



## Cassadaga Wind Project

Case No. 14-F-0490

### Exhibit 31

## Local Laws and Ordinances

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## EXHIBIT 31 LOCAL LAWS AND ORDINANCES

Throughout the development of the Facility, the Applicant has been in consultation with the municipalities whose requirements are the subject of this exhibit to determine whether all such requirements have been correctly identified, and to determine whether any potential request by the Applicant that the Board elect to not apply any such local requirement could be obviated by design changes to the proposed facility. As a result of these consultations, the Applicant has identified the applicable requirements of the local laws and has taken them into consideration to the extent practicable. The Applicant could not obviate the need for requests that the Board elect to not apply certain local requirements, (i.e. height limitations or construction hours), with design changes to the Facility.

The Towns of Charlotte<sup>1</sup>, Cherry Creek<sup>2</sup>, and Arkwright<sup>3</sup>, each have their own Wind Energy Laws (Appendix FFF) which would be applicable, but for the passage of Article 10 which supplants the procedural requirement of these local laws. It is the intent of the Applicant to comply with all local Wind Energy Laws to the greatest extent practicable. The Applicant understands based on consultations with the Towns, that the Wind Energy Laws supersede other general local zoning laws, for example, bulk restrictions and height limitations that do not apply to wind turbines, unless explicitly provided for within the Towns' Wind Energy Law.<sup>4</sup>

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

Article 10 provides for the siting review of major electric generating facilities in New York State in a unified proceeding instead of requiring a developer to apply for numerous state and local permits. The Applicant, with the assistance and input of the local communities, compiled a listing of local ordinances, laws, resolutions, regulations, standards, and other requirements of a procedural nature that would otherwise be required for the construction or operation of the proposed Facility and interconnection. The below listed local procedural requirements are supplanted by PSL Article 10 unless the Board expressly authorizes the exercise of the procedural requirement by the local municipality or agency.

#### Town of Arkwright (Town of Arkwright Zoning Law Article VI-A Wind Energy Facilities)

- Permits Required §653 (C), (D), (F), (G) and (H).
- Creation of Wind Overlay Zones §656(B)-(C).

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<sup>1</sup> Wind Energy Conversion Systems Law located at Article VI, §618 of the Town of Charlotte Zoning Law

<sup>2</sup> Wind Energy Facilities Law located in Local Law 2 of 2011 of the Town of Cherry Creek Zoning Law

<sup>3</sup> Wind Energy Facilities Law located at Article VI-A, §650 of the Town of Arkwright Zoning Law

<sup>4</sup> The Town of Stockton also has a Wind Energy Facilities Law, however since no turbines will be sited in Stockton, the Wind Law is inapplicable.

- Applications for Wind Energy Conversion Systems §657(A)(1)-(20) (Some of the requirements will be provided in the Article 10 Application).
- Application Review Process §658(A)-(J).
- Noise and Setback Easements §663(A)(1)-(3).
- Creation of Wind Overlay Zones and Issuances of Special Use Permits §664(A)-(D).
- Fees §671 (A), (B) and (D).
- Enforcement; Penalties and remedies for violation §673 (A)-(C).
- Permit Revocation §667(A)-(C).

**Town of Charlotte (Town of Charlotte Zoning Law Article VI, §618 Wind Energy Conversion Systems Law)**

- Permits and Rezoning Required §618(B)(2)-(5) and (7)-(8).
- Wind Overlay District Rules §618(D)(2)-(3).
- Applications for Wind Energy Conversion System and Wind Overlay District §618(E)(1)(a)-(E)(1)(t) (Some of the requirements will be provided in the Article 10 Application).
- Application Review Process §618(F)(1)-(10).
- Noise, Height and Setback Easements; Variances §618(K)(1)(a)-(c).
- Creation of Wind Overlay Districts and Issuance of Special Use Permits §618(L)(1)-(4).
- Permit Revocation §618(O)(1)-(3).

**Town of Cherry Creek (Local Law 2 of 2011 Article VI Wind Energy Facilities Law of the Town of Cherry Creek)**

- Permits and Rezoning Required §5(C)-(E), (G)-(H).
- Applications for Wind Energy Conversion Systems and Wind Overlay District §8(A)(1)-(20).
- Application Review Process §9(A)-(J).
- Noise and Setback Easements; Variances §14(A)(1)-(3).
- Creation of Wind Overlay District and Issuance of Special Permits §15(A)-(D).
- Fees §28(A), (B), and (D).
- Enforcement; Penalties and remedies for violations §30(A)-(C).
- Permit Revocation §18(A)-(C).

**Town of Stockton**

- The Facility components that will be located in the Town of Stockton will be limited to a portion of the generator lead line and the point of interconnect substation, both of which will be located within the Agricultural (A) Zoning District. According to Section 407 Land Use Matrix of the Town of Stockton Zoning

Regulations, uses related to utilities are allowed by right in A districts. Based on its discussions with the Town, there are not local approvals required (i.e. site plan, special use permit or building permits) and therefore there are no procedural requirements which would be supplanted by Article 10.

### County of Chautauqua

The County of Chautauqua requires onsite wastewater treatment systems pursuant to Article IV of the Sanitary Code of the Chautauqua County Health District. The Following Sections of Article IV are of a procedural nature:

- Section 4. Installation Permit (a)-(j).
- Section 10. Inspections (a)-(c).
- Section 11. Waivers.

#### (b) Local Procedural Requirements Requiring Board Authorization

The Applicant requests the Board expressly authorize the County of Chautauqua to exercise their procedural requirements under Article IV of the Sanitary Code. The Applicant requests that the County retain this authority because the timing of the submittal of this Application and the timing of the design and construction of the sewage and well system for the O&M Building is such that the Applicant will not have the permit information needed to provide to the Board in this Application. This information will be prepared once the final location for the O&M building is identified prior to commencement of construction. The Applicant will work with the County to follow all of their procedural and substantive requirements for the permitting of sewage and water. The Applicant is not proposing large interconnections and does not anticipate the need for new municipal systems for the number of employees anticipated to work at the O&M building. Regulation of sewage and well systems is primarily an issue of local concern, are routine matters and ministerial in nature provided the Applicant meets the applicable standards. Therefore, rather than have the Siting Board reach a decision on this matter, it is more appropriate for the County to issue local sewer and water permits as needed.

To the extent that the County of Chautauqua and the Towns of Charlotte, Cherry Creek, Arkwright, and Stockton require highway work permits for work performed on Town roads or within the Towns' right of way, and special haul permits for oversized/overweight vehicles the Applicant request that the Board expressly authorize the County and Towns to issue such permits. Exhibit 25 outlines the different types of permitting that may be required for work performed on local roads. The Applicant requests that the County and Towns retain this authority, to the extent applicable. The timing of the issuance of these highway work and special haul permits is such that the Applicant will not have the information needed to provide to the Board in this Application. These permits are often obtained by the BOP contractor

immediately prior to construction of the Facility. The Applicant will work with the County and Towns to follow all of their procedural and substantive requirements for the permitting of highway work permits and special haul permits. Highway work and similar road permits are primarily an issue of local concern and ministerial in nature provided the Applicant meets the applicable standards. In addition, the Applicant and the Towns have discussed terms for a road use agreement regarding the Applicant's obligations with respect to road use and repair and have an agreement in principal as to the permissions required from the Towns as well as the Applicant's obligations to undertake repair of the Towns' roads. The Applicant plans to reach out to the County to discuss the need for a Road Use Agreement and anticipates the Agreement would be similar to that agreed in principal with the Towns.

There are no other procedural requirements that the Applicant request that the Board expressly authorize.

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

The Towns of Charlotte, Cherry Creek, Arkwright, and Stockton are 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.

Due to the complex nature of the Facility, the Applicant will arrange with the Towns 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.<sup>5</sup> For a wind powered electric generating facility, typically, this work is limited to turbine foundations and operations and maintenance buildings.

Based on consultations with the Towns and discussions regarding a potential agreement, the Towns will engage the services of a qualified independent engineer or engineering firm (the "On-Site Monitor") who shall be responsible for: (a) review of the Company's building plans, (b) recommending approval of building plans to the Applicant, (c) assisting the Town codes enforcement officer or any of the representatives of the Town with inspecting the Applicant's compliance with the New York State Uniform Fire Prevention and Building Code, (d) certifying such compliance which shall be evidenced by the issuance of Certificates of Completion and Temporary Certificates of Completion.

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<sup>5</sup> The NYS DOS has stated that the Building Code of New York State does not regulate wind generators or free standing communication towers. See NYSDOS, Division of Code Enforcement and Administration, Technical Bulletin January 1, 2003, Communication Towers, Cellular Towers and Wind Generators.

Table 31-1 below provides the names and contact information of the Code Enforcement Officer for the Towns of Arkwright, Charlotte, Cherry Creek, and Stockton.

