

Heritage Wind Project

Case No. 16-F-0546

1001.31 Exhibit 31

Local Laws and Ordinances

TABLE OF CONTENTS

EXHIBIT 31 LOCAL LAWS AND ORDINANCES 1

(a) List of Applicable Local Ordinances and Laws of a Procedural Nature 1

(b) Local Procedural Requirements Requiring Board Authorization..... 3

(c) Identification of Municipal Agency Qualified to Review and Approve Building Permits..... 3

(d) List of Applicable Local Ordinances and Laws of Substantive Nature 4

(e) List of Substantive Local Ordinances/Laws That the Applicant Requests the Board Not Apply 6

(f) List of Procedural Local Ordinances/Laws Related to Use of Water, Sewer, or Telecommunication Lines... 16

(g) List of Substantive Local Ordinances/Laws Related to Use of Water, Sewer, or Telecommunication Lines . 16

(h) Local Ordinances/Laws Related to Use of Water/Sewer that the Applicant Requests the Board Not Apply . 16

(i) Zoning Designation..... 24

List of Tables

Summary Table of Substantive Local Requirements 16

Appendices

Appendix 31-A. Local Zoning Laws¹

Appendix 31-B. Visual Simulation of Turbines at 500 feet versus 600 feet

¹ The entire Barre Code is available online at <https://ecode360.com/13203338>. The Application includes relevant sections of the code, including the Town’s wind law (Chapter 350, Article XI) and other relevant zoning provisions.

EXHIBIT 31 LOCAL LAWS AND ORDINANCES

The Facility is proposed within the Town of Barre, Orleans County, New York, which has adopted zoning and an existing Wind Energy Law, codified at Chapter 350, Article XI of the Barre Town Code (“Barre Wind Law”). Since first proposing the Heritage Wind Project, the Applicant has been in conversations with the Town about the proposed Facility, and has identified for the Barre Town Board a list of substantive requirements in the Town’s existing laws which are problematic, unworkable, and/or inconsistent with other laws, and has requested that the Town consider modifications to other provisions to improve the overall design and feasibility of the Facility. As of the time of Application, the Town has not taken action on these requested changes and, for that reason, this Exhibit reflects the law as it exists as of the Application submission, and includes requests for waivers of substantive local law requirements from the Siting Board. However, the Applicant will continue its conversations with the Town regarding the requested changes and will update the Parties and the Siting Board should local requirements change in a manner which obviates the need for waivers from the Siting Board.

(a) List of Applicable Local Ordinances and Laws of a Procedural Nature

The Applicant has compiled a list of local ordinances, laws, resolutions, regulations, standards, and other requirements of a procedural nature required for the construction or operation of the proposed Facility, which are preempted by Article 10 by operation of law. The Applicant notes that the Barre Town Code is available online, and can be accessed at <https://ecode360.com/BA2836>. The full version of the wind law as it exists at the time of Application is included as Appendix 31-A, as are other relevant sections of the Town Code, such as the Town’s zoning provisions on signs and parking.

Town of Barre

Town Wind Law, Article XI of the Town Zoning Code [Local Law Number 2 of 2008]

- Article XI § 350-99 Creation of Wind Energy Overlay Zones
- Article XI § 350-100 Permits and Zoning Required; Exemptions; Transfer
- Article XI § 350-101 Application Procedure; Waiver
- Article XI § 350-102 Application Review Process
- Article XI § 350-103 Standards
 - (A)(1), second sentence on Town requirements for addressing communications issues
 - (A)(2), second sentence/provisions regarding Town-directed remedies of signal interference

- (B)(2)-(3), Town-directed noise study methodology²
- (C)(1), additional Town-directed signage requirements
- (D)(2) lighting study
- (D)(3), lighting plan notification requirements
- (E)(1), Town review/approval of transmission lines
- (E)(2), stray voltage notification
- (G)(3), Town permit conditions
- (G)(4), posting of public improvement bond³
- (J), Town shutdown of Facility under certain circumstances
- (K), Town letter of credit requirement for oils and chemicals
- (O), post-installation field reports and facility shutdown
- Article XI § 350-105 Decommissioning⁴
- Article XI § 350-106 (C)-(E) Other Operating Considerations; Permit Revocation
- Article XI § 350-107 (A)-(B) and (D), Certifications
- Article XI § 350-108 Wind Measurement Towers *[as applied to permanent towers only]*⁵
- Article XI § 350-109 Penalties
- Article XI § 350-110 Fees
- Article XI § 350-111 Tax Exemptions

Town Zoning Law

- Article III § 350-12 through -17, Zoning Permits
- Article VIII § 350-44, Special Permit Criteria
- Article V § 350-27 Flood Hazard Overlay Zone
- Article VI § 350-29(B), Sign permits required
- Article VI § 350-29(G), Procedures for Obtaining a Sign Permit
- Article VI § 350-33(B), Planning Board review of fencing

² The methodology for noise studies was addressed in Stipulations amongst the parties and is set forth in Exhibit 19 of this Application. Results of noise studies are expressed in a manner which allows for their comparison to substantive Town noise standards. See Preconstruction Noise Impact Analysis, Exhibit 19-A to the Application.

³ While procedural portions of this section are preempted, Applicant nevertheless anticipates that these matters will be addressed with the Town in a Road Use Agreement or similar contract that addresses Applicant's remediation of damaged roads, including the financial security appropriate therefor.

⁴ While the Town's process outlined in the local law is preempted, the matter of decommissioning of the Facility and financial assurance therefor will be addressed in the Application and the Facility Certificate.

⁵ The Applicant has used, and will continue to use, the procedures outlined in § 350-108 to apply for local permits to erect and operate temporary Wind Measurement Towers prior to Facility Certification. To the extent that the Facility contemplates the inclusion of permanent Wind Measurement Towers, the procedural requirements of this section would not apply to those permanent facilities, though the substantive standards outlined in § 350-108 (C)(1) would still apply.

- Article IX § 350-86, Special Use Permit Procedures
- Article X § 350-89 through -94, Site Plan Approval

These local procedural requirements are supplanted by PSL Article 10, as a matter of law, unless the Board expressly authorizes the exercise of the procedural requirement by the local municipality or agency.

