

## **Appendix A**

PSS Notice

# Bluestone Wind Project

## Broome County, New York

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### NOTICE OF SUBMISSION OF PRELIMINARY SCOPING STATEMENT

Bluestone Wind, LLC (Applicant), a wholly-owned subsidiary of Calpine Corporation, is proposing to submit an Application to construct the Bluestone Wind Farm (Facility), a wind-powered major electric generating facility under Article 10 of the Public Service Law (Facility). This notice announces that on or about August 16, 2017 the Applicant will file a Preliminary Scoping Statement (PSS), pursuant to 16 NYCRR 1000.5, which is designed to gather input from the public and interested participants on the scope and methodology of studies to be conducted in support of the Application, which will be filed at a later date. **The filing will start a 21-day public comment period on the PSS scope and methodology of the studies proposed.**

The Facility is currently proposed to be an up to 124-megawatt (MW) wind-powered electric generating facility. The Facility components are proposed to include the installation and operation of up to 40 wind turbines in the Towns of Sanford and Windsor, together with the associated collection lines, access roads, permanent meteorological towers, construction and laydown areas, and an operation and maintenance (O&M) building. To deliver electricity to the New York State power grid, the Applicant proposes to construct a collection substation to interconnect to NYSEG's Afton to Stilesville 115 kV transmission line in the Town of Sanford. The Facility is proposed to be located on leased private land that is generally rural in nature. The actual footprint of the proposed facilities will be located within the leased land, and will enable landowners to continue with existing land uses such as forestry practices, mining and hunting.

The Facility will result in the generation of electricity from wind, a renewable energy source, avoiding harmful emissions and the use of water resources that are typically associated with energy generation. In addition, the Facility will assist the State in meeting the goals of the 2015 State Energy Plan and the goals supporting the Clean Energy Standard which seek to reach 50% of energy generation from renewable sources by 2030, and other State policy initiatives. Other positive impacts to be discussed in the PSS include employment opportunities, specifically by generating temporary construction employment and full-time jobs, and increased revenues to County and local municipality tax bases, patronage of the local hospitality industry, purchase of local supplies and goods, and lease revenues to participating landowners.

The PSS describes and identifies: the environmental setting in the Facility area, potential environmental and health impacts from construction and operation of the Facility, proposed benefits of the Facility, proposed studies (including preconstruction studies and post-construction monitoring for potential impacts to avian and bat species), proposed measures to minimize environmental impacts, reasonable alternatives, other required permits/authorizations, and other relevant information to be evaluated and included in the Application. The PSS also provides a preliminary scope of an environmental impact analysis containing a discussion of potentially significant adverse environmental and health impacts to be assessed relating to the construction and operation of the Facility, including potential impacts to, land use in the Facility area; public health and safety; terrestrial ecology, including avian and bat species, and wetlands; water resources and aquatic ecology; communications, transportation and utilities; cultural, historical and recreational resources; visual, including potential for shadow flicker; sound; electromagnetic fields; and impacts on the statewide electrical system.

Within 21 days after filing of the PSS, any person, agency or municipality may submit comments on the PSS by serving such comments on the Applicant and filing a copy with the Secretary of the Department of Public Service. The Applicant will prepare a summary of the material comments and its reply thereto within 21 days after the closing of the comment period. The scoping process is overseen and mediated by a Hearing Examiner designated by the DPS. Notice will be provided from the Hearing Examiner for scheduling the participants' scoping and intervenor funding conference and dates for filing intervenor funding applications.

Upon filing of PSS, the Applicant will provide funding in the amount of \$43,750.00, as required by Article 10, to be disbursed by the Hearing Examiner to municipalities and other local parties to help pay expenses, including attorneys and consultants, associated with participating in the Article 10 process during the pre-application review phase. Fifty percent (50%) of these intervenor funds are reserved for municipalities. Additional intervenor funds will be available for the Application/Hearing Phases. Following the filing of a PSS, the Hearing Examiner or the Secretary shall issue a notice of availability of pre-application intervenor funds providing a schedule and related information describing how interested

members of the public may apply for pre-application funds. A pre-application meeting to consider funding requests will be convened within no less than 45 but no more than 60 days after the filing of the PSS.