**Table 31-1. Local Code Enforcement Officer Contact Information**

Town	Town Code Enforcement Officer
Arkwright	Joseph D. Sorrento 9543 Center Road Fredonia, NY 14063 Phone: 716-410-0626 E-mail: jscheese4@netsync.net
Charlotte	David H. Crossley 8 Lester Street PO Box 994 Sinclairville, NY 14782 Phone: 716-640-3093
Cherry Creek	Kevin Okerlund 6845 Main Street PO Box 98 Cherry Creek, NY 14723 Phone: 716-296-8050
Stockton	Samuel C. Mancuso 36 N. Beaver Street Dunkirk, NY 14048 Phone: 716-637-5678

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

The Applicant has compiled the following list of local ordinances, laws, resolutions, regulations, standards, and other requirements of a substantive nature required for the construction or operation of the proposed facility and interconnection. The location of the proposed facility will conform to all such local substantive requirements, except any that the Applicant requests that the Board elect to not apply.

**Town of Arkwright (Town of Arkwright Zoning Law Article VI-A Wind Energy Facilities)**

- Permits Required §653 (A), (B), & (E)
- Applicability §655(A) & (C) (§655 (B) is not applicable)
- Creation of Wind Overlay Zones §656(A)
- Standards for WECS §659(A)(1)-(17)
- Required Safety Measures §660(A)-(G).
- Traffic Routes §661(A)-(C).
- Setbacks for Wind Energy Conversion Systems §662(A)-(E)
- Abatement §665(A)-(C)
- Limitations on Approvals; Easements on Town Property §666(A)-(B)
- Standards for Wind Measurement Towers §670(A)
- Fees §671(C)

**Town of Charlotte (Town of Charlotte Zoning Law Article VI, §618 Wind Energy Conversion Systems Law)**

- Permits and Rezoning Required §618(B)(1), (2) & (6)
- Applicability §618(C)(1) & (3) (§618(C)(2) is not applicable)
- Wind Overlay District Rules §618(D)(1)
- Standards for WECS §618(G)(1)(a)-(s)
- Required Safety Measures §618(H)(1)-(7).
- Traffic Routes §618(I)(1)-(3).
- Setbacks for Wind Energy Conversion Systems §618(J)(1)-(6)
- Abatement §618(M)(1)-(3)
- Limitations on Approval; Easements on Town Property §618(N)(1)-(2)
- Wind Measurement Towers §618(II)(A) and §618(II)(C)(1)

**Town of Cherry Creek (Local Law 2 of 2011 Article VI Wind Energy Facilities Law of the Town of Cherry Creek)**

- Permits and Rezoning Required §5(B), (F)
- Applicability §6(A) & (C) (§6(B) is not applicable)
- Wind Overlay District Rules §7(A)
- Standards for WECS §10(A)(1)-(17)
- Required Safety Measures §11(A)-(F).
- Traffic Routes §12(A)-(C).
- Setbacks for Wind Energy Conversion Systems §13(A)-(F)

- Abatement §16(A)-(C)
- Limitations on Approvals; Easements on Town Property §17(A)-(B)
- Standards for Wind Measurement Towers §21(A)
- Fees §28(C)

**Town of Stockton**

- Upon review of the Town of Stockton's Zoning Regulations and consultation with town officials there are no substantive requirements applicable to the point of interconnect substation and generator lead line.

**County of Chautauqua**

The County of Chautauqua requires onsite wastewater treatment systems pursuant to Article IV of the Sanitary Code of the Chautauqua County Health District. The Following Sections of Article IV are of a substantive nature:

- Section 2. Applicability
- Section 3. Disposal Requirements (a)-(h)
- Section 5. Installation Requirements (a)-(d)
- Section 6. Abandoned Sewage Disposal or Treatment Equipment (a)
- Section 7. Lot Dimensions and Area
- Section 9. Design, Construction, Installation, Maintenance and Operation (a)

Maps of existing and proposed zoning districts, specially designated areas, and recreational and other sensitive land uses within a 5-mile radius of the Facility can be found in Exhibit 4 (Figures 4-5, 4-6 and 4-7).

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

The Applicant requests that the Siting Board apply the substantive requirements from the Wind Overlay Zoning provisions in the WECS laws, as summarized in (d) above except as set forth in this section.

The following list provides a description of the substantive provisions that the Applicant requests the Siting Board rule are unreasonably burdensome in view of the existing wind turbine technology, practicable implementation at the Facility, and the needs of ratepayers located inside and outside of such municipality for this large scale renewable energy Facility.

## Town of Arkwright

- Permits Required §653 (B).
  - The Applicant is requesting that the Board waive the Wind Overlay Zone use restriction. According to the zoning law, no WECS may be constructed except within a Wind Overlay Zone. The process for an applicant to apply to the Town for creation of the Wind Overlay Zone is a procedural law which is supplanted by Article 10. Thus, no Wind Overlay Zone will be created during the Article 10 process and the use restriction that would otherwise apply would make it impossible for the Applicant to comply, thereby creating an unreasonably burdensome requirement. But for Article 10, the Applicant would have applied for a wind overlay, met the standards for the wind overlay, subject to the waivers which could be issued by the Towns, and the project would be a permitted use. The Applicant requests that the Siting Board proceed as if the Wind Overlay Zone were created for the Facility and impose the standards set forth therein, except as requested by the Applicant because those standards are unduly burdensome.
- Limits on Construction Activity Times §659(A)(14).
  - Currently, the Town of Arkwright Wind Law limits construction of WECS to the hours of 8 am to 8 pm, except for certain activities that require cooler temperatures than are possible during the day (subject to Town approval). Limiting WECS construction activities to these times will delay construction, cause the construction of the Facility to disrupt the community for longer and may ultimately impact the Facility's ability to provide the energy needs of consumers. It is typical in the industry to do construction work at turbine sites during early morning and night hours to take advantage of cooler temperatures and low wind speeds. The low wind speeds are especially important when performing wind turbine erection activities (i.e. tower section and blade installation) because, due to safety concerns, tower sections and blades cannot be installed during high wind conditions. The Applicant has had to perform wind turbine erection activities throughout the night at its other operation Facilities in order to meet critical deadlines. At the Facility, the Applicant is required to meet various technical and government deadlines including NYISO Interconnection deadlines and Production Tax Credit deadlines, to ensure the Facility is economically viable and in compliance with interconnection requirements. The Facility is also set to help New York State reach its renewable energy goals. The State Energy Plan calls for achieving a 40% reduction in GHG emissions from 1990 levels and 50% of generation of electricity from renewable energy sources by 2030 (NYSEPB, 2015). These are aggressive targets that will require significant new sources of renewable energy be brought online as soon as possible. The goal is to have the project built and generating power by December 2018. In order to accomplish this goal and ensure technical and government deadlines can be achieved, the Facility will need extended construction work hours. The

Applicant requests extending construction work hours to 7:00 a.m. to 10:00 p.m., on Monday through Saturday and 7:00 a.m. to 8:00 p.m. on Sunday, and to allow wind turbine erection activities during extended hours beyond this schedule on an as needed basis to address unusual circumstances. Extended hours may be needed to maintain construction schedules or due to weather conditions. The Applicant will make best efforts to alert the Town and On Site Monitor when wind turbine erection activities will be required to occur past 10pm (or 8pm on Sundays), but often this decision is made the day of wind turbine erection activities so it is not practical to give advance notice and obtain approval in such a limited time window.

- Abatement §665(A)-(C).
  - 16 NYCRR Section 1001.29 requires the Applicant to include a decommissioning plan. The Applicant's decommissioning plan sets forth a detailed plan regarding how the Applicant will decommission or restore wind turbines, and includes detailed information regarding financial assurances. Requiring the Applicant to follow the Article 10 decommissioning plan and the Town's abatement requirements would lead to confusion, increased costs (multiple financial assurances), and would place the Applicant in the position of having to follow requirements which may be inconsistent. Therefore, the Abatement provision is unreasonably burdensome and should be waived and the decommissioning and abatement provisions provided for in this Application and ultimately in the Certificate Conditions should adequately address these requirements. The Applicant agrees to ensure the Town has adequate financial assurances to accomplish decommissioning and site restoration as set forth in Exhibit 29, this request for a waiver is necessary to avoid unnecessary conflict between the local law provision and Article 10 and/or inconsistent obligations on the Applicant. If such duplicative or inconsistent requirements were imposed, the cost of the Facility would increase and the inconsistent provisions could complicate financing for the Project. Therefore, is in the interests of consumers in facilitating the development of this Facility for the Siting Board to overrule the local requirements and ensure there are no duplicative or inconsistent decommissioning or site restoration requirements.

### Town of Charlotte

- Permits and Rezoning Required §618(B)(2).
  - The Applicant is requesting that the Board waive the Wind Overlay Zone use restriction. According to the zoning law, no WECS may be constructed except within a Wind Overlay Zone. The process for an applicant to apply to the Town for creation of the Wind Overlay Zone is a procedural law which is supplanted by Article 10. Thus, no Wind Overlay Zone will be created during the Article 10 process and the use restriction that would otherwise apply would make it impossible for the Applicant to

comply, thereby creating an unreasonably burdensome requirement. But for Article 10, the Applicant would have applied for a wind overlay, met the standards for the wind overlay, subject to the waivers which could be issued by the Towns, and the project would be a permitted use. The Applicant requests that the Siting Board proceed as if the Wind Overlay Zone were created for the Facility and impose the standards set forth therein, except as requested by the Applicant because those standards are unduly burdensome.

