, obsolete or unused wind energy conversion system or portions thereof and restore the site to pre-construction conditions, or make the wind energy conversion system or portion thereof fully operational, within one hundred eighty (180) days of delivery or receipt of the notification set forth in subparagraph 14 subdivision e of this section.

i. Prior to the expiration of this time, the applicant may apply to the Town Code Enforcement Officer, and the Code Enforcement Officer may grant, an extension in time for which such wind energy conversion system or portion thereof needs to be removed or made operational, up to an additional time of one hundred eighty (180) days. Such extension shall only be granted if the applicant demonstrates good cause that such extension is necessary as a result of uncontrollable events such as weather delays, repair delays or other similar conditions requiring the need for such extension.

g. Failure to notify and/or remove any discontinued, decommissioned, obsolete or unused wind energy conversion system or portion thereof in accordance with this local law shall be in violation of this local law and subject the applicant to the penalties set forth herein. In addition, the cost of removing the offending wind energy conversion system or portion thereof shall be drawn against the financial surety posted by the applicant for demolition or decommissioning of the project as set forth in this section.

h. Any costs incurred by the Town that exceeds the amount of such financial surety or not be covered by said surety shall be the complete and sole responsibility of the applicant. If the applicant is insolvent and such costs cannot be practicably collected from said applicant, then such costs shall become a lien upon the property upon which the costs were incurred and said lien shall thereafter be assessed on the next succeeding years tax bill for such parcel and collected in accordance with normal tax foreclosure proceedings if such tax bill remains unpaid thereafter.

i. Upon completion of all such removal activities by the Town, any remaining portion of the posted surety shall be returned to the applicant forthwith

15. – Post-Installation

a. – On an annual basis a post-installation field report identifying the wind energy conversion system’s generation of electricity, and impacts upon the environment, including but not limited to any adverse drainage patterns then existing, sites of erosion in vicinity of the system, and other potential adverse environmental conditions, shall be submitted by the applicant to the Town Board. The report shall also include any and all work related calls logged by the Applicant, and any other reasonable items that may be requested by the Planning Board. This report shall be filed with the Town Clerk annually in the month of June for review at the July Town Board meeting.

b. – If it is determined that any Wind Energy Conversion System or portion thereof is operating outside the parameters of the zoning requirements and conditions of approval, the Applicant shall be notified, and any and all necessary remedies implemented. If the problem cannot be remedied within an appropriate amount of time, based on its nature and severity, the Code Enforcement Officer may require the wind energy conversion system or a portion thereof be shut down until such repairs can be affected. If the applicant and the Code Enforcement Officer are unable to agree on an appropriate time or method for remedying such problem, either party shall ask the Town Board to determine such a reasonable time or method of remedy, which determination shall be final unless successfully appealed to the Steuben County Supreme Court by way of a CPLR Section 78 proceeding, which said petition must be filed with said Court within 30 days of the issuance of the determination by the Town Board being so appealed.

c. Safety issues deemed to be of an imminent significant threat to the health, safety and/or welfare of any person affected by the wind energy conversion system or any portion thereof as determined by the Code Enforcement Officer shall require the immediate shut down of the wind energy conversion system or portion thereof system until corrective action is taken and the imminent significant threat fully mitigated.

d. – In the event a Wind Energy Conversion system or portion thereof requires attention, whichever entity is notified first – the Applicant or the Code Enforcement Officer – such entity shall immediately contact the other party to report the matter being attended to.

Section 13.19 – F: OPERATING CONSIDERATIONS

1. - Landscaping – Upon completion of installation the site shall be returned as close as possible to its natural state, including, but not limited to restoring the subsoil and topsoil to pre-construction condition and reforestation of at least 40% for any woodlands that have been cleared.

2. – Building and Grounds Maintenance – Any damaged or unused parts shall be removed from the premises within thirty (30) days or stored in a locked on-site storage building. All maintenance equipment, spare parts, oil or chemicals (cleaning, pesticides, fuels), shall also be stored in said on-site locked storage building.

3. – Ownership Changes – If the ownership of a Wind Energy Conversion System changes, the approved permit shall remain in full force and effect. All requirements of the approved permit, including bonding, letters of credit or continuing certification requirements of the original owner shall continue to be obligations of the succeeding owners. However, all such changes in ownership shall be registered with the Town Clerk within thirty (30) days of such transfer, and any emergency contact information posted shall be changed accordingly.

4. – Wind Energy Conversion Unit Modifications – Any and all modifications, additions, deletions or changes to Wind Energy Conversion System, whether structural or not, shall be made by obtaining a new approval from the Town Planning Board prior to any modifications or changes being made.

5. – Repairs – However, prior approval as set forth in subparagraph 6 of this section shall not be required for repairs which become necessary in the normal course of operation of the Wind Energy Conversion System, become necessary as a result of natural forces such as wind or ice, as a result of any other acts of God, or repairs caused by the malicious or negligent acts of any persons or the behavior of animals.

#### Section 13.19 – G: CERTIFICATIONS

1. – Routine Inspection Report – An inspection report prepared by an independent professional engineer licensed in the State of New York shall be required at the completion of the installation of the wind energy conversion system. Said inspection report shall certify the wind energy system and any portion thereof complies with all manufacturing specifications and any and all rules, regulations and statutes pertaining thereto. Said inspection report shall be filed with the Code Enforcement Officer and the Town Clerk.