(b) Local Procedural Requirements Requiring Board Authorization

The Applicant is in the process of negotiating a Road Use Agreement with the Town of Barre and Orleans County to address many topics related to Town and County roads and rights-of-way (ROW). To the extent that the Town and/or Orleans County require permits or other approvals for work performed on Town/County roads or within the Town's/County's ROW, at this time, it is the Applicant's intent to request that the Board expressly authorize the Town and County to issue such permits or alternatively enter into road use agreements with the Applicant. Highway work and similar road permits are primarily an issue of local concern and ministerial in nature provided the Applicant meets the applicable standards.

Similarly, to the extent the Towns or County require ministerial permits or other approvals for the Operations and Maintenance (O&M) building (i.e. water and septic permits), it is the Applicant's intent to request that the Board expressly authorize the municipalities to issue such permits. These ministerial permits are routinely granted by these entities provided an Applicant meets applicable standards.

Lastly, prior to submission of this Application, the Applicant has used, and seeks authorization from the Siting Board to continue to use, the procedures outlined in Barre Town Code § 350-108 to apply for local permits to erect and operate temporary Wind Measurement Towers. These permits are routine, ministerial permits, and authorizing the Town to issue them for temporary structures would allow for flexibility should the Applicant need to erect such structures to gather additional wind speed data or other information, for a short period of time. Further, these temporary structures have no permanent impacts on the environment or the community, since they are erected for a limited period without the need to install permanent foundations or features, and are fully removed within a given period of years, based on permit requirements/renewals. Further, to the extent that the Facility contemplates the inclusion of permanent Wind Measurement Towers, those features are included in this Application, and comply the substantive standards outlined in § 350-108 (C)(1), as discussed in this Exhibit.

(c) Identification of Municipal Agency Qualified to Review and Approve Building Permits

The Town of Barre is responsible for reviewing and approving building plans, inspecting construction work, and certifying compliance with the New York State Uniform Fire Prevention and Building Code, and the Energy Conservation Code of New York State to the extent that a municipal official is a qualified individual.

Due to the complex nature of the Facility, there is the potential that the Applicant will arrange with the Town to pay for consultant services for the review, approval, inspection and compliance certification for work required to comply with the New York State Uniform Fire Prevention and Building Code, and the Energy Conservation Code of New York State, if necessary. For a wind powered electric generating facility, typically, this work is limited to turbine foundations and operations and maintenance buildings. The Applicant has been in negotiations with the Town prior to submission of the Article 10 Application to develop a Host Community Agreement to address these issues, and to identify the appropriate individuals to conduct this review. It is anticipated that such an agreement would be filed with the Secretary once finalized by both parties.

(d) List of Applicable Local Ordinances and Laws of Substantive Nature

The Applicant has compiled the following preliminary listing of local ordinances, laws, resolutions, regulations, standards, and other requirements of a substantive nature required for the construction or operation of the proposed Facility.

Town of Barre

Town Wind Law, Article XI of the Town Zoning Code [Local Law Number 2 of 2008]

- Article XI § 350-103 Standards (as outlined below):
 - (A)(1) “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.”
 - (A)(2) “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 such unit would produce interference with signal transmission or reception.”
 - (A)(3) through (A)(8) Location requirements
 - (B)(1) Noise standard
 - (B)(2) “In the event that 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 not exceeded for more than six minutes per hour (L 90).”

- (C) “At least one sign shall be posted at the base of each tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of the fence around each tower or group of towers and any building (or on the tower or building if there is no fence) containing emergency contact information, including a local or toll-free telephone number with twenty-four hour, seven-day-a-week coverage.”
 - (D)(1) and (4) Lighting
 - (D)(2) “Light shields, if commercially available, or other devices to mitigate or control light pollution/spilling of light shall be used to minimize the amount of light visible at ground level.”
 - (E)(1) “All power transmission lines servicing the project or any portion thereof shall be underground to a minimum depth of 48 inches or to such depth as required by applicable state and federal regulations and codes, whichever is greater. If this standard is deemed to be technically infeasible, rationale and alternative solutions and designs shall be submitted.”
 - (F), Blade sweep and tip height
 - (G)(1)-(2) Access Roads
 - (G)(3) “Construction and delivery vehicles for Wind Energy Conversion Systems (WECS) and associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include: 1) minimizing traffic impacts from construction and delivery vehicles; 2) minimizing WECS-related traffic during times of school bus activity; 3) minimizing wear and tear on local roads; and 4) minimizing impacts on local business operations . Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips per day and the dates and time periods of expected use of designated traffic routes.”
 - (G)(5) Seasonal Use Roads
 - (H) Access structures/facilities
 - (I) Security
 - (J) Shadow Flicker
 - (L) Below-grade foundations
 - (M) Construction hours
 - (N) Removal of solid waste
- Article XI § 350-104 (A)-(B), where adjacent parcels are participants in Facility, setback and noise restrictions are waived by written consent of adjoining landowner.
 - Article XI § 350-106 (A)-(B) Landscaping, Building and Grounds Maintenance.

- Article XI § 350-106 (D) “A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages.”
- Article XI § 350-107 (C) National and State Standards
- Article XI § 350-108 (C)(1), Standards for Wind Measurement Towers

Town Zoning Law

- Article V § 350-22(D)(8); -23(D)(3)—Essential Services and Utilities permitted as special uses
- Article VI § 350-29 (B); (C)(5), (6) & (13); (D); and (E) Substantive Standards for Signs
- Article VI § 350-30, Off-street Parking
- Article VI § 350-31, Off-Street Loading
- Article VI § 350-33(A), (C)-(F), Fences

Copies of zoning, floodplain, and similar maps, tables and/or documents related to local substantive requirements will be included in the Article 10 Application.

(e) List of Substantive Local Ordinances/Laws That the Applicant Requests the Board Not Apply

In making its required findings, the Siting Board must find that a proposed Facility will comply with all substantive requirements of the local laws. However, the Board “may elect not to apply, in whole or in part, any local ordinance, law, resolution or other action or any regulation issued thereunder . . . which would be otherwise applicable if it finds that, as applied to the proposed facility, such is unreasonably burdensome in view of the technology or the needs of or costs to ratepayers whether located inside or outside of such municipality.” NY Public Service Law § 163(3)(e). To obtain such a waiver, the Applicant must demonstrate “why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the proposed facility, the request is the minimum necessary, and the adverse impacts in granting the request are mitigated to the maximum extent practicable.” 16 NYCRR § 1001.31(e).