No less than 90 days after the filing of the PSS, the Applicant may submit an Article 10 Application. Building on the scoping process and any stipulations agreed to by the parties, the Application will include the studies developed as part of the scoping process in support of the Project. The Application will include a description of the Facility, an evaluation of environmental and health impacts, a summary of public involvement activities, a statement of why any local substantive standards should not be applied, if any, an electric interconnection study including general design study and SRIS, security and emergency plans, statement demonstrating compliance with the most recent State Energy Plan, and other information. The Application will also contain the information set forth in 16 NYCRR 1001, Exhibits 1-41, unless otherwise waived by the Siting Board or otherwise not applicable.

Once an Application is filed and determined by the Siting Board to be compliant with the requirements in PSL §164, the Hearing Examiner will schedule hearings on the Application. The Hearing Examiner will also issue a notice of availability of application intervenor funds that are available to be used by parties to participate in formal review of the Application. A pre-hearing conference will be scheduled by the Hearing Examiner to identify intervenors, award intervenor funds, identify issues for the hearing, and establish a case schedule. Additional hearings regarding the application and project impact assessments will be scheduled by the Hearing Examiner, as needed. After hearings, the stakeholders may brief their positions and the Hearing Examiner will issue a recommended decision upon which the Siting Board will base its decision. Article 10 requires that all proceedings on the Application, including a final decision by the Siting Board must be completed within 12 months of when the Application is determined to be complete.

To obtain information regarding the Project, please contact:

Contact information for Applicant:

Alec Jarvis  
Director of Development  
Calpine Corporation  
717 Texas Avenue, Suite 1000  
Houston, TX 77002  
Phone: 207-956-1169  
Email: [alec.jarvis@calpine.com](mailto:alec.jarvis@calpine.com)

Contact information for DPS Article 10 Coordinator:

James Denn  
New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350  
Phone: 518-474-7080  
Email: [james.denn@dps.ny.gov](mailto:james.denn@dps.ny.gov)

Information is also available at the public document repositories and on the web. The DPS website is (<http://www.dps.ny.gov/>). To access documents, go to “Search” at the top of the webpage, then search using the Case Number 16-F-0559 or the direct link:

(<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=16-F-0559&submit=Search>)

or by going to the Project-specific website maintained by the Applicant: <http://www.calpine.com/bluestonewind>

### **File a Request for Notices**

Any interested member of the public may file a request with the DPS Secretary to receive copies of all notices concerning the Project, including but not limited to notices regarding any proposed pre-application stipulations. Written requests should be sent to the DPS Secretary at [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov) or sent by mail to the following address:

Hon. Kathleen H. Burgess  
Secretary to the Commission  
New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350

## **Appendix B**

### Certificate of Formation

**CORPORATION SERVICE COMPANY**

www.cscglobal.com

CSC- Sacramento  
Suite 150N  
2710 Gateway Oaks Drive  
Sacramento, CA 95833  
800-222-2122  
916-641-5151 (Fax)

**Matter#** Not Provided

**Order#** 073311-5

**Project Id :**

**Order Date** 03/22/2016

**Entity Name:** BLUESTONE WIND, LLC  
**Jurisdiction:** DE - Secretary of State  
**Request for:** Incorporation/Formation Filing  
**File#:** 5995483  
**File Date:** 03/22/2016  
**Result:** Filed

Ordered by NANCY HOANG at CALPINE CORPORATION

Thank you for using CSC. For real-time 24 hour access to the status of any order placed with CSC, access our website at [www.cscglobal.com](http://www.cscglobal.com).

If you have any questions concerning this order or CSCGlobal, please feel free to contact us.

Mai Lou Her  
[mher1@cscinfo.com](mailto:mher1@cscinfo.com)

The responsibility for verification of the files and determination of the information therein lies with the filing officer; we accept no liability for errors or omissions.