- Limits on Construction Activity Times §618(G)(1)(n).
  - The Town of Charlotte Zoning Law limits construction of WECS to the hours of 7 am to 8 pm, except for certain activities that require cooler temperatures than are possible during the day (subject to Zoning Board of Appeals approval). Limiting WECS construction activities to these times will delay construction, cause the construction of the Facility to disrupt the community for longer and may ultimately impact the Facility's ability to provide the energy needs of consumers. It is typical in the industry to do construction work at turbine sites during early morning and night hours to take advantage of cooler temperatures and low wind speeds. The low wind speeds are especially important when performing wind turbine erection activities (i.e. tower section and blade installation) because, due to safety concerns, tower sections and blades cannot be installed during high wind conditions. The Applicant has had to perform wind turbine erection activities throughout the night at its other operation Facilities in order to meet critical deadlines. At the Facility, the Applicant is required to meet various technical and government deadlines including NYISO Interconnection deadlines and Production Tax Credit deadlines, to ensure the Facility is economically viable and in compliance with interconnection requirements. The Facility is also set to help New York State reach its renewable energy goals. The State Energy Plan calls for achieving a 40% reduction in GHG emissions from 1990 levels and 50% of generation of electricity from renewable energy sources by 2030 (NYSEPB, 2015). These are aggressive targets that will require significant new sources of renewable energy be brought online as soon as possible. The goal is to have the project built and generating power by December 2018. In order to accomplish this goal and ensure technical and government deadlines can be achieved, the Facility will need extended construction work hours. The Applicant requests extending construction work hours to 7:00 a.m. to 10:00 p.m., on Monday through Saturday and 7:00 a.m. to 8:00 p.m. on Sunday, and to allow wind turbine erection activities during extended hours beyond this schedule on an as needed basis to address unusual circumstances. Extended hours may be needed to maintain construction schedules or due to weather conditions. The Applicant will make best efforts to alert the Town and On Site Monitor when wind turbine erection activities will be required to occur past 10pm (or 8pm on Sundays), but often this decision is made

the day of wind turbine erection activities so it is not practical to give advance notice and obtain approval in such a limited time window.

- Abatement §618(M)(1)-(3).
  - 16 NYCRR Section 1001.29 requires the Applicant to include a decommissioning plan. The Applicant's decommissioning plan sets forth a detailed plan regarding how the Applicant will decommission or restore wind turbines, and includes detailed information regarding financial assurances. Requiring the Applicant to follow the Article 10 decommissioning plan and the Town's abatement requirements would lead to confusion, increased costs (multiple financial assurances), and would place the Applicant in the position of having to follow requirements which may be inconsistent. Therefore, the Abatement provision is unreasonably burdensome and should be waived and the decommissioning and abatement provisions provided for in this Application and ultimately in the Certificate Conditions should adequately address these requirements. The Applicant agrees to ensure the Town has adequate financial assurances to accomplish decommissioning and site restoration as set forth in Exhibit 29, this request for a waiver is necessary to avoid unnecessary conflict between the local law provision and Article 10 and/or inconsistent obligations on the Applicant. If such duplicative or inconsistent requirements were imposed, the cost of the Facility would increase and the inconsistent provisions could complicate financing for the Project. Therefore, it is in the interests of consumers in facilitating the development of this Facility for the Siting Board to overrule the local requirements and ensure there are no duplicative or inconsistent decommissioning or site restoration requirements.

### Town of Cherry Creek

- Permits and Rezoning Required §5(B).
  - The Applicant is requesting that the Board waive the Wind Overlay Zone use restriction. According to the zoning law, no WECS may be constructed except within a Wind Overlay Zone. The process for an applicant to apply to the Town for creation of the Wind Overlay Zone is a procedural law which is supplanted by Article 10. Thus, no Wind Overlay Zone will be created during the Article 10 process and the use restriction that would otherwise apply would make it impossible for the Applicant to comply, thereby creating an unreasonably burdensome requirement. But for Article 10, the Applicant would have applied for a wind overlay, met the standards for the wind overlay, subject to the waivers which could be issued by the Towns, and the project would be a permitted use. The Applicant requests that the Siting Board proceed as if the Wind Overlay Zone were created for the Facility and impose the standards set forth therein, except as requested by the Applicant because those standards are unduly burdensome.

- Turbine Height §10(A)(13).
  - Cherry Creek's Wind Law requires that the maximum total height of any WECS be 420 feet. The Applicant proposes using commercial scale wind turbines at a maximum height of 500 feet. Both the Towns of Arkwright and Charlotte allow turbines to be 500 feet. As proposed, the Facility would not conform to height regulations in the Town of Cherry Creek's wind provisions. Advances in turbine technology are generally towards the development and installation of taller towers and longer blades in order to improve the efficiency in which the turbine captures wind, and increase the capture of wind at greater heights. At greater heights wind speeds are stronger and more consistent, thereby allowing a project to have a smaller footprint and fewer total number of turbines necessary to generate the same energy production. Thus, the imposition of a 420 ft. height requirement would necessitate additional turbine locations, and the corresponding increase in potential impacts, to achieve the same level of energy production in the Town. There are very few turbine models that are being manufactured at total heights below 420 feet and by the time the Facility goes into construction it is very possible that there will be no turbine models available below this height. Based on a current list of over 50 turbine models that are potentially suitable for the Facility, only nine total height models exist that are below 420 feet total. Further, these below total height turbine models are lowest in net capacity factor compared to most other turbine models. Using a smaller height turbine technology, which equates generally to smaller capacity would require the use of more turbine locations thus increasing the Facility's environmental impact. It is also possible that, because of the lower capacity, the Facility would not be able to achieve its capacity goal (126 MW), thus negatively impacting the New York's retail customers from achieving the clean energy available at the Facility. In sum, use of a turbine model total height below 420 feet would significantly impact the Facility economics and consumer access to the maximum clean energy from the Facility and it is entirely possible a turbine model option below that total height will not be available in the market in 2018, thus endangered the viability of the entire Facility. In addition, in light of the turbine height standards in Arkwright and Charlotte, it is unreasonable for the Applicant to construct the Project with different turbine heights. For a greater discussion involving the need for taller towers and why taller towers are economically and environmentally the best option see Exhibit 9.
- Limits on Construction Activity Times §10(A)(14).
  - The Town of Charlotte Zoning Law, restricts construction of the WECS to the hours of 7 am to 8 pm, except for certain activities that require cooler temperatures than are possible during the day (subject to Zoning Board of Appeals approval). Limiting WECS construction activities to these times will delay construction, cause the construction of the Facility to disrupt the community for longer and may ultimately impact the Facility's ability to provide the energy needs of consumers. It is typical in the

industry to do construction work at turbine sites during early morning and night hours to take advantage of cooler temperatures and low wind speeds. The low wind speeds are especially important when performing wind turbine erection activities (i.e. tower section and blade installation) because, due to safety concerns, tower sections and blades cannot be installed during high wind conditions. The Applicant has had to perform wind turbine erection activities throughout the night at its other operation Facilities in order to meet critical deadlines. At the Facility, the Applicant is required to meet various technical and government deadlines including NYISO Interconnection deadlines and Production Tax Credit deadlines, to ensure the Facility is economically viable and in compliance with interconnection requirements. The Facility is also set to help New York State reach its renewable energy goals. The State Energy Plan calls for achieving a 40% reduction in GHG emissions from 1990 levels and 50% of generation of electricity from renewable energy sources by 2030 (NYSEPB, 2015). These are aggressive targets that will require significant new sources of renewable energy be brought online as soon as possible. The goal is to have the project built and generating power by December 2018. In order to accomplish this goal and ensure technical and government deadlines can be achieved, the Facility will need extended construction work hours. The Applicant requests extending construction work hours to 7:00 a.m. to 10:00 p.m., on Monday through Saturday and 7:00 a.m. to 8:00 p.m. on Sunday, and to allow wind turbine erection activities during extended hours beyond this schedule on an as needed basis to address unusual circumstances. Extended hours may be needed to maintain construction schedules or due to weather conditions. The Applicant will make best efforts to alert the Town and On Site Monitor when wind turbine erection activities will be required to occur past 10pm (or 8pm on Sundays), but often this decision is made the day of wind turbine erection activities so it is not practical to give advance notice and obtain approval in such a limited time window.

- Abatement §16(A)-(C).
  - 16 NYCRR Section 1001.29 requires the Applicant to include a decommissioning plan. The Applicant's decommissioning plan sets forth a detailed plan regarding how the Applicant will decommission or restore wind turbines, and includes detailed information regarding financial assurances. Requiring the Applicant to follow the Article 10 decommissioning plan and the Town's abatement requirements would lead to confusion, increased costs (multiple financial assurances), and would place the Applicant in the position of having to follow requirements which may be inconsistent. Therefore, the Abatement provision is unreasonably burdensome and should be waived and the decommissioning and abatement provisions provided for in this Application and ultimately in the Certificate Conditions should adequately address these requirements. The Applicant agrees to ensure the Town has adequate financial assurances to accomplish

decommissioning and site restoration as set forth in Exhibit 29, this request for a waiver is necessary to avoid unnecessary conflict between the local law provision and Article 10 and/or inconsistent obligations on the Applicant. If such duplicative or inconsistent requirements were imposed, the cost of the Facility would increase and the inconsistent provisions could complicate financing for the Project. Therefore, it is in the interests of consumers in facilitating the development of this Facility for the Siting Board to overrule the local requirements and ensure there are no duplicative or inconsistent decommissioning or site restoration requirements.