In making its “unreasonably burdensome” determination, the Siting Board must weigh the burdens and benefits of compliance with the requirement versus waiver of that requirement. It states that “in considering whether the burden imposed on a project is unreasonable, the Applicant must demonstrate that the burdens (e.g., construction delays, increased cost, impossibility, impingement on the public interest, etc.) outweigh the benefits associated with applying the local law (managing traffic and construction noise impacts, etc.), as well as the impacts of refusing to apply it.” Case 15-F-0122 (“Baron Winds”), Order Granting Certificate of Environmental Compatibility and Public Need (Sept. 12, 2019) at page 153. The Board will also consider whether waiver of the requirement would itself be in the public

interest. *Id.* Under the Climate Leadership and Community Protection Act (CLCPA), the Siting Board must also weigh the Project's potential environmental benefits, such as its contribution toward the State's aggressive renewable energy goals and greenhouse gas emissions reductions, which are intended to combat the devastating effects of climate change on New York's natural and human environment.

In this case, the Applicant is requesting that the Board not apply local ordinances pertaining to: (1) § 350-103(B)(1)'s requirement that no turbine emit noise in excess of 45 dBA at a distance of 1,000 feet from the base of the wind turbine; (2) § 350-103(A)(6)'s requirement relating to the use of guy wires, as applied only to Facility substation(s), and only to the extent the requirement is applicable to such components; (3) § 350-103(J)'s shadow flicker limitation, to the extent that it imposes a restriction on shadow flicker "at any point on a roadway" and to the extent that its 25 hour/year limit is inconsistent with established standards for wind facilities across the State; (4) the limitation on height of the turbines in § 350-103(F); (5) a reforestation requirement in §350-106(A); (6) construction hour limitations in § 350-103(M), only as applied to certain times when deviation from those hours is needed; (7) a turbine foundation burial requirement in § 350-103(L); and (8) required timelines for decommissioning set forth in § 350-105 and -106(D), to the extent these provisions are substantive in nature, and not procedural provisions preempted by Article 10. As is demonstrated below, the Siting Board should find that the burdens on the Facility in imposing these provisions, and the environmental benefits the Facility can provide, outweigh the benefits, if any, of their enforcement in this case. Moreover, the State's energy policy and CLCPA support the Siting Board's determination not to apply these requirements to the proposed Heritage Wind Facility.

(1) Wind Turbine Noise

The requirement set forth in Barre Town Code § 350-103(B)(1)—that wind turbine noise be limited to 45 dBA at 1,000 feet from the turbine's base—should be waived in view of existing technology. The requirement is beyond unreasonably burdensome; complying with this requirement is a technological impossibility since no available commercial turbine model meets this standard. Even assuming that (1) each turbine operated in isolation (an unreasonable assumption since commercial wind projects consist of multiple wind turbines), and (2) all turbines are fitted with the low-noise trailing edge (LNTE) blades, which the Applicant proposes in this Application as a minimization measure, the turbine models available cannot meet the Town's noise standard. The Vestas wind turbines are generally considered the quietest on the market. However, a single Vestas V162-5.6 turbine would have a sound level of at least 46 dBA at 1,000 feet from the base of the turbine, in isolation. As part of a commercial wind project, with other turbines nearby, the Vestas turbine would measure at least approximately 48 dBA at 1,000 feet from the base of each turbine. The GE turbines under consideration would be at approximately 49 dBA at 1,000 feet from their bases in isolation, and at least approximately 51 dBA at 1,000 feet from the base in a typical wind project setting. There are no design changes or

other measures that could be utilized to meet the Town's standard. Application of the standard forecloses the siting of any commercial wind project whatsoever in the Town of Barre.

The Applicant has designed the Facility to meet the same noise emissions standards imposed in recent Siting Board cases, such as Cassadaga Wind (14-F-0490); Baron Winds (15-F-0122); Eight Point Wind (16-F-0062); Number Three Wind (16-F-0328), and Bluestone Wind (16-F-0559). This includes a 45 dBA Leq 8-hour standard at non-participating residences, and a 55 dBA Leq 8-hour standard at participating residences. As the Siting Board has held, and as is shown in Exhibit 19 and the related noise studies, the standards to which the Heritage Wind Facility has been designed are protective of public health and safety, and avoid or minimize adverse noise impacts from the Facility to the maximum extent practicable. For the foregoing reasons, the Siting Board should waive the requirement set forth in Barre Town Code § 350-103(B)(1) that wind turbine noise be limited to 45 dBA at 1,000 feet from the turbine's base.

(2) Guy Wires

Section 350-103(A) of the Barre Town Code sets forth numerous requirements for the location of wind energy conversion systems (WECS). WECS are defined in § 350-98 as "[a]ll structures and facilities utilized or necessary for the normal operation of the project being submitted by an applicant under this article, including, but not limited to, wind energy conversion units, all accessory facilities and equipment thereto, and/or any portion thereof." Subsection (A)(6) prohibits the use of guy wires, except for small wind turbines. It states that "[t]he use of guy wires is prohibited except in the case of a wind energy conversion unit/wind turbine (small project)." All other requirements in § 350-103(A) apply to the wind turbines themselves, and not to the other structures needed for a wind energy facility, such as substations, collection lines, transmission infrastructure, and other facility components. Given the context of the remainder of that subsection, it appears that the Town intended the guy wire prohibition to apply solely to wind turbines, however the language is unclear. In its communications with the Town, the Applicant has sought revision of this section to clarify that it is meant to apply only to wind turbines, and not to other Facility components. Unless and until the Town takes action to make such a clarification or amendment, the Applicant is requesting a waiver of the guy wire prohibition as applied to substation and transmission infrastructure.

While the Applicant does not intend to utilize guy wires for wind turbines or permanent wind measurement towers, and does not presently intend to utilize significant overhead collection or transmission lines which might require guy wiring, the Applicant may need to deploy guy wires for pole structures within the proposed substations to ensure that masts and dead end structures are safely and adequately secured. Due to the nature and requirements of safe substation design, there may not be other practicable options that would permit construction of these features without the use of guy wires. Further, while the Applicant proposes underground collection lines for this Facility, in the event that on-site

conditions render burial of collection lines impracticable, and require that collection line segments be installed above ground, the Applicant further requests a limited waiver of the guy wire prohibition as applied to overhead transmission or collection structures that may require guy wiring. Although the current Facility layout does not anticipate the use of these features, the Applicant wants the Siting Board to grant a limited waiver applicable only if on-site conditions render the use of underground collection impracticable, *and* the overhead collection proposed requires guy wiring.