# Delaware

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The First State

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "BLUESTONE WIND, LLC", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF MARCH, A.D. 2016, AT 2:37 O`CLOCK P.M.*



  
Jeffrey W. Bullock, Secretary of State

5995483 8100  
SR# 20161795695

Authentication: 202029505  
Date: 03-23-16

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

CERTIFICATE OF FORMATION  
OF  
LIMITED LIABILITY COMPANY

FIRST. The name of the limited liability company is Bluestone Wind, LLC.

SECOND. The address of its registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The name of its Registered Agent at such address is Corporation Service Company.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Formation of Bluestone Wind, LLC this 22<sup>nd</sup> day of March, 2016.

BY: /s/Kelvin Chung  
Authorized Person(s)

NAME: Kelvin Chung  
(Type or Print Name)

## **Appendix C**

### Master List of Stakeholders



## AFFECTED STATE AND FEDERAL AGENCIES

### **New York State Attorney General**

Eric Schneiderman, NYS Attorney General  
State Capitol Building  
Albany, NY 12224  
*Email not available.*

### **New York State Governor's Office**

Andrew Cuomo, Governor of NY  
NY State Capitol Building  
Albany, NY 12224  
*Email not available*

### **New York State Department of Agriculture and Markets**

Richard Ball, Commissioner  
10B Airline Drive  
Albany, NY 12235  
[info@agriculture.ny.gov](mailto:info@agriculture.ny.gov)

### **New York State Department of Health**

Howard Zucker, Commissioner  
Richard Thomas, Counsel  
Corning Tower  
Empire State Plaza  
Albany, NY 12237  
[dohweb@health.ny.gov](mailto:dohweb@health.ny.gov)  
[Richard.thomas1@dps.ny.gov](mailto:Richard.thomas1@dps.ny.gov)

### **New York State Department of Agriculture and Markets**

Tara Wells, Counsel's Office  
Matthew Brower, Environmental Analyst  
10B Airline Drive  
Albany, NY 12235  
[tara.wells@agriculture.ny.gov](mailto:tara.wells@agriculture.ny.gov)  
[matthew.brower@agriculture.ny.gov](mailto:matthew.brower@agriculture.ny.gov)

### **New York State Division of Homeland Security and Emergency Services**

Jerome Hauer, Commissioner  
1220 Washington Ave  
Albany, NY 12226  
*Email not available*

### **New York State Department of Environmental Conservation**

Basil Seggos, Commissioner  
625 Broadway  
Albany, NY 12233  
[basil.seggos@dec.ny.gov](mailto:basil.seggos@dec.ny.gov)

### **New York State Office of Parks, Recreation and Historic Preservation**

Ruth Pierpont, Deputy Commissioner  
Peebles Island State Park  
P.O. Box 189  
Waterford, NY 12188-0189  
[Ruth.Pierpont@parks.ny.gov](mailto:Ruth.Pierpont@parks.ny.gov)

### **New York State Department of Environmental Conservation Region 7**

Matt Marko, Regional Director  
615 Erie Blvd. West  
Syracuse, NY 13204-2400  
[r7dep@gw.dec.state.ny.us](mailto:r7dep@gw.dec.state.ny.us)

### **New York State Department of Public Service**

Kathleen Burgess, Secretary to the Commission  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223  
[secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

### **New York State Department of Environmental Conservation**

Jonathan Binder, Associate Attorney  
Karen Gaidasz, Project Manager  
625 Broadway - 4th Floor  
Albany, NY 12233-1750  
[jonathan.binder@dec.ny.gov](mailto:jonathan.binder@dec.ny.gov)

### **New York State Department of State**

Rossana Rosado, Secretary of State  
One Commerce Place  
99 Washington Avenue  
Albany, NY 12231-0001  
[info@dos.ny.gov](mailto:info@dos.ny.gov)

### **New York State Energy Research and Development Authority (NYSERDA)**

Kelly Tyler, Director of Communities and Local Government  
17 Columbia Circle  
Albany, NY 12203-6399  
[kelly.tyler@nysesda.ny.gov](mailto:kelly.tyler@nysesda.ny.gov)