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

The Applicant will not be connecting to any water, sewer, telecommunication or steam lines in public rights of ways. 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.

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

The Applicant will not be connecting to any water, sewer, telecommunication or steam lines in public rights of ways. 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.

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

The Applicant does not request that the Board elect not to apply any of the procedural or substantive requirements under subdivision (f) and (g) because there are no applicable provisions.

(i) Summary Table of Substantive Local Requirements

Table 31-2 provides a list of all applicable substantive requirements to the Facility as well as a description of how the Applicant plans to meet compliance.

Table 31-2. List of Applicable Substantive Requirements to the Facility and Anticipated Degree of Compliance

Substantive Provision	Degree of Compliance
<b>Town of Arkwright</b>	
Permits Required §653(A), (B) and (E)	
A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Arkwright except in compliance with this Article.	The Applicant agrees that the proposed Facility is regulated by this Article. The Applicant intends to substantially comply with the substantive provisions in the Article except as to those provisions which the Applicant is specifically requesting the Board not apply. (See Section (e) above).
B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Arkwright except in a Wind Overlay Zone, pursuant to an application for rezoning and special use permit approved pursuant to this Article.	The Applicant requests that the Siting Board set aside the Wind Overlay Zone use restriction as unreasonably burdensome. However, the proposed WECS are only within AR1 zones and therefore comply with the substantive portion of this regulation. See §656(A).
E. This article shall apply to all areas of the Town of Arkwright	The Applicant agrees that the Article applies to all areas of the Town.
Applicability §655(A) & (C)	
A. The requirements of this Article shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Article.	The Applicant agrees that the proposed Facility would otherwise be subject to the substantive provisions of this Article. The Applicant intends to substantially comply with the substantive provisions in the Article except as to those provisions which the Applicant is specifically requesting the Board not apply.
C. Wind Energy Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same Site shall not preclude the installation of a Wind Energy Facility or a part of such facility on such Site. Wind Energy Facilities constructed and installed in accordance with this Article shall not be deemed expansions of a nonconforming use or structure.	To the extent that this provision is applicable, the Applicant intends to comply with this provision.
Creation of Wind Overlay Zones §656(A)	
A. Wind Overlay Zones may be created in the Agricultural-Residential (AR1) Zone only and the T-Transitional Use Zone along the eastern boundary of the Town of Arkwright Only	The Applicant requests that the Siting Board set aside the Wind Overlay Zone use restriction as unreasonably burdensome. However, the proposed WECS are only within AR1 zones and therefore comply with the substantive portion of this regulation. See §653(B)
Standards for WECS §659(A)(1)-(17)	
1. All Power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.	The term "power transmission lines" is ambiguous. However, the Applicant intends to comply with this Section; all power transmission lines in Arkwright will be underground.
2. No television, radio or other communication antennas may be affixed or otherwise made a part of	The Applicant intends to comply with this provision.

Substantive Provision	Degree of Compliance
any WECS, except pursuant to the telecommunications provisions of the Town Zoning Code.	
3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures	The Applicant intends to comply with this provision.
4. Lighting of Tower. No Tower shall be lit except to comply with FAA requirements. Security lighting shall be designed to minimize light pollution.	The Applicant intends to comply with this provision; security lighting will be designed to minimize light pollution and not attract migratory birds.
5. All applicants shall use measures to reduce the visual impact of WECS to the extent possible. WECS shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage theme. Individual WECS within a Wind Overlay Zone shall be construed using wind turbines whose appearance, with respect to one another is similar. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub or blades.	The Applicant intends to comply with this provision. To the extent that the Applicant cannot control graphics or other insignia applied by the turbine manufacturers, the Applicant may need to request a waiver of this restriction once a turbine model is selected.
6. The use of guy wires is prohibited	The Applicant intends to comply with this provision.
7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception.	The Applicant intends to comply with this provision to the extent practicable. The Applicant has a complaint resolution plan to address complaints if an unforeseen issue occurs.
8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations	The Applicant intends to comply with this provision.
9. WECS shall be designed to minimize the impacts land clearing and loss of open space area	The Applicant intends to comply with this provision.
10. WECS shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species	The Applicant intends to comply with this provision.
11. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations	The Applicant intends to comply with this provision.
12. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations	The Applicant intends to comply with this provision.
13. The maximum total height of any WECS shall be 420 feet (Subsequent to the filing of the PSS, the Town of Arkwright has enacted Local Law No. 1 of 2016 amending its Zoning Law to limit WECS to a total height of 500 ft.).	The Applicant intends to comply with this provision. All turbine models currently under consideration by the Applicant have a total height of less than 500 feet.
14. Construction of the WECS shall be limited to the hours of 8 am to 8 pm, except for certain activities	The Applicant requests that the Siting Board set aside the construction time restriction as

Substantive Provision	Degree of Compliance
that require cooler temperatures than are possible during the day (subject to Town approval).	unreasonably burdensome. The Applicant requests extending construction work hours for WECS to 7:00 a.m. to 10:00 p.m., on Monday through Saturday and 7:00 a.m. to 8:00 p.m. on Sunday, and to allow wind turbine erection during extended hours beyond this schedule on an as needed basis to address unusual circumstances. As explained above, the need for this is to maintain construction schedules or due to weather conditions. The Applicant will make best efforts to alert the Town and On Site Monitor when wind turbine erection activities will be required to occur past 10pm (or 8pm on Sundays), but often this decision is made the day of wind turbine erection activities so it is not practical to give advance notice and obtain approval in such a limited time window.
15. Substations shall be screened from public view	Not applicable. There are no substations in Arkwright.
16. The Town of Arkwright shall be named as an additional insured	The Applicant intends to comply with this provision.
17. Any construction or ground disturbance involving agricultural land shall be done according to the NYS Dept. of Ag & Mkts publication entitled Guidelines for Agricultural Mitigation for Wind Power Projects	The Applicant intends to comply with this provision. In discussions with Dept. of Ag & Mkts, these Guidelines are able to be modified to fit site specific conditions and these modifications will be coordinated with Dept. of Ag & Mkts.
<b>Required Safety Measures §660</b>	
A. WECS shall be equipped with both manual and automatic controls to limit rotational speed	The Applicant intends to comply with all safety measures listed in section A.
B. Unless the property owner submits a written request that no fencing be required, a 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 each WECS installation shall be determined on the basis of individual applications as safety needs dictate. The entrances to entrance roads shall be gated and locked.	The Applicant intends to comply with this provision and is attempting to secure written consent from the property owner to not require fencing.
C.-G. Appropriate warning signs; no climbing pegs; minimum distance between ground and rotor or blade shall be 20 feet; WECS shall be designed to prevent unauthorized access; accurate map of underground facilities	The Applicant intends to comply with all safety measures listed in sections C-G. A map of anticipated underground facilities is Figure 3-1 to this Application.
Traffic Routes §661(A)-(C).	The Applicant intends to comply with all Traffic Route provisions. A Transportation Effect and Route Evaluation Study have been prepared by the Applicant and are included as Appendix WW to this Application.
<b>Setbacks for Wind Energy Conversion Systems §662</b>	
A. The statistical sound pressure level generated by a WECS shall not exceed L10 50 dBA measured at any	The Applicant intends to comply with Town of Arkwright's Noise Limit Provisions. The Applicant

Substantive Provision	Degree of Compliance
residents existing at the time of completing the SEQRA review of the application. If the ambient sound pressure level exceeds 48 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.	has prepared a Noise Impact Assessment which is included as Appendix Z to this Application.
B. In the event audible noise due to WECS operations contains a steady pure tone, such as a wine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five dBA.	The Applicant intends to comply with Town of Arkwright's Noise Limit Provisions. The Applicant has prepared a Noise Impact Assessment which is included as Appendix Z to this Application.
C. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five minutes per hour. Ambient noise level shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocities is not exceed 30 mph at the ambient noise measurement location	The Applicant intends to comply with Town of Arkwright's Noise Limit Provisions. The Applicant has prepared a Noise Impact Assessment which is included as Appendix Z to this Application.
D. Any noise level falling between to hold decibel shall be the lower of the two.	The Applicant intends to comply with Town of Arkwright's Noise Limit Provisions. The Applicant has prepared a Noise Impact Assessment which is included as Appendix Z to this Application.
§662(E) each WECS shall be setback a minimum distance of:	
500 feet from the nearest non-participating property line	The Applicant intends to comply with this provision.
500 feet from the nearest public road	The Applicant intends to comply with this provision.
1,200 feet from the nearest existing off-Site residence	The Applicant intends to comply with this provision.
1.5 times the total height of the WECS from any non-WECS structure or above ground utilities	The Applicant intends to comply with this provision.
100 feet from the edge of State wetlands	The Applicant intends to comply with this provision.
500 feet from gas wells	The Applicant intends to comply with this provision.
1,200 feet or 200% of the total tower height, whichever is greater, from boundary of existing trails, trail facilities, and recreation areas	The Applicant intends to comply with this provision.