The impact of the Siting Board waiving this requirement for these limited purposes would be negligible, since it would apply only (1) to substation and transmission infrastructure where needed for reasons of practicability and safety or (2) where unexpected circumstances are encountered that require the relocation of underground collection lines above ground, and the overhead collection design requires guy wiring. The broader intent of the local ordinance—to avoid use of guy wires for stabilization of wind turbines or even wind measurement towers—would still be achieved, as the Applicant does not propose the use of guy wires for either of those component types. For the foregoing reasons, Applicant asks that the Siting Board waive the prohibition against the use of guy wires set forth in Barre Town Code § 350-103(B)(1) to the limited extent outlined above.

(3) Shadow Flicker

The shadow flicker limitation imposed by Barre Town Code § 350-103(J) as applied to “any point on any roadway” should be waived because it lacks a scientific basis or rational relationship to the potential impacts of shadow flicker and is per se unreasonable. The purpose of a shadow flicker restriction is to avoid potential annoyance by individuals who may experience shadow flicker in their homes for prolonged periods throughout the year. Shadow flicker is not an impact in a vacuum; it is considered an impact from wind energy generating facilities at those locations where a human observer is present at a location to experience the flicker, and where a non-participant may be annoyed by that prolonged exposure.

Given that shadow flicker limitations are predicated on the presence of a stationary human observer with the potential to become annoyed, a shadow flicker limitation for public roadways does not make sense. Public road users are mobile (typically in a motorized vehicle traveling at a relatively high speed). Vehicle operators are already accustomed to shadow flicker while driving, since shadows cast from nearby objects (e.g., trees, roadside/overhead signage, etc.) will “flicker” across the windows of a moving vehicle. Multiple operating wind farms in New York State are proximate to State highways and the associated shadow flicker modeling results indicated that portions of these roads would receive shadow flicker well in excess of 30 hours per year. However, absent a residence or other permanent structure at those

locations, human observers will not be present to experience those 30 hours per year of shadow flicker. As a result, there is no potential for annoyance from prolonged shadow flicker exposure at these locations.

The Applicant is not aware of any issues caused by shadow flicker on State highways (or any other roads) proximate to operating wind farms in New York. Shadow flicker is not anticipated to impact mobile receptors. Imposition of a shadow flicker limitation on abstract points on a public roadway would have no benefit, as no human observer would be present for a sufficient length of time for annoyance from prolonged exposure to occur. Further, imposition of the limitation would require the Applicant to engage in a herculean effort to model shadow flicker impacts at all discrete points on all public roadways in the vicinity of the Facility to show compliance with a standard that provides no benefit to the community. Requiring such a compliance effort would impose an unreasonable burden on the Applicant and increase significantly the costs of constructing and operating the Facility, all for no appreciable benefit.

Further, the Barre Town Code limits shadow flicker at non-participating residences to more than 25 hours per year, rather than the 30 hours per year industry standard that has been widely adopted by the Siting Board in recent proceedings. As noted above, the purpose of adopting a shadow flicker limit for non-participating residences is to avoid and minimize potential visual impacts—in this case, annoyance from prolonged exposure to flicker—which could occur as a result of facility operation. However, the available science does not support the notion that a 25 hour per year limit is necessary to avoid those impacts. The Siting Board has reviewed the available science and other considerations and adopted a 30 hour per year shadow flicker limit as a sufficiently protective measure in nearly other cases, including Cassadaga Wind (14-F-0490), Eight Point Wind (16-F-0062), Number Three Wind (16-F-0328), and Bluestone Wind (16-F-0559).

Imposition of the 25-hour per year (hr/yr) shadow flicker limit would require that Heritage Wind engage in additional operational curtailment to achieve the more stringent limit on shadow flicker at nonparticipating residences. The Project has been designed to meet a standard of flicker affecting a non-participating receptor for less than 30 hours per year. Applying that standard will result in curtailment leading to 6060 MW hr/yr in lost generation. The Applicant estimates that in order meet the Town's 25 hour/year standard, the additional curtailment will result in 150% loss of energy generation compared to the 30 hour/year standard, or an additional 3030 MW hr/yr loss of generation.

The cumulative effect of strict curtailment regimes for wind generation—which must be applied for a variety of impacts, including impacts to bat species, noise levels and shadow flicker—threatens the financial viability of the Heritage Wind Project, and of commercial wind projects generally in New York. The Siting Board has acknowledged the need to balance the benefits of imposing local requirements with the burdens those requirements place on a Facility's feasibility

and economic viability. This need for balance was made more acute by the State Legislature's acknowledgement of the need to significantly increase renewable energy generation statewide, as set forth in the Climate Leadership and Community Protection Act. Eliminating an estimated 3030 MW hr/yr in renewable energy production to achieve a speculative reduction in the already small potential for annoyance from shadow flicker fails to achieve the balance the Siting Board is tasked with finding. For all of these reasons, the 25 hour per year limit in the Barre Town Code should be waived and a standard of 30 hours/year imposed instead, consistent with the Siting Board's findings in other recent proceedings.

(4) Turbine Height

Section 350-103(F) of the Barre Town Code currently limits the height of wind turbines to 500 feet—a requirement that the Applicant has requested be increased to 600 feet based on available technology and the existing wind regime in the Town. At this time, the Applicant is asking the Siting Board to waive this height restriction to allow for siting of turbines greater than 500 feet, on the basis of technology and the needs of ratepayers for additional, affordable renewable energy generation in the State of New York.

The Applicant has modeled a turbine currently available that would meet the current height limit of 500 feet. Such a turbine would result in significant loss of generation. Furthermore, there is uncertainty that a commercially competitive turbine of those dimensions will still be in production and available in year 2022, given the industry's general move toward taller models. The Applicant estimates that imposition of the 500-foot height restriction would result in an annual loss of 35.9% or 179 GW hrs annually of the Facility's energy generation, and would compromise the Project's ability to compete financially.

Since setbacks are tied to the height of the turbines, and are adjusted upwards to accommodate higher models, the primary basis for a height restriction in the Town's law is not grounded in safety or protection of adjacent lands or structures. Rather, it appears either that that 500-foot height was simply the tallest available at the time the law was written or, potentially, that the restriction was imposed out of aesthetic concerns. However, as Heritage Wind has shown in visual simulations presented at Town meetings about this topic, a viewer is highly unlikely to be able to discern the difference between a turbine that is 600 feet versus 500 feet tall (see Attachment 31-B). In either case, these structures cannot be screened from most viewpoints regardless of height. The differences in visual impact are minimal. Meanwhile, the restriction significantly impairs to the Facility's ability to produce renewable electricity in furtherance of the State's CLCPA goals. On balance, the Siting Board should find that the circumstances, including CLCPA and State's renewable energy goals, favor granting the waiver.