### **New York State Department of Transportation**

Jack Williams, P.E., Regional Director  
44 Hawley Street  
Binghamton, NY 13901  
[jack.williams@dot.ny.gov](mailto:jack.williams@dot.ny.gov)

**New York Independent System Operator**

Michael Bemis, Board Chair  
10 Krey Boulevard  
Rensselaer, NY 12144  
[stakeholder\\_services@nyiso.com](mailto:stakeholder_services@nyiso.com)

**Empire State Development Corporation**

Kevin McLaughlin, Southern Tier Regional Director  
44 Hawley St.  
Room 1508  
Binghamton, NY 13901  
[km@theagency-ny.com](mailto:km@theagency-ny.com)

**New York State Senate**

Frederick J. Akshar II, NYS Senator, 52nd District  
1607 State Office Building  
44 Hawley Street  
Binghamton, NY 13901  
[akshar@nysenate.gov](mailto:akshar@nysenate.gov)

**New York State Assembly**

Clifford W. Crouch, Assembly Member, District 122  
Suite 1  
1 Kattelville Road  
Binghamton, NY 13901  
[CrouchC@nyassembly.gov](mailto:CrouchC@nyassembly.gov)

**New York State Department of Economic Development**

Howard Zemsky, Commissioner  
625 Broadway  
Albany, NY 12245  
[nys-capitaldist@esd.ny.gov](mailto:nys-capitaldist@esd.ny.gov)

**US Senate**

Charles E. Schumer, US Senator  
15 Henry Street, Room 100AF  
Binghamton, NY 13901  
*Email not available*

**US Senate**

Kirsten E. Gillibrand, US Senator  
100 South Clinton Street  
P.O. Box 7378  
Syracuse, NY 13261-7378  
[invite@gillibrand.senate.gov](mailto:invite@gillibrand.senate.gov)

**US Congress**

Claudia Tenney, Representative, District 22  
4747 Middle Settlement Road  
P.O. Box 627  
New Hartford, NY 13413  
[tenneyc@nyassembly.gov](mailto:tenneyc@nyassembly.gov)

**US Congress**

John Faso, Representative, District 19  
PO Box 448  
Kinderhook, NY 12106  
[john@johnfaso.com](mailto:john@johnfaso.com)

**US Army Corps of Engineers**

Steve Metivier, Chief, NY Application Evaluation  
Section  
1776 Niagara Street  
Buffalo, NY 14207  
[steven.v.metivier@usace.army.mil](mailto:steven.v.metivier@usace.army.mil)

**US Fish and Wildlife Service**

Tim Sullivan, Biologist  
3817 Luker Road  
Cortland, NY 13045  
[tim\\_sullivan@fws.gov](mailto:tim_sullivan@fws.gov)

**US Fish and Wildlife Service**

David Stilwell, Field Supervisor  
3817 Luker Road  
Cortland, NY 13045  
[FW5ES\\_NYFO@fws.gov](mailto:FW5ES_NYFO@fws.gov)

**US National Park Service**

Kris Heister, Superintendent  
274 River Road  
Beach Lake, PA 18405  
*Email not available*

**US Federal Aviation Administration**

Carmine Gallo, Eastern Region Regional  
Administrator  
1 Aviation Plaza  
Jamaica, NY 11434  
*Email not available*

**US Department of Defense**

Steven J. Sample, Mission Evaluation Branch  
3400 Defense Pentagon  
Room 5C646  
Washington, DC 10301  
[steven.j.sample4.civ@mail.mil](mailto:steven.j.sample4.civ@mail.mil)

**National Telecommunications and Information Administration**

Frank O'Brien,  
Herbert C. Hoover Building (HCHB)  
U.S. Department of Commerce  
1401 Constitution Avenue NW  
Washington, DC 20230  
*Email not available*

## LOCAL AGENCIES

**Southern Tier East Regional Planning  
Development Board**  
Erik Miller, Director  
Caroline Quidort, Regional Development Analyst II  
49 Court Street  
Suite 222  
Binghamton, NY 13901-3274  
*Email not available*