Substantive Provision	Degree of Compliance
Abatement §665	
<p>A. If any WECS remains nonfunctional or an operative for continuous period of one year, the applicant agrees that, without any further action by the town board, it shall remove said system at its own expense. Removal of the system shall include at least the entire aboveground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the town's ability to order a remedial action plan after public hearing.</p>	<p>The Applicant requests that the Siting Board set aside the abatement provisions as unreasonably burdensome to the extent that they conflict with the provisions of Article 10 or the Certificate issued in this proceeding and related decommissioning requirements in 16 NYCRR 1001.29.</p>
<p>B. None function or lack of operation may be proven by reports to the public service commission, NYSEERDA, or by lack of income generation. The applicant shall make available (subject to nondisclosure agreement) to the town board all reports to and from the purchaser of energy from individual wind energy conversion systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.</p>	<p>The Applicant requests that the Siting Board set aside the abatement provisions as unreasonably burdensome to the extent that they conflict with the provisions of Article 10 or the Certificate issued in this proceeding and related decommissioning requirements in 16 NYCRR 1001.29.</p>
<p>C. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a funder bond payable put the town for the removal of nonfunctional towers and appurtenant facilities in an amount to be determined by the town for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed financial institution. All cost of the financial security shall be borne by the applicant.</p>	<p>The Applicant requests that the Siting Board set aside the abatement provisions as unreasonably burdensome to the extent that they conflict with the provisions of Article 10 or the Certificate issued in this proceeding and related decommissioning requirements in 16 NYCRR 1001.29.</p>
Limitations on Approvals; Easements on Town Property §666	
<p>1. Nothing in this Article shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Article shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.</p>	<p>This provision of law is ambiguous and does not appear to be applicable to the Facility. Tree clearing will be necessary as part of Facility construction as detailed in this Application. Any additional tree-clearing will be conducted consistent with the provisions of the Certificate issued in this proceeding. To the extent that this provision is applicable, the Applicant intends to comply with this provision unless its interpretation is otherwise inconsistent with Article 10 or the Certificate issued in this proceeding.</p>

Substantive Provision	Degree of Compliance
<p>2. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state law or this Article.</p>	<p>To the extent that this provision is applicable, the Applicant intends to comply with this provision. The Applicant does not anticipate such agreements with the Town.</p>
<b>Standards for Wind Measurement Towers §670(A)</b>	
<p>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>The Applicant intends to comply with this provision.</p>
<b>Fees §671(C)</b>	
<p>C. Nothing in this Article shall be read as limiting the ability of the Town to enter into Host Community Agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any applications review, including the review required by SEQR.</p>	<p>The Applicant intends to comply with this provision.</p>
<b>Town of Charlotte</b>	
<b>Permits and Rezoning Required §618(B)(1), (2), &amp; (6)</b>	
<p>1. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Charlotte except in compliance with this Article and shall require a Building Permit Application.</p>	<p>The Applicant agrees that the proposed Facility is regulated by this Article. The Applicant intends to substantially comply with the substantive provisions in the Article except as to those provisions which the Applicant is specifically requesting the Board not apply. The requirement of a Building Permit is procedural. (See Section (e) above).</p>
<p>2. No WECS including small WECS shall be constructed, reconstructed, modified, or operated in the Town of Charlotte except in a Wind Overlay District, pursuant to an application for rezoning and for special use permit approved pursuant to this article</p>	<p>The Applicant requests that the Siting Board set aside the Wind Overlay District use restriction as unreasonably burdensome. However, the proposed WECS are only within AR1 district and therefore comply with the substantive portion of this regulation. See §618(D)(1)</p>
<p>6. This Article shall apply to all areas of the Town of Charlotte.</p>	<p>The Applicant agrees that the Article applies to all areas of the Town.</p>
<b>Applicability §618(C)(1)</b>	
<p>1. The requirements of this Article shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Article.</p>	<p>The Applicant agrees that the proposed Facility is regulated by this Article. The Applicant intends to substantially comply with the substantive provisions in the Article except as to those provisions which the Applicant is specifically requesting the Board not apply.</p>

Substantive Provision	Degree of Compliance
Wind Overlay District Rules §618(D)(1)	
<p>1. Wind Overlay District may be created in the Agricultural – Residential (AR1) District</p>	<p>The Applicant requests that the Siting Board set aside the Wind Overlay District use restriction as unreasonably burdensome. However, the proposed WECS are only within AR1 zones and therefore comply with the substantive portion of this regulation. See §618(B)(2)</p>
Standards for WECS §618(G)	
<p>a. All Power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.</p>	<p>The Applicant has located the collection system between and among wind turbines underground to the maximum extent practicable. It has located collection lines above ground only when needed for constructability reasons (i.e. significant changes in elevation), crossing of roads, wetlands and streams to avoid and minimize impacts to these resources, and on long sections of collection when going underground is not economically practicable and would be cost prohibitive. The Applicant has located the generator lead line above ground. This is standard industry practice for generator lead lines between substations. Locating the generator lead line above ground minimizes impacts to wetlands, streams, and roads and makes construction of the generator lead line economically practicable. Requiring the generator lead line to be underground is cost prohibitive and would make the project economically unviable. Therefore, because “power transmission lines” have been located underground to the maximum extent practicable, the Applicant complies with this provision.</p>
There are no sections b. and c. under the code	
<p>d. No television, radio or other communication antennas may be affixed or otherwise made a part of any WECS, except pursuant to the telecommunications provisions of the Town Zoning Code.</p>	<p>The Applicant intends to comply with this provision.</p>
<p>e. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures</p>	<p>The Applicant intends to comply with this provision.</p>
<p>f. Lighting of Tower. No Tower shall be lit except to comply with FAA requirements. Security lighting shall be designed to minimize light pollution.</p>	<p>The Applicant intends to comply with this provision; security lighting will be designed to minimize light pollution and not attract migratory birds.</p>

Substantive Provision	Degree of Compliance
<p>g. All applicants shall use measures to reduce the visual impact of WECS to the extent possible. WECS shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage theme. Individual WECS within a Wind Overlay Done shall be constructed using wind turbines whose appearance, with respect to one another is similar. No letter, company insignia, advertising, or graphics shall be on any part of the tower, hub or blades.</p>	<p>The Applicant intends to comply with this provision. To the extent that the Applicant cannot control graphics or other insignia applied by the turbine manufacturers, the Applicant may need to request a waiver of this restriction once a turbine model is selected.</p>
<p>h. The use of guy wires is prohibited</p>	<p>The Applicant intends to comply with this provision</p>
<p>i. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location on the major access of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the links operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the special use permit for the specific WECS or WECSs causing interference.</p>	<p>The Applicant intends to comply with this provision to the extent practicable. The Applicant has a complaint resolution plan to address complaints if an unforeseen issue occurs.</p>
<p>j. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations</p>	<p>The Applicant intends to comply with this provision.</p>
<p>k. WECS shall be designed to minimize the impacts land clearing and loss of open space area</p>	<p>The Applicant intends to comply with this provision.</p>
<p>l. WECS shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species</p>	<p>The Applicant intends to comply with this provision.</p>
<p>m. WECS and related infrastructure shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations</p>	<p>The Applicant intends to comply with this provision.</p>
<p>n. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations</p>	<p>The Applicant intends to comply with this provision.</p>
<p>o. The maximum total height of any WECS shall be 500 feet.</p>	<p>The Applicant intends to comply with this provision. All turbine models currently under consideration by the Applicant have a total height of less than 500 feet.</p>

Substantive Provision	Degree of Compliance
<p>p. Construction of the WECS shall be limited to the hours of 8 am to 8 pm, except for certain activities that require cooler temperatures than are possible during the day (subject to Town approval).</p>	<p>The Applicant requests that the Siting Board set aside the construction time restriction as unreasonably burdensome. The Applicant requests extending construction work hours for WECS to 7:00 a.m. to 10:00 p.m., on Monday through Saturday and 7:00 a.m. to 8:00 p.m. on Sunday, and to allow wind turbine erection during extended hours beyond this schedule on an as needed basis to address unusual circumstances. As explained above, the need for this is to maintain construction schedules or due to weather conditions. The Applicant will make best efforts to alert the Town and On Site Monitor when wind turbine erection activities will be required to occur past 10pm (or 8pm on Sundays), but often this decision is made the day of wind turbine erection activities so it is not practical to give advance notice and obtain approval in such a limited time window.</p>
<p>q. Substations shall be screened from public view to the extent possible</p>	<p>The Applicant intends to comply with this provision. The substation was sited so that it is surrounded by existing forest vegetation and is not located near any visually sensitive receptors (see Exhibit 24 for additional information).</p>
<p>r. The Town of Charlotte shall be named as an additional insured</p>	<p>The Applicant intends to comply with this provision.</p>
<p>s. Any construction or ground disturbance involving agricultural land shall be done according to the NYS Dept. of Ag &amp; Mkts publication entitled Guidelines for Agricultural Mitigation for Wind Power Projects</p>	<p>The Applicant intends to comply with this provision. In discussions with Dept. of Ag &amp; Mkts, these Guidelines are able to be modified to fit site specific conditions and these modifications will be coordinated with Dept. of Ag &amp; Mkts.</p>
<p><b>Required Safety Measures §618</b></p>	
<p>1. WECS shall be equipped with both manual and automatic controls to limit rotational speed</p>	<p>The Applicant intends to comply with all safety measures.</p>
<p>2. If property owner submits a written request that fencing be required, a 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 each WECS installation shall be determined on the basis of individual applications as safety needs dictate. The entrances to entrance roads shall be gated and locked.</p>	<p>The Application intends to comply with this section; no property owners have requested fencing.</p>
<p>3.-7. Appropriate warning signs; no climbing pegs; minimum distance between ground and rotor or blade shall be 20 feet; WECS shall be designed to prevent unauthorized access; accurate map of underground facilities</p>	<p>The Applicant intends to comply with all safety measures listed in sections C-G. A map of proposed underground facilities is Figure 3-1 to this Application.</p>