(5) Reforestation

The Town Law §350-106(A) requires reforestation of at least 40% of the forested lands that have been cleared for the Facility. Approximately 1,423 acres (24%) of the Facility Site are forested lands. Of that total, 38 acres (3%) will be cleared for construction. At least 20 of the 38 acres (or more than half of the cleared forested land) will likely not be reforested or permitted to return to a forested state either because they will be converted to built facilities (3 acres) and or maintained by the Applicant in a successional state (17 acres). It is anticipated that maintained areas will occur within 10 feet from collection lines, access road edges and substations, and 100 feet from wind turbine pads. These successional areas are maintained to prevent vegetation from interfering with equipment. For example, trees are kept from growing within 10 feet of buried collection lines to prevent roots from entangling and damaging the lines. Requiring reforestation of these lands would interfere with the proper functioning of the Facility and threaten the continued viability of these Facility components during operation. Thus, more than half of the cleared forested land cannot be reforested either because the land is the site of built facilities or because trees would interfere with the proper functioning of Facility components. . The remaining 17 acres of cleared forested land (roughly 45%) will likely be permitted to return to its pre-disturbance state naturally, with time. However, mandating active reforestation of many of these lands is not feasible or reasonable, and would carry a significant cost. The Applicant respectfully requests that the Siting Board waive the reforestation requirement on the grounds of technology and the feasibility of Facility implementation.

To preserve soils and vegetative cover, the Applicant will conduct revegetation efforts, using native seed mixes free of invasive species, or by working with landowners to plant crops or appropriate grasses for grazing, in restored areas around the Facility. These types of measures will help to address stormwater runoff and other potential impacts, while not inhibiting Facility operation in future. Further, the Applicant will implement appropriate landscaping measures to provide vegetative screening of components, provided that screening does not itself interfere with the functionality or safety of the equipment involved, such as by creating a fall risk on a substation or root entanglement in buried electrical lines. These measures will help achieve the benefits the Town appears to have been seeking in imposing this requirement, without unduly burdening the Facility or threatening the viability of electrical lines, substations or roadways, which cannot coexist with forested vegetation.

(6) Construction Hours

Barre Town Code § 350-103(M) limits construction hours for wind energy projects to between 6:00 a.m. and 8:00 p.m. daily, except in cases of “emergencies” which are not defined. The Applicant requests a limited waiver of the construction hour limitations to allow extended hours for turbine construction activities on an as-needed basis to address unusual circumstances, such as a time-sensitive construction stage that may be affected by inclement

weather, or the need to exceed those hours for a continuous concrete pour or turbine erection effort. In general, the Facility would comply with the existing construction hour limits. The waiver would simply allow flexibility for certain unusual circumstances. Further, this waiver would not apply to ordinary construction activities such as delivery and maintenance, except as they are directly tied to the unusual circumstances mentioned herein. The waiver will ensure that construction of the Facility is practicable and restrictions are sufficiently flexible, while still limiting community impacts during most activities.

Strict imposition of this requirement could significantly interfere with the construction process and increase construction time, imposing an undue burden on both the Applicant and on the surrounding communities. These requirements are unreasonably burdensome in view of the existing technology, practicable implementation of the Facility, or the needs of or costs to ratepayers whether located inside or outside of such municipality. Furthermore, waiver of the construction hours requirement, would be consistent with Certificate Orders issued by the Siting Board in recent cases, including Cassadaga Wind (14-F-0490); Baron Winds (15-F-0122); and Eight Point Wind (16-F-0062).

(7) Foundation Burial

Barre Town Code § 350-103(L) requires that the tops of all foundations be buried to a depth of 4 feet below ground surface at the time of installation. The Applicant requests a waiver of this requirement on the grounds of technical feasibility, increased impacts to the community which would result from compliance with that requirement, and potential degradation of steel turbine towers through corrosion if those towers are required to be buried.

The local law states “The foundation top of each wind energy conversion unit shall be buried to a depth of four 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.” Barre Town Code § 350-103(L). However, it appears that this requirement may have resulted from a misunderstanding of the New York State Department of Agriculture and Markets *Guidelines for Agricultural Mitigation for Windpower Projects*. The NYSDAM Guidelines require a depth of cover of at least 4 feet for *buried collection lines*, to ensure the lands around turbines can be safely plowed and farmed during the operational life of the Facility—a requirement the Applicant will meet (wherever practicable) for buried collection in agricultural fields. However, the Guidelines impose no such requirement on turbine *foundations*. In fact, the Applicant is only aware of one similar requirement not contained in the Guidelines themselves—NYSDAM’s preference that removal of Facility components *after decommissioning* be conducted to a depth of 4 feet, including foundations. As discussed in Exhibit 29 and the Decommissioning Plan (Appendix 29-A), the Applicant will comply with this 4-foot removal requirement for turbine foundations in active agricultural lands at the time of decommissioning.

The requirement that the tops of foundations be buried at least 4 feet below ground at the time of construction and during operations would significantly and unnecessarily increase the costs, time and logistical complexity of construction activities, as well as the impacts from construction on the surrounding community. For example, this additional 4 feet of burial depth will: substantially increase the volume of disturbed soils by approximately 1,163.5 cubic yards (31,416 cubic feet) or more; increase construction costs, duration and logistics by shifting the entire concrete foundation four feet deeper than is typical for wind turbine projects across the world; increase the likelihood that significant blasting would be required to excavate bedrock to bury the foundations an additional 4 feet deeper than industry standard; and increase the length of time the community will be impacted by construction by significantly complicating construction activities. The requirement may also render some turbine locations—or the Facility—wholly infeasible, in light of the cumulative costs and delays associated with this requirement.

Furthermore, the requirement may be technologically impossible or infeasible from an operational standpoint. To meet this requirement, the bottom 4 feet of each steel turbine structure would need to be buried below the ground surface, where the structures would be vulnerable to corrosion. Although it is possible that additional coatings or protection measures could be implemented to protect that four-foot area of steel from corroding, those measures would increase the Facility costs. Moreover, this requirement would result in burial of the turbines' access doors, which are installed at the base of the turbine structure and meant to be at ground level. The Applicant is not aware of turbine models which could accommodate an additional four feet at the base of the first segment for correct placement of the access doors or achievement of the required turbine hub height. Compliance with the foundation burial requirement could necessitate costly—or impossible—special orders for turbines not currently available on the market.