**Broome County Emergency Services and Public  
Safety**  
Jerry Marinich, Director  
Public Safety Facility Lower Level  
153 Lt. VanWinkle Drive  
Binghamton, NY 13905  
[jmarinich@co.broome.ny.us](mailto:jmarinich@co.broome.ny.us)

**Broome County Soil and Water Conservation  
District**  
Charles McElwee, District NR Specialist  
1163 Upper Front Street  
Binghamton, NY 13905  
[cmcelwee@broomeswcd.org](mailto:cmcelwee@broomeswcd.org)

**Broome County Industrial Development Agency**  
Kevin McLaughlin, Executive Director  
Fifth Floor Broome County Office Building  
P.O. Box 1510  
Binghamton, NY 13902  
[info@theagency-ny.com](mailto:info@theagency-ny.com)

**Broome County Board of Economic  
Development, Education and Culture**  
Michael P. Sopchak, Chair  
151 Deyo Hill Road  
Johnson City, NY 13790  
[msopchak@co.broome.ny.us](mailto:msopchak@co.broome.ny.us)

**Broome County Parks, Recreation and Youth  
Services**  
Arthur Garrison, Director  
County Office Building  
Government Plaza  
60 Hawley Street  
Binghamton, NY 13902-1766  
[bcparks@co.broome.ny.us](mailto:bcparks@co.broome.ny.us)

**Broome County, Highway Division**  
Susan Brown, Director  
Highway Building  
47 Thomas Street  
Chenango, NY 13901  
[bcdpwhighways@co.broome.ny.us](mailto:bcdpwhighways@co.broome.ny.us)

**Broome County Environmental Management  
Council (EMC)**  
Beth Lucas, Senior Planner, EMC Staff  
Broome County Office Building  
Government Plaza  
44 Hawley Street  
Binghamton, NY 13902-1766  
[blucas@co.broome.ny.us](mailto:blucas@co.broome.ny.us)

**Broome County Convention and Visitors'  
Bureau**  
Judi Hess, Director  
49 Court Street 2nd Floor  
P.O. Box 995,  
Binghamton, NY 13902-0995  
[judi@visitbinghamton.org](mailto:judi@visitbinghamton.org)

**Broome County Department of Planning and  
Economic Development**  
Frank Evangelisti, Director and Local Hazard  
Mitigation Point of Contact  
Edwin L Crawford County Office Bldg. 5th Floor  
60 Hawley Street  
Binghamton, NY 13902  
[fevangelisti@co.broome.ny.us](mailto:fevangelisti@co.broome.ny.us)

**Broome County Cornell Cooperative Extension**  
Victoria Giarratano, Executive Director  
840 Upper Front St.  
Binghamton, NY 13905  
[vg4@cornell.edu](mailto:vg4@cornell.edu)

**Broome County Farm Bureau, Inc.**  
David Johnson, President  
840 Upper Front Street  
Binghamton, New York 13905  
[e.schuyler58@gmail.com](mailto:e.schuyler58@gmail.com)

**Greater Binghamton Chamber of Commerce**

Jennifer Conway, President & CEO  
PO Box 995  
Binghamton, NY 13902-0995  
[jconway@greaterbinghamtonchamber.com](mailto:jconway@greaterbinghamtonchamber.com)

**Windsor Fire Department**

John McNulty, Fire Chief  
PO Box 433  
Windsor, NY 13865  
*Email not available*

**MUNICIPALITIES AND SCHOOL DISTRICTS IN FACILITY AREA**

**Broome County**

Jason Garner, County Executive  
Scott Baker, Legislator 2<sup>nd</sup> District  
60 Hawley Street  
Binghamton, NY 13902  
[clerkinfo@co.broome.ny.us](mailto:clerkinfo@co.broome.ny.us)  
[sbaker@co.broome.ny.us](mailto:sbaker@co.broome.ny.us)

**Town of Sanford**

Dewey A. Decker, Town Supervisor  
91 Second Street  
Deposit, NY 13754  
[sanfordclerk@echoes.net](mailto:sanfordclerk@echoes.net)