Substantive Provision	Degree of Compliance
Traffic Routes §618(l)(1)-(3)	The Applicant intends to comply with all Traffic Route provisions. A Transportation Effect and Route Evaluation Study have been prepared by the Applicant and are included as Appendix WW to this Application.
<b>Setbacks for Wind Energy Conversion Systems §618(J)</b>	
1. The statistical sound pressure level generated by a WECS shall not exceed L10 50 dBA measured at any residents existing at the time of completing the SEORA review of the application. If the ambient sound pressure level exceeds 48 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.	The Applicant intends to comply with Town of Arkwright's Noise Limit Provisions. The Applicant has prepared a Noise Impact Assessment which is included as Appendix Z to this Application.
2. In the event audible noise due to WECS operations contains a steady pure tone, such as a wine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five dBA.	The Applicant intends to comply with Town of Arkwright's Noise Limit Provisions. The Applicant has prepared a Noise Impact Assessment which is included as Appendix Z to this Application.
3. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five minutes per hour. Ambient noise level shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocities is not exceed 30 mph at the ambient noise measurement location	The Applicant intends to comply with Town of Arkwright's Noise Limit Provisions. The Applicant has prepared a Noise Impact Assessment which is included as Appendix Z to this Application.
4. Any noise level falling between two whole decibels shall be the lower of the two.	The Applicant intends to comply with Town of Arkwright's Noise Limit Provisions. The Applicant has prepared a Noise Impact Assessment which is included as Appendix Z to this Application.
5. Each WECS shall be setback:	
500 feet from the nearest public road	The Applicant intends to comply with this provision.
1,000 feet from the nearest existing primary structure	The Applicant intends to comply with this provision.
100 feet from the edge of State wetlands	The Applicant intends to comply with this provision.
500 feet from gas wells	The Applicant intends to comply with this provision.
1,000 feet from any other WECS	The Applicant intends to comply with this provision.

Substantive Provision	Degree of Compliance
<p>6. Other wind Energy Facility structures and improvements shall comply with the underlying zoning district regulations</p>	<p>The Applicant did not identify any additional set back requirements in the underlying district regulations that would be applicable to this Project.</p>
<p>Abatement §618(M)</p>	
<p>1. If any WECS remains nonfunctional or an operative for continuous period of one year, the applicant agrees that, without any further action by the town board, it shall remove said system at its own expense. Removal of the system shall include at least the entire aboveground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the town's ability to order a remedial action plan after public hearing.</p>	<p>The Applicant requests that the Siting Board set aside the abatement provisions as unreasonably burdensome.</p>
<p>2. None function or lack of operation may be proven by reports to the public service commission, NYSEERDA, or by lack of income generation. The applicant shall make available (subject to nondisclosure agreement) to the town board all reports to and from the purchaser of energy from individual wind energy conversion systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.</p>	<p>The Applicant requests that the Siting Board set aside the abatement provisions as unreasonably burdensome.</p>
<p>3. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a funder bond payable put the town for the removal of nonfunctional towers and appurtenant facilities in an amount to be determined by the town for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed financial institution. All cost of the financial security shall be borne by the applicant.</p>	<p>The Applicant requests that the Siting Board set aside the abatement provisions as unreasonably burdensome.</p>
<p>Limitations on Approvals; Easements on Town Property §618(N)(1)-(2)</p>	
<p>1. Nothing in this Article shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Article shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy</p>	<p>To the extent that this provision is applicable, the Applicant intends to comply with this provision.</p>

Substantive Provision	Degree of Compliance
Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.	
2. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state law or this Article.	To the extent that this provision is applicable, the Applicant intends to comply with this provision.
<b>Wind Measurement Towers §618(II)(A) and (C)(1)</b>	
A. Insulation of Wind Measurement Towers shall be permitted as a special use in The Agricultural – Residential (AR1) Use District	The Applicant intends to comply with this provision
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.	The Applicant intends to comply with this provision.
<b>Town of Cherry Creek</b>	
<b>Permits And Rezoning Required §5 (A), (B), (F)</b>	
A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Cherry Creek except in compliance with this Article.	The Applicant agrees that the proposed Facility is regulated by this Article. The Applicant intends to substantially comply with the substantive provisions in the Article except as to those provisions which the Applicant is specifically requesting the Board not apply. (See Section (e) above).
B. No WECS including small WECS shall be constructed, reconstructed, modified, or operated in the Town of Cherry Creek except in a Wind Overlay District, pursuant to an application for rezoning and for special use permit approved pursuant to this article	The Applicant requests that the Siting Board set aside the Wind Overlay District use restriction as unreasonably burdensome. However, the proposed WECS are only within Agricultural-Residential District III zones and therefore comply with the substantive portion of this regulation. See §7(A)
F. This Article shall apply to all areas of the Town of Cherry Creek. Please refer to section 7 for regulations regarding the permitted location of wind overlay districts.	The Applicant agrees that the Article applies to all areas of the Town. The Applicant requests that the Siting Board set aside the Wind Overlay District use restriction as unreasonably burdensome.
<b>Applicability §6(A) &amp; (C)</b>	
A. The requirements of this Article shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Article.	The Applicant agrees that the proposed Facility is regulated by this Article. The Applicant intends to substantially comply with the substantive provisions in the Article except as to those provisions which the Applicant is specifically requesting the Board not apply.

Substantive Provision	Degree of Compliance
<p>C. Wind Energy Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same Site shall not preclude the installation of a Wind Energy Facility or a part of such facility on such Site. Wind Energy Facilities constructed and installed in accordance with this Article shall not be deemed expansions of a nonconforming use or structure.</p>	<p>To the extent that this provision is applicable, the Applicant intends to comply with this provision.</p>
<p>Wind Overlay District Rules §7(A)</p>	
<p>A. Wind Overlay District may be created in the Agricultural-Residential District III, only</p>	<p>The Applicant requests that the Siting Board set aside the Wind Overlay District use restriction as unreasonably burdensome. However, the proposed WECS are only within Agricultural-Residential District III zones and therefore comply with the substantive portion of this regulation. See §5(B)</p>
<p>Standards for WECS §10(A)(1)-(17)</p>	
<p>1. All Power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.</p>	<p>The Applicant has located the collection system between and among wind turbines underground to the maximum extent practicable. It has located collection lines above ground only when needed for constructability reasons (i.e. significant changes in elevation), crossing of roads, wetlands and streams to avoid and minimize impacts to these resources, and on long sections of collection when going underground is not economically practicable and would be cost prohibitive. The Applicant has located the generator lead line above ground. This is standard industry practice for generator lead lines between substations. Locating the generator lead line above ground minimizes impacts to wetlands, streams, and roads and makes construction of the generator lead line economically practicable. Requiring the generator lead line to be underground is cost prohibitive and would make the project economically unviable. Therefore, the Applicant believes it has met the intent of this provision.</p>
<p>2. No television, radio or other communication antennas may be affixed or otherwise made a part of any WECS, except pursuant to the telecommunications provisions of the Town Zoning Code.</p>	<p>The Applicant intends to comply with this provision.</p>
<p>3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures</p>	<p>The Applicant intends to comply with this provision.</p>
<p>4. Lighting of Tower. No Tower shall be lit except to comply with FAA requirements. Security lighting shall be designed to minimize light pollution.</p>	<p>The Applicant intends to comply with this provision; security lighting will be designed to minimize light pollution and not attract migratory birds.</p>

Substantive Provision	Degree of Compliance
5. All applicants shall use measures to reduce the visual impact of WECS to the extent possible. WECS shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage theme. Individual WECS within a Wind Overlay Zone shall be construed using wind turbines whose appearance, with respect to one another is similar. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub or blades	The Applicant intends to comply with this provision. To the extent that the Applicant cannot control graphics or other insignia applied by the turbine manufacturers, the Applicant may need to request a waiver of this restriction once a turbine model is selected.
6. The use of guy wires is prohibited	The Applicant intends to comply with this provision.
7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location on the major access of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the links operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the special use permit for the specific WECS or WECSs causing interference.	The Applicant intends to comply with this provision to the extent practicable. The Applicant has a complaint resolution plan to address complaints if an unforeseen issue occurs.
8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations	The Applicant intends to comply with this provision.
9. WECS shall be designed to minimize the impacts land clearing and loss of open space area	The Applicant intends to comply with this provision.
10. WECS shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species	The Applicant intends to comply with this provision.
11. WECS and related infrastructure shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations	The Applicant intends to comply with this provision.
12. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations	The Applicant intends to comply with this provision.
13. The maximum total height of any WECS shall be 420 feet	The Applicant requests that the Siting Board set aside the height restriction as unreasonably burdensome.