These increased costs and impacts would come with very little benefit to the community or farmers who seek to cultivate crops around the base of the wind turbines. Wind turbine foundations are constructed such that the majority of the concrete is not visible at the surface. While the largest diameter of the turbine foundations proposed for this Facility is 100 feet, the foundations are tapered such that the top portions which connect to the turbines themselves are only 22 feet in diameter, leaving the remaining space around the base available for cultivation of crops or grazing of livestock by host landowners. Only approximately 0.3 acres around each turbine will be permanently removed from crop production. Imposing a logistically and technologically infeasible foundation burial requirement, at an extensive cost, for a nominal benefit to agricultural production, is unreasonable.

This unreasonableness is even more pronounced for turbines proposed to be constructed outside agricultural lands. Approximately 79% of the Facility's turbines are proposed on active agricultural lands, but the remaining 21% are not in agricultural lands. Imposing the burial requirement on all turbines to facilitate potential crop production is wholly

unnecessary and without any benefit for the 21% of turbines not sited in agricultural lands. For all of these reasons, the turbine foundation burial requirement is unreasonably burdensome and should not be applied to the Facility.

(8) Decommissioning

In general, the decommissioning requirements, which are set forth in Barre Town Code § 350-105 and -106(D), are largely procedural in nature, and thus preempted by Article 10. However, there are some sections which appear to contain substantive requirements which would be unworkable as applied to the Facility. For example, the Barre Town Code § 350-105 requires that “should the wind energy conversion system or any portion thereof not operate for a total period of 60 days within any ninety-day period . . . such offending wind energy conversion system or portion thereof shall be removed or made operational.” The section goes on to require that “The applicant shall remove any discontinued, decommissioned, obsolete or unused wind energy conversion system or portions thereof and restore the site to preconstruction conditions, or make the wind energy conversion system or portion thereof fully operational, within 90 days . . . unless such time limit is extended . . . for good cause shown, but the total period shall not exceed 180 days.” Similarly, Barre Town Code § 350-106(D) states that “Should a WECS become inoperable, or should any part of the WECS be damaged . . . the owner or operator shall remedy the situation within 90 days . . .”

However, these restrictions fail to take into account the myriad circumstances which could cause a wind facility not to operate, many of which fall outside of the Applicant’s responsibility or control. For example, the New York State Independent System Operator or interconnecting utility could require that the Applicant suspend Facility operation for a given period to address a problem elsewhere in the electric system. A governmentally imposed curtailment regime could result in periods of non-operation to address impacts to endangered species. A technical failure or act of God, such as a lightning strike, could render a turbine inoperable, and receipt of replacement part may be subject to delays in manufacturing or shipping or other procurement issues. Further, the Applicant may have a turbine or turbines shut down for a given period to attempt to address a complaint or resolve impacts or disputes with a neighboring landowner regarding television service interference, noise or other problems. In any of these cases, it would be inequitable and counterproductive to require that the Applicant commence the very complex and costly decommissioning and removal process for that turbine, or for the Facility at large. The inflexibility of this requirement—particularly given that any of the Town’s built-in discretionary extensions thereto are preempted by Article 10—is unworkable and unreasonable in view of the available technology, as well as the needs of and/or costs to ratepayers who would stand to lose a significant renewable energy generation source which took many years to permit and build, after only 60 days’ non-operation for any number of legitimate reasons.

In other recent wind cases, the Siting Board has adopted decommissioning timelines and requirements which address these concerns, and also take into account a community's concern that a non-functioning Facility be decommissioned and the land restored in a reasonable period of time. The Applicant respectfully requests that, to the extent not already preempted by Article 10, the Town Code's decommissioning timelines and requirements be waived and the matter of decommissioning process and triggers be resolved through Certificate Conditions and/or the Facility's Decommissioning Plan.

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

The Applicant does not anticipate connecting to any water, sewer, telecommunication or steam lines in public rights of way. Therefore, the Applicant has not identified any local ordinances, laws, resolutions, regulations, standards or other requirements applicable to the interconnection related to the use of water, sewer, telecommunication and steam lines in public rights of way that are of a procedural nature. The Article 10 Application will confirm that the Facility will not be connecting to any water, sewer, telecommunication or steam lines in public rights of way.

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

The Applicant does not anticipate connecting to any water, sewer, telecommunication or steam lines in public rights of way. Therefore, the Applicant has not identified any local ordinances, laws, resolutions, regulations, standards or other requirements applicable to the interconnection related to the use of water, sewer, telecommunication and steam lines in public rights of way that are of a substantive nature. The Article 10 Application will confirm that the Facility will not be connecting to any water, sewer, telecommunication or steam lines in public rights of way.

(h) Local Ordinances/Laws Related to Use of Water/Sewer that the Applicant Requests the Board Not Apply

At this time the Applicant has not identified any local substantive ordinances or laws related to the use of water/sewer that are applicable to the proposed Facility and that they anticipate requesting the Board not apply. However, the Applicant will continue to consult with the local municipalities and will provide more detail in the Article 10 Application.

Summary Table of Substantive Local Requirements

Below is a summary table of applicable substantive requirements to the Facility and the Facility's compliance with each requirement. To the extent that the Applicant intends to seek relief from substantive local zoning requirements, the

chart identifies those requirements. The Applicant has sought amendments to local laws from the Town. If granted, those amendments would bring the Facility into compliance with Town laws and obviate the need for any waivers of provisions of local law by the Siting Board.