**Town of Sanford**

Gerald Seymour, Superintendent of Highways  
192 Front Street  
Deposit, NY 13754  
[sanfordclerk@echoes.net](mailto:sanfordclerk@echoes.net)

**Town of Sanford**

Ann Parsons, Town Historian  
3 Lippencott ST.  
Deposit, NY 13754  
[sanfordclerk@echoes.net](mailto:sanfordclerk@echoes.net)

**Town of Windsor**

Carolyn Price, Town Supervisor  
68 White Birch Lake Road  
Windsor, NY 13865  
[windsorsupervisor@echoes.net](mailto:windsorsupervisor@echoes.net)

**Town of Windsor**

Cheryl Sacco, Town Attorney  
Coughlin & Gerhart, LLP  
124 Main Street  
Windsor, NY 13865  
[CSacco@cglawoffices.com](mailto:CSacco@cglawoffices.com)

**Town of Windsor**

Richard Kohlback, Superintendent of Highways  
526 Atwell Hill Road  
Windsor, NY 13865  
[windsorhwy@echoes.net](mailto:windsorhwy@echoes.net)

**Windsor School District**

Jason Andrews, Superintendent  
1191 NY Route 79  
Windsor, NY 13865  
[jandrews@windsor-csd.org](mailto:jandrews@windsor-csd.org)

**Deposit School District**

Denise Cook, Superintendent  
171 Second Street  
Deposit NY, 13754  
[dcook@deposit.stier.org](mailto:dcook@deposit.stier.org)

## MUNICIPALITIES AND SCHOOL DISTRICTS IN STUDY AREA

### Delaware County

Tina Mole, Chairman of the Board of Supervisors  
Sharon O'Dell, County Clerk  
22 Wilcox Road  
Harpersfield, NY 13786  
[sharon.odell@co.delaware.ny.us](mailto:sharon.odell@co.delaware.ny.us)

### Chenango County

Lawrence Wilcox, Chairman of the Board of Supervisors  
Mary Wediman, Clerk  
5 Court Street  
Norwich, NY 13815  
[countyclerk@co.chenango.ny.us](mailto:countyclerk@co.chenango.ny.us)

### Town of Colesville

Glenn Winsor, Town Supervisor  
780 Welton Street  
Harpursville, NY 13787  
[colesvillesupervisor@echoes.net](mailto:colesvillesupervisor@echoes.net)

### Town of Afton

John Lawrence, Town Supervisor  
204A County Road 39  
Afton, NY 13730  
[aftonsupervisor@gmail.com](mailto:aftonsupervisor@gmail.com)

### Town of Masonville

Mike Spaccaforno, Town Supervisor  
PO Box 121  
Trout Creek, NY 13847  
[forno100@aol.com](mailto:forno100@aol.com)

### Town of Deposit

Thomas Axtell, Town Supervisor  
3 Elm Street  
Deposit, NY 13754  
*Email not available*

### Town of Tompkins

Bill Layton, Town Supervisor  
148 Bridge St  
Trout Creek, NY 13847  
*Email not available*

### Deposit Fire Department

Shaun Rynearson, Fire Chief  
130 2nd St.  
Deposit, NY 13754  
[Chief22@tds.net](mailto:Chief22@tds.net)

### Village of Deposit

Robert Rynearson Jr., Mayor  
146 Front Street  
Deposit, NY 13754-1198  
[Mayorofdeposit@yahoo.com](mailto:Mayorofdeposit@yahoo.com)

### Village of Windsor

Ron Harting, Mayor  
107 Main Street  
P.O. Box 98  
Windsor, NY 13865  
[rharting@villageofwindsor.org](mailto:rharting@villageofwindsor.org)

### Bainbridge-Guilford Central School District

Timothy Ryan, Superintendent  
18 Juliard Street  
Bainbridge, NY 13733  
[sweibel@bgcsd.org](mailto:sweibel@bgcsd.org)