Substantive Provision	Degree of Compliance
14. Construction of the WECS shall be limited to the hours of 7 am to 8 pm, except for certain activities that require cooler temperatures than are possible during the day (subject to Town approval).	The Applicant requests that the Siting Board set aside the construction time restriction as unreasonably burdensome. The Applicant requests extending construction work hours for WECS to 7:00 a.m. to 10:00 p.m., on Monday through Saturday and 7:00 a.m. to 8:00 p.m. on Sunday, and to allow wind turbine erection during extended hours beyond this schedule on an as needed basis to address unusual circumstances. As explained above, the need for this is to maintain construction schedules or due to weather conditions. The Applicant will make best efforts to alert the Town and On Site Monitor when wind turbine erection activities will be required to occur past 10pm (or 8pm on Sundays), but often this decision is made the day of wind turbine erection activities so it is not practical to give advance notice and obtain approval in such a limited time window.
15. Substations shall be screened from public view	In applicable. There are no substations proposed for Cherry Creek.
16. The Town of Cherry Creek shall be named as an additional insured	The Applicant intends to comply with this provision
17. Any construction or ground disturbance involving agricultural land shall be done according to the NYS Dept. of Ag & Mkts publication entitled Guidelines for Agricultural Mitigation for Wind Power Projects	The Applicant intends to comply with this provision. In discussions with Dept. of Ag & Mkts, these Guidelines are able to be modified to fit site specific conditions and these modifications will be coordinated with Dept. of Ag & Mkts.
<b>Required Safety Measures §11(A)-(G).</b>	
A. WECS shall be equipped with both manual and automatic controls to limit rotational speed	The Applicant intends to comply with all safety measures listed in section A.
B. If property owner submits a written request that fencing be required, a 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 each WECS installation shall be determined on the basis of individual applications as safety needs dictate.	Applicant intends to comply with this provision; no property owners have submitted a written request that fencing be required.
C.-G. Appropriate warning signs; no climbing pegs; minimum distance between ground and rotor or blade shall be 20 feet; WECS shall be designed to prevent unauthorized access; accurate map of underground facilities	The Applicant intends to comply with all safety measures listed in sections C-G. A map of proposed underground facilities is Figure 3-1 to this Application.
Traffic Routes §12(A)-(C).	The Applicant intends to comply with all Traffic Route provisions. A Transportation Effect and Route Evaluation Study have been prepared by the Applicant and are included as Appendix WW to this Application.
<b>Setbacks for Wind Energy Conversion Systems §13(A)-(F)</b>	
A. The statistical sound pressure level generated by a WECS shall not exceed L10 50 dBA measured at	The Applicant intends to comply with Town of Cherry Creek's Noise Limit Provisions. The

Substantive Provision	Degree of Compliance
<p>the closest exterior wall of any residence existing at the time of completing the SEQRA review of the application. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.</p>	<p>Applicant has prepared a Noise Impact Assessment which is included as Appendix Z to this Application</p>
<p>B. In the event audible noise due to WECS operations contains a steady pure tone, such as a wine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five dBA.</p>	<p>The Applicant intends to comply with Town of Cherry Creek's s Noise Limit Provisions. The Applicant has prepared a Noise Impact Assessment which is included as Appendix Z to this Application.</p>
<p>C. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five minutes per hour. Ambient noise level shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocities is not exceed 30 mph at the ambient noise measurement location</p>	<p>The Applicant intends to comply with Town of Cherry Creek's Noise Limit Provisions. The Applicant has prepared a Noise Impact Assessment which is included as Appendix Z to this Application.</p>
<p>D. Any noise levels falling between two whole decibels shall be the lower of the two</p>	<p>The Applicant intends to comply with Town of Cherry Creek's Noise Limit Provisions. The Applicant has prepared a Noise Impact Assessment which is included as Appendix Z to this Application.</p>
<p>E. Each WECS shall be setback:</p>	
<p>500 feet from the nearest site boundary property line</p>	<p>The Applicant intends to comply with this provision.</p>
<p>A. 500 feet from the nearest public road</p>	<p>The Applicant intends to comply with this provision.</p>
<p>1,000 feet from the nearest existing primary structure</p>	<p>The Applicant intends to comply with this provision.</p>
<p>100 feet from the edge of State wetlands</p>	<p>The Applicant intends to comply with this provision.</p>
<p>500 feet from gas wells</p>	<p>The Applicant intends to comply with this provision.</p>
<p>1,000 feet from any other WECS</p>	<p>The Applicant intends to comply with this provision.</p>
<p>F. Other wind Energy Facility structures and improvements shall comply with the underlying zoning district regulations</p>	<p>The Applicant identified an additional set back requirement that "no building shall be erected within 100 feet of any property line". The Applicant intends to comply with this additional set back requirement as no building will be located within 100 feet of a property line.</p>

Substantive Provision	Degree of Compliance
<b>Abatement §16(A)-(C)</b>	
<p>A. If any WECS remains nonfunctional or an operative for continuous period of one year, the applicant agrees that, without any further action by the town board, it shall remove said system at its own expense. Removal of the system shall include at least the entire aboveground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the town's ability to order a remedial action plan after public hearing.</p>	<p>The Applicant requests that the Siting Board set aside the abatement provisions as unreasonably burdensome.</p>
<p>B. None function or lack of operation may be proven by reports to the public service commission, NYSEDA, or by lack of income generation. The applicant shall make available (subject to nondisclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual wind energy conversion systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.</p>	<p>The Applicant requests that the Siting Board set aside the abatement provisions as unreasonably burdensome.</p>
<p>C. Decommissioning Bond or Fund. The applicant, or successors, shall continuously maintain a funder bond payable put the town for the removal of nonfunctional towers and appurtenant facilities in an amount to be determined by the town for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed financial institution. All cost of the financial security shall be borne by the applicant.</p>	<p>The Applicant requests that the Siting Board set aside the abatement provisions as unreasonably burdensome.</p>
<b>Limitations on Approvals; Easements on Town Property §17</b>	
<p>A. Nothing in this Article shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Article shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.</p>	<p>To the extent that this provision is applicable, the Applicant intends to comply with this provision.</p>
<p>B. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such</p>	<p>To the extent that this provision is applicable, the Applicant intends to comply with this provision.</p>

Substantive Provision	Degree of Compliance
terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state law or this Article.	
<b>Standards for Wind Measurement Towers §21</b>	
A. 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.	The Applicant intends to comply with this provision.
<b>Fees §671(C)</b>	
D. Nothing in this Article shall be read as limiting the ability of the Town to enter into Host Community Agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any applications review, including the review required by SEQR.	The Applicant intends to comply with this provision.
<b>Town of Stockton</b>	
Upon review of the Town of Stockton's Zoning Regulations and consultation with town officials there does not appear to be any substantive requirements associated with the point of interconnect substation and generator lead line.	
<b>County of Chautauqua</b>	
<b>Section 2. Applicability</b>	
This article shall apply to the construction and use of a new or modified treatment system, point source or outlet when such disposal, point source system or outlet is designed to discharge and discharges sewage effluent without the admixture of industrial wastes or other wastes from a premises designed to house fewer than three families or ten or fewer people computed on the basis of twenty-four hour occupancy and when the discharge from such a disposal system consists of a flow of less than one thousand gallons per day.	The Applicant agrees that this provision would apply to the construction of the O & M building and intends to comply.
<b>Section 3. Disposal Requirements</b>	
a) No person shall discharge, or allow or cause to be discharged untreated sewage, the overflow drainage or contents of a sewage tank, or other putrescible, impure or offensive wastes onto the surface of the ground or into any street, road, alley, open excavation, stormwater sewer, land drain ditch, adjoining property, water course, or body of water or ground water, except under such circumstances as prescribed by and with then written approval of the Public Health Director.	The Applicant intends to comply with this provision.
b) No person shall discharge, or allow to be discharged, treated or untreated sewage, the overflow drainage or	The Applicant intends to comply with this provision.