Section	Degree of Compliance
<p>Barre Town Code § 350-99(B) A Wind Energy Overlay District may be created in any zoning districts of the Town of Barre consistent with the rules and procedures established therein</p>	<p>Project will comply with substantive provision allowing wind energy as a use in any zoning district</p>
<p>§350-103 Standards</p>	
<p>A. Location. All wind energy conversion systems shall be located, erected and sited in accordance with the following requirements:</p> <p>(1) 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.</p>	<p>Project complies</p>
<p>(2) 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 such unit would produce interference with signal transmission or reception. The applicant shall correct (or document significant progress toward corrective action on) any unforeseen interference . . . within 30 days of any complaint being given to the applicant . . . To correct such problem:</p> <p>(a) 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 . . .</p> <p>(b) 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</p>	<p>See Exhibit 26 for analysis of potential impacts to communications, including measures to address potential complaints (via the proposed complaint resolution plan) and, in the event of interference, potential mitigation strategies, which comport with the substantive requirements of this provision.</p>
<p>(3) All wind energy conversion units shall be located in a manner that minimizes significant</p>	<p>Project complies with this requirement.</p>

negative impacts on rare animal species in the vicinity, particularly bird and bat species.	
(4) No individual wind energy generating unit shall be installed in any location where it may interfere with the normal flight patterns at area airports and private airstrips.	Project will comply with this requirement, though the Applicant has requested this language be revised by the Town to make it consistent with the FAA's language on hazards to air navigation.
(5) Wind energy conversion systems and related infrastructure shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations.	Project complies with this requirement.
(6) The use of guy wires is prohibited except in the case of a wind energy conversion unit/wind turbine (small project).	The Applicant has requested that the Town clarify that this provision is intended to apply only to wind turbines, and not to substations or transmission lines. The Facility will comply with this requirement as applied to wind turbines. To the extent it is applicable to substations or transmission lines, the Applicant is requesting it be waived if needed.
(7) No advertising signs, or television, radio, cellular telephone or other communication antennas are allowed on any part of the wind energy conversion system, including fencing and support structures. Signage to inform persons of ownership and contact information is permitted so long as such signage is erected in accordance with Town Law.	Project complies with this requirement.
(8) All wind energy conversion units shall only be located, installed, or constructed on the subject parcel in accordance with the following setbacks ⁶ : (a) A distance not less than 1.5 times the tip height of the wind energy generating unit as measured from any and all public roadways or aboveground power lines in	Project complies with this requirement.

⁶ Pursuant to § 350-104 of the Town of Barre Zoning Ordinance, the setback distances and noise limits defined in the ordinance are waived by operation of law upon the Applicant obtaining written consent from adjacent property owners. These waivers are automatic, and no additional approvals are required from the Town to effectuate them. Therefore, the setbacks are applicable only to non-participants who have not executed an agreement with the Applicant to waive the setback by operation of law. Specifically, § 350-104(A) states "In the event the noise levels resulting from a WECS exceed the criteria established in this article, or a setback requirement is not met, a waiver is hereby granted from such requirement where the property adjacent to that hosting the wind energy conversion unit is also part of the WECS site due to hosting a wind energy conversion unit or other ancillary components." Further, under § 350-104(B), "Written consent from the affected property owners shall be obtained stating that they are aware of the WECS and the noise and/or setback limitations imposed by this article, and that they wish to be a part of the site as defined herein, and that consent is granted to: (1) Allow noise levels to exceed the maximum limits otherwise allowed; or (2) Allow distance setbacks less than required."

the vicinity of said unit, to the base of such unit.	
(b) A distance not less than 1,000 feet from any existing residential or commercial building. ⁷	The Project complies with this requirement.
(c) A distance not less than 1.5 times the tip height of the wind energy generating unit as measured from the property lines of the parcel on which said unit is to be sited. ⁸	The Project complies with this requirement.
B. Noise ⁹ (1) The level of noise produced by or from the operation of the wind energy conversion system shall not exceed 45 dBA 10 (which means the 45 dBA may statistically be exceeded only 10% of the time six minutes of every hour) measured at a distance of 1,000 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. During any allowed period of sound level exceedence, as set forth hereinabove, the noise level shall not exceed 51 dBA.	The Applicant has asked the Town to consider amendment of this provision, as it is technologically impossible. In the absence of an amendment from the Town, the Applicant will seek a waiver of this provision from the Siting Board.
C. Emergency shutdown/safety operations. (1) The applicant shall file emergency contact information, including, but not limited to, a telephone number and unique identification number, for each wind energy conversion unit . . . At least one sign shall be posted at the base of each tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of the fence around each tower or group of towers and any building (or on the tower or building if there is no fence) containing emergency contact information, including a local or toll-free telephone	Project complies

⁷ By virtue of § 150-104(A)-(B), this applies to non-participating residential or commercial buildings. See footnote 5 above.

⁸ By virtue of § 150-104(A)-(B), this applies to non-participating property lines. See footnote 5 above.

⁹ Under § 350-104(A) "In the event the noise levels resulting from a WECS exceed the criteria established in this article, or a setback requirement is not met, a waiver is hereby granted from such requirement where the property adjacent to that hosting the wind energy conversion unit is also part of the WECS site due to hosting a wind energy conversion unit or other ancillary components." Under § 350-104(B), "Written consent from the affected property owners shall be obtained stating that they are aware of the WECS and the noise and/or setback limitations imposed by this article, and that they wish to be a part of the site as defined herein, and that consent is granted to: (1) Allow noise levels to exceed the maximum limits otherwise allowed; or (2) Allow distance setbacks less than required."

number with twenty-four hour, seven-day-a-week coverage.	
(2) Each wind energy conversion unit shall have an automatic manufacturer certified or engineer certified braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components or nacelle.	Project complies
D. Lighting. (1) 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.	The Project will comply with this requirement.
(2) Light shields, if commercially available, or other devices to mitigate or control light pollution/spilling of light shall be used to minimize the amount of light visible at ground level.	Project complies
E. Utility service. (1) All power transmission lines servicing the project or any portion thereof shall be underground to a minimum depth of 48 inches or to such depth as required by applicable state and federal regulations and codes, whichever is greater. If this standard is deemed to be technically infeasible, rationale and alternative solutions and designs shall be submitted . . .	Project complies
(2) 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.	Project complies
F. Blade sweep and tip height. The minimum height of the lowest part of the blade sweep area shall be 30 feet above the highest existing major structure or tree within a one-hundred-fifty-foot radius of the base of the wind energy conversion unit. The total tip height for each wind energy conversion unit cannot exceed 500 feet as measured from the base of the unit to the tip of the unit's longest blade.	The Applicant has requested, and the Town has retained an expert to consider, an increase in the height restriction. The current restrictions would result in a loss of 48% of Facility generation. The Applicant is seeking this tip height increase to accommodate newer, more efficient turbine models which would allow the project to reach higher, more consistent wind speeds. In the event the Town does not amend this provision, the Applicant will be seeking a waiver from the Siting Board.
G. Access roads and road mitigation. (1) In an effort to minimize curb cuts, existing roadways shall be used for access to the site whenever possible.	Project complies
(2) 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	Project complies