2. – Insurance – Liability – Prior to the issuance of a building permit regarding an approved wind energy conversion system, the applicant shall file with the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance in a reasonable level as determined by the Town Board in consultation with the Town's insurer, guided by industry standards, to cover damage or injury which might result from the wind energy conversion system or any portion thereof. Such liability insurance shall also name the Town and the current property owner of record as an additional insured, unless said property owner waives such coverage in writing.

3. – National and State Standards – In addition to any requirements of this local law, the applicant shall show that all applicable manufacturers, New York State and U.S. standards for the construction, operation and maintenance of the proposed Wind Energy Conversion Units have been met or are in compliance. Wind Energy Conversion Units shall be built, operated and maintained to applicable industry standards of the Institute of Electrical and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).

4. – Continuing Obligations – All requirements detailed in this local law shall remain in full force and effect for the duration of the granted permit.

## Section 13.19 – H: DEFINITIONS

**Applicant:** Any person applying to develop, own, locate, construct or operate a wind energy conversion system within the Town. All requirements placed upon an applicant under this local law or by way approval of a permit issued hereunder, shall be fully and completely binding upon the owner, his/her/its successors, heirs and assigns, of the wind energy conversion system being submitted for review hereunder.

**Accessory Facilities or Equipment:** Any structure, other than a Wind Energy Conversion Unit, related to the use and purpose of deriving energy from such towers located at the Wind Energy Conversion System.

**Blade glint:** The intermittent reflection of the sun off the surface of the blades of a Wind Energy Conversion Unit

**Decommissioned:** Status applied to a Wind Energy Conversion Unit when it has been non-productive for a period of one year, or when the unit or project no longer provides a useful service.

**Fall Zone:** Fall Zone shall be a level distance perpendicular to the base equal to the total height of the wind energy conversion unit plus the rotor at a full and upright vertical position.

**Nacelle:** The portion of the Wind Energy Conversion Unit that connects the rotor to the support tower and houses the generator, gearbox, drive train and braking system.

**Planning Board:** For the purposes of this Local Law shall mean the Town of Hornby Planning Board.

**Public Hearing:** A meeting announced and advertised in advance, and open to the public, with the public given an opportunity to talk, participate and express their opinions, support or concerns.

**Residential structure:** Any permanent structure with electric power and running water.

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

**Set Back:** The area of land measured along the ground out a horizontal distance in any direction from the structure or facility being regulated under this local law.

**Shadow Flicker:** The effect from the sun shining through the turning blades on the Wind Energy Conversion Unit and casting a shadow over the landscape – most noticeably during sunrise and sunset.

**Tip Height:** Tip height is equal to the distance from the ground to the tip of the rotor blade in a full and upright vertical position.

**Tower Site:** Site where one or more Wind Energy Conversion Unit or wind turbines will be located, including all accessory facilities or equipment.

**Tower Height:** Tower height is equal to the distance from the ground to the top of the tower not including the nacelle or rotor blades.

**Wind Energy Conversion Unit / Wind Turbine:** Any tower, pole or other structure, whether attached to a building, guyed or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as a nacelle and generator for the purpose of producing electricity.

**Wind Energy Conversion Unit / Wind Turbine (Large Project):** Three or more towers, poles or other structures, whether attached to a building, guyed or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as a nacelle and generator for the purpose of producing electricity intended to provide wholesale electricity production for delivery on the local transmission network. Any Wind Energy Conversion Unit / wind turbine not meeting the definition of a Wind Energy Conversion Unit / wind turbine (Small Project) shall, for the purposes of this Local Law, be considered a Wind Energy Conversion Unit / wind turbine (Large Project).

**Wind Energy Conversion Unit / Wind Turbine (Small Project):** One or two towers, poles or other structures, whether attached to a building, guyed or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as a nacelle and generator for the purpose of producing electricity intended to reduce on-site consumption of utility power. Any Wind Energy Conversion Unit / wind turbine not meeting this definition shall, for the purposes of this Local Law, be considered a Wind Energy Conversion Unit / wind turbine (Large Project).

**Wind Energy Conversion System:** All structures and facilities utilized or necessary for the normal operation of the project being submitted by an applicant under this local law, including, but not limited to, wind energy conversion units, all accessory facilities and equipment thereto, and/or any portion thereof.

#### Section 13:19 I- INCONSISTENCY

All other local laws and ordinances of the Town of Hornby inconsistent with the provisions of this Local law are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this Local Law shall be in addition to such other local laws or ordinances regulating and governing the subject matter covered by this local law.

#### Section 13:19 J - UNCONSTITUTIONALITY AND ILLEGALITY

If any clause, sentence, paragraph, word, section or part of this Local Law shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair, or invalidate any paragraph, word, section or part thereof not directly involved in the controversy in which such judgment shall have been rendered.

#### Section 13:19 K- EFFECTIVE DATE

This Local law shall take effect immediately upon filing with the Secretary of State.

Section 13:19 L- PENALTY

Any person who violates or knowingly permits the violation of this Local Law shall be deemed to have committed a violation and shall be subject to the following penalties: a minimum of \$25.00 up to the maximum of \$250.00 or 15 days imprisonment, or both. Each separate violation shall constitute a separate additional offense for which a penalty may be assessed thereon. Further, every day such violation is determined to have existed shall be deemed to constitute a separate and additional offense for which the person may be subject to the penalties set forth herein for each and every day violation so existed.