Substantive Provision	Degree of Compliance
contents of a sewage tank, or other putrescible, impure, or offensive tank, or other putrescible, impure, or offensive wastes into an abandoned water supply well, spring, or cistern or into a natural or artificial well, spring, or cistern or into a natural or artificial well, sink hole, crevice or opening extending into limestone, sandstone, or other rock or shale formation.	
c) Each premises provided with plumbing fixtures or provided with a receptacle to create a sanitary flow, where no approved public sanitary sewage system is available, shall have a household sewage disposal system of approved type and design as specified in Chapter II of Title 10 of New York Code Rules and Regulations Part 75 and Appendix 75-A.	The Applicant intends to comply with this provision.
d) Each household sewage treatment system shall serve a single dwelling on an individual dwelling on an individual lot and shall be properly maintained by the owner as specified in Chapter II of Title 10 of New York Code Rules and Regulations Part 75. Any failure to provide a properly maintained system may be declared a public health nuisance by the Public Health Director.	The Applicant intends to comply with this provision.
e) Roof water, foundation drain, cistern overflow, or surface or subsoil drainage shall not be discharged into a sanitary sewer or into a sewage treatment system.	The Applicant intends to comply with this provision.
f) No household sewage treatment system shall be installed, maintained, or operated on property accessible to a public sewage system.	The Applicant intends to comply with this provision.
g) Whenever an approved public sewage system is accessible to the property, any household sewage treatment system shall be abandoned and the house sewer directly connected to the public sewers.	The Applicant intends to comply with this provision.
h) Where a public sanitary sewer is available and accessible, the Public Health Director may issue an order upon the owner of any property whereon any other method of sewage treatment was located requiring said owner to abandon the use of such other method of sewage treatment within a period of not more than ninety (90) days, and to connect with such public sewer system.	The Applicant intends to comply with this provision.
<b>Section 5. Installation Requirements</b>	
Installation requirements for individual sewer systems must satisfy Chapter II of Title 10 of New York Code Rules and Regulations, Part 75 and Appendix 75-A.	The Applicant intends to comply with this provision.
a) A septic tank-leaching system shall not be installed in an area where the texture, structure, and porosity of the soil are not suitable. Percolation tests shall be performed by persons whose qualifications shall be acceptable to the Public Health Director. The Public Health Director may require as many percolation tests as may be necessary to determine acceptability of this site. No septic tank-leaching tile field or bed shall be installed with a percolation rate less than one (1)	The Applicant intends to comply with this provision.

Substantive Provision	Degree of Compliance
<p>inch fall in water level in the test hole in sixty (60) minutes. No septic tank-seepage pit shall be installed where the percolation rate is less than one (1) inch fall in water level in fifteen (15) minutes.</p>	
<p>b) No person shall install individual household sewage treatment systems in a new realty subdivision, unless it is considered to be impractical and inadvisable by the Public Health Director to install a community sewer system with required treatment.</p>	<p>The Applicant intends to comply with this provision.</p>
<p>c) If it has been determined by the Public Health Director that on lot leaching is impracticable the effluent from subsurface sandfilters, household aeration or other approved type sewage treatment system may be permitted to discharge off the lot only if the outlet is satisfactory to the Public Health Director.</p>	<p>The Applicant intends to comply with this provision.</p>
<p>d) Where the point of discharge or discharge area is into a road or highway right-of-way, permission must be obtained from the highway superintendent or other similar officer having jurisdiction.</p>	<p>The Applicant intends to comply with this provision.</p>
<p><b>Section 6. Abandoned Sewage Disposal or Treatment Equipment</b></p>	
<p>a) The owner of abandoned septic tank or other device or equipment for treatment or disposal of sewage shall clean the tank and fill to the ground surface in a manner acceptable to the Public Health Director.</p>	<p>The Applicant intends to comply with this provision.</p>
<p><b>Section 7. Lot Dimensions and Area</b></p>	
<p>a) Lots on which household sewage treatment systems are to be installed shall be of sufficient area and suitable topography to permit compliance with this article. Where public water is available and a public sewer is not available the minimum lot size shall be 15,000 square feet. Where neither public water nor public sewer is available the minimum lot size shall be 40,000 square feet.</p>	<p>The Applicant intends to comply with this provision.</p>
<p>b) There shall be available sufficient area to provide for the complete replacement of the leaching system or subsurface sand filter.</p>	<p>The Applicant intends to comply with this provision.</p>
<p><b>Section 9. Design, Construction, Installation, Maintenance and Operation</b></p>	
<p>a) The design, construction, installation, location, maintenance and operation of household sewage treatment systems including: septic tanks; aeration type treatment systems; leaching tile fields; leaching beds, seepage pits; subsurface sand filters; house sewers; privies; and any other treatment system or part thereof shall conform to Chapter II of Title 10 of New York Code Rules and Regulations, Part 75 and Appendix 75-A.</p>	<p>The Applicant intends to comply with this provision.</p>
<p>b) Approval of sewage treatment system pursuant to the provisions of this Article shall not be construed as a guarantee by the Public health Director or by his/her agents</p>	<p>The Applicant intends to comply with this provision.</p>

Substantive Provision	Degree of Compliance
that the system will function satisfactorily, nor shall it in any way restrict the ability of the Public Health Director, or his/her duly authorized subordinate to enforce this code or any other law, rule, or regulation.	

(j) Zoning Designation

Zoning regulations within the Facility Site are described within the Zoning Laws of the Towns of Arkwright, Charlotte, Cherry Creek, and Stockton.

The Zoning Law of the Town of Arkwright (Appendix FFF) establishes three districts within the Town – the Agricultural-Residential (AR1) District, the Transition (T) District, and the Flood Plain (FP) District. AR1 Districts are established to promote maintenance of agricultural lands and allow large lot residential development. T Districts are established to provide for the maintenance of rural land primarily for large lot residential developments, as well as agricultural uses. T Districts also allow municipal sewage or water systems and some commercial uses. The Arkwright zoning map (see Figure 4-5 in Exhibit 4) does not show the location of the FP-Flood Plain Districts. In Arkwright, wind energy conversions systems are allowed in the AR1 district and in the T District along the eastern boundary of the Town, and are considered uses that would require the establishment of a Wind Overlay Zone and a special use permit (Town of Arkwright Local Law 2 of 2007, §656) absent the Article 10 process. As currently proposed, the one turbine located within the Town of Arkwright is sited within the AR1 Zoning District. Furthermore, as a result of the development of a separate wind project (The Arkwright Summit Wind Farm), a Wind Overlay Zone has already been established within the Town of Arkwright. However, this existing Wind Overlay Zone does not overlap with proposed Cassadaga Wind Project Facility Site.

The Zoning Law of the Town of Charlotte establishes three districts within the Town – the Agricultural and Residential (AR-1) District, the Commercial-Industrial (C-I) District, and the Flood Plain (FP) District (see Figure 4-5 in Exhibit 4). AR-1 Districts are established to promote maintenance of agricultural lands as well as to allow large lot residential development. The C-I Districts are established to accommodate general commercial, industrial and related structures and uses. In Charlotte, wind energy conversion systems are allowed in the AR-1 District, and are considered uses that would require a special use permit and the establishment of a Wind Overlay (Town of Charlotte Zoning Law, Article VI, §618(D)(1)) absent the Article 10 process. As currently sited, Facility components sited in the AR-1 District include turbines, access roads, buried and overhead collection lines, meteorological towers, generator lead line, collector substation, O&M building, and laydown area. Two spans of the generator lead line, cross C-I Districts. The generator lead line is the only Facility component located in the C-I District. Utilities, specifically including utility lines, are a use by right in this District.

The generator lead line and a co-located section of overhead collection line are the only Facility components located in the FP District. The Zoning Law does not specify any permitted uses for FP Districts. However, the Town of Charlotte Local Law No. 2 of 1987 entitled Flood Damage Prevention is incorporated by reference into the 2012 Zoning Law, and given full force and effect. The generator lead line and a co-located section of overhead collection line are the only Facility component located in the FP District. With regard to utilities, the Flood Damage Prevention Law aims to minimize flooding damage to utilities (specifically including electric lines) by requiring such facilities be designed to prevent water from entering the component. The generator lead line and overhead collection line will be suspended from poles at a height well beyond anticipated flood levels. Only one pole will be located within the FP District; the foundation of this pole will be anchored or otherwise engineered to prevent floatation, collapse, or lateral movement of the structure.

The Zoning Law of the Town of Cherry Creek establishes three districts within the Town – the Agricultural and Commercial (I) District, the Recreational, Commercial, and Residential (II) District, and the Residential, Recreational, and Agricultural (III) District (see Figure 4-5 in Exhibit 4). In Cherry Creek, wind energy conversions systems are allowed in Zoning District III only, and are considered uses that would require a special use permit and the establishment of Wind Overlay District (Town of Cherry Creek Local 2 of 2011, Section 7(A)) absent the Article 10 process. As currently proposed, all Facility components located within the Town of Cheery Creek would fall within Zoning District III.

The Zoning Law of the Town of Stockton establishes six districts within the Town – the Residential (R) District, the Agricultural-Residential (AR) District, the Agricultural (A) District, the Business (B) District, the Industrial (I) District, and the Lakeside (L) District (see Figure 4-5 in Exhibit 4). As currently proposed only the point-of-Interconnect (POI) substation and a portion of the overhead generator lead line will be located within the Town of Stockton. Both of these components are sited in an Agricultural (A) Zoning District. According to Section 407 Land Use Matrix of the Town of Stockton Zoning Regulations, uses related to utilities are allowed by right in A districts.