<p>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.</p>	
<p>(3) Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and associated facilities shall use traffic routes established . . . Factors in establishing such corridors shall include: 1) minimizing traffic impacts from construction and delivery vehicles; 2) minimizing WECS-related traffic during times of school bus activity; 3) minimizing wear and tear on local roads; and 4) minimizing impacts on local business operations. The applicant shall obtain any necessary road use agreements with agencies and municipalities over whose roads and rights-of-way will be used in the construction or reconstruction of any WECS . . .</p>	<p>Project complies</p>
<p>(4) The applicant, or its successor, is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS.</p>	<p>Project complies</p>
<p>(5) If the applicant or successor uses any seasonal use highway in the off season, it shall be solely responsible for the maintenance of said highway, including, but not limited to, snowplowing.</p>	<p>Project complies</p>
<p>H. 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.</p>	<p>Project complies</p>
<p>I. Security. To secure each and every wind energy conversion unit so constructed within the Town, each such unit shall:</p> <p>(1) Not have any climbing pegs, tower ladders or other climbing device of any kind attached to the wind energy conversion unit closer than 15 feet from the ground.</p>	<p>Project complies</p>
<p>(2) Have a locked anticlimbing device installed on the unit.</p>	<p>Project complies</p>
<p>(3) If the property owner submits a written request that fencing be required, a minimum six-foot high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for</p>	<p>Project complies</p>

each WECS installation shall be determined on the basis of individual applications as safety needs dictate.	
(4) WECS shall be designed to prevent unauthorized external access to electrical and mechanical components, and shall have access doors that are kept securely locked.	Project complies
(5) Accurate maps of the underground facilities shall be filed with the Town and with "Dig Safely New York" (1-800-962-7962) or its successor.	Project complies
J. 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 25 hours per year. If an individual residence is being impacted by multiple wind energy conversion units, the cumulative affect of said impact shall not exceed 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.	The Applicant has requested that the Town revise this provision, or the Siting Board waive it, to remove the application of this standard to "any area of a roadway" and requested increase of standard from 25 to 30 hours per year, which is the standard shadow flicker limit adopted by the Siting Board and recommended by recognized authorities.
L. Below-grade foundations. The foundation top of each wind energy conversion unit shall be buried to a depth of four 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.	Project will request waiver of this requirement.
M. Construction hours. No construction or reconstruction of any WECS shall begin before 6:00 a.m. nor end after 8:00 p.m. Except in cases of emergencies, all maintenance of WECS shall take place within those same time frames.	In general, the Facility will generally comply with this requirement, however the Applicant is requesting that the Siting Board grant a limited waiver of this requirement as required to allow for such flexibility, as was done in the Cassadaga proceeding.
N. Removal of solid waste. The applicant/operator of a WECS shall remove and properly dispose of any solid waste or other unused construction materials in accordance with applicable laws and regulations.	Project complies
§350-105 Decommissioning	
B. The applicant, or successors, shall continuously maintain a fund or bond . . . for the removal of nonfunctional towers and appurtenant facilities . . . for the period of the life of the wind energy conversion system. This fund may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant and/or its successor.	Generally, the Facility will comply with this specific provision, however the Applicant has requested that the Town consider substantial revisions to the Decommissioning provisions contained herein.
D. Should the wind energy conversion system or any portion thereof not operate for a total period of 60 days within any ninety-day period . . . such offending wind energy conversion system or portion thereof shall be removed or made operational	The Applicant is seeking a waiver of the time limits set forth in this provision.

<p>E. The applicant shall remove any discontinued, decommissioned, obsolete or unused wind energy conversion system or portions thereof and restore the site to preconstruction conditions, or make the wind energy conversion system or portion thereof fully operational, within 90 days . . . unless such time limit is extended . . . for good cause shown, but the total period shall not exceed 180 days. Nonfunction or lack of operation may be proven, among other means, by reports to the Public Service Commission, NYSERDA, or by lack of income generation.</p>	<p>The Applicant is seeking a waiver of the time limits set forth in this provision.</p>
<p>§350-106 Other Operating Considerations A. Landscaping. Upon completion of installation, the site shall be returned as close as possible to its natural state, and in conformity with applicable state and federal regulations and guidelines, including, but not limited to, restoring the subsoil and topsoil to preconstruction condition and reforestation of at least 40% for any woodlands that have been cleared.</p>	<p>Project will request revision to “revegetate” in replacement of “reforest” and to define specific areas that will need to be maintained as cleared, versus lands that will be permitted to return to a forested state naturally. The Applicant will request a waiver from the Siting Board.</p>
<p>B. Building and grounds maintenance. Any damaged or unused parts shall be removed from the premises within 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.</p>	<p>Project will comply</p>
<p>D. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements . . . Should a WECS become inoperable, or should any part of the WECS be damaged . . . the owner or operator shall remedy the situation within 90 days . . .</p>	<p>The Applicant is seeking a waiver of the time limitation portion this provision, which conflicts with State requirements.</p>
<p>§350-107 Certifications A. 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 statues pertaining thereto.</p>	<p>Project complies</p>
<p>C. National and state standards. In addition to any requirements of this article, the applicant shall show that all applicable manufacturer's, New</p>	<p>Project complies</p>

<p>York State and U.S. standards and guidelines 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, including, but not limited to, the Institute of Electrical and Electronic Engineers (IEEE), the International Electrotechnical Commission (IEC) and the American National Standards Institute (ANSI).</p>	
<p>§350-108 Wind Measurement Towers</p>	
<p>A. Installation of wind measurement towers, also known as anemometer ("met") towers, shall be permitted as special use in the Town.</p>	<p>Project complies</p>
<p>C. Standards for Wind Measurement Towers (1) The distance between a wind measurement tower and the property line shall be at least 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>Project complies</p>

(i) Zoning Designation

Zoning regulations within the Facility Area are described within the applicable Town Zoning Laws. The Facility Site will be located in the Agricultural-Residential (A/R), Residential (R-1) and General Business (B) zones. Wind energy generation is a permitted use in any of the Town's zoning districts, subject to acquisition of applicable permits under the Wind Energy Overlay section of the Barre Town Law, and adherence to procedural requirements which are otherwise preempted by Article 10. See Barre Town Law § 350-99(B). The substantive requirements imposed by these subsections are those enumerated above.