### Sidney Central School District

Dr. William Christiansen, Superintendent  
95 West Main St.  
Sidney, NY 13838  
[wchristensen@sidneycsd.org](mailto:wchristensen@sidneycsd.org)

### Afton Central School District

Elizabeth Briggs, Superintendent  
29 Academy Street  
Afton, NY 13730  
[bbriggs@aftoncsd.org](mailto:bbriggs@aftoncsd.org)

### Harpursville Central School District

Michael Rullo, Superintendent  
54 Main St  
Harpursville, NY 13787  
693-8112  
[mrullo@hcs.stier.org](mailto:mrullo@hcs.stier.org)

## PUBLIC INTEREST GROUPS

### **The Nature Conservancy - Eastern NY**

Rick Werwaiss, Executive Director  
195 New Karner Road  
Suite 201  
Albany, NY 12205  
[eny@tnc.org](mailto:eny@tnc.org)

### **Upper Susquehanna Conservation Alliance**

David Stilwell, Chairman  
3817 Luker Road  
Cortland, NY 13045  
[FW5ES\\_NYFO@fws.gov](mailto:FW5ES_NYFO@fws.gov)

### **New York Agricultural Land Trust**

Nancy Hourigan, Board Chair  
PO Box 216  
Elbridge, NY 13060  
[nhourigan878@gmail.com](mailto:nhourigan878@gmail.com)

### **Audubon Society - Delaware Otsego Chapter**

Andy Mason  
Po Box 544  
Oneonta, NY 13820  
[info@doas.us](mailto:info@doas.us)

### **NY Public Interest Research Group (NYPIRG) - Binghamton Chapter**

State University College University Union  
Box 2000  
Binghamton, NY 13902  
[binghamton@nypirg.org](mailto:binghamton@nypirg.org)

### **Sierra Club Susquehanna Group**

Scott Lauffer, Chair  
P.O. Box 572  
Endicott, NY 13760  
*Email not available*

### **Upper Susquehanna Coalition**

Jeremy Waddell, Staffer  
Tioga Soil and Water Conservation District 183  
Corporate Drive  
Owego, NY 13827-3249  
[jwaddell@u-s-c.org](mailto:jwaddell@u-s-c.org)

### **Delaware Highlands**

P.O. Box 218  
Hawley, Pennsylvania  
18428

### **New York Rivers United**

Bruce R. Carpenter, Executive Director  
199 W. Dominick Street  
Rome, NY 13440  
*Email not available*

### **Susquehanna River Basin Commission**

Andrew D. Dehoff, Executive Director  
4423 N. Front Street  
Harrisburg, PA 17110-1788  
[srbc@srbc.net](mailto:srbc@srbc.net)

### **The Wetlands Trust**

Jim Curatolo, Director  
4729 State Route 414  
Burdett, NY 14818  
[jc@thewetlandtrust.org](mailto:jc@thewetlandtrust.org)

### **Windsor Emergency Services**

4 Academy St  
Windsor, NY 13865  
[contactus@windsoremergencyservices.org](mailto:contactus@windsoremergencyservices.org)

### **Colesville Volunteer Ambulance Service**

P. O. Box 62  
Harpursville, NY 13787  
*Email not available*

### **Greater Binghamton Chamber of Commerce**

Jennifer Conway, President and CEO  
PO Box 995  
Binghamton, NY 13902-0995  
[jconway@greaterbinghamtonchamber.com](mailto:jconway@greaterbinghamtonchamber.com)

## ADDITIONAL STAKEHOLDERS

### **Oneida Indian Nation**

Jesse Bergevin, Historic Resources Specialist  
2037 Dream Catcher Plaza  
Oneida, NY 13421-0662  
[jbergevin@oneida-nation.org](mailto:jbergevin@oneida-nation.org)

### **Oneida Nation of Wisconsin**

Corina Williams, THPO  
P. O. Box 365  
Oneida, WI 54155-0365  
[cwilliam@oneidanation.org](mailto:cwilliam@oneidanation.org)

### **Delaware Nation**

Darrin Ahshapanek, EPA Director  
31064 State Highway 281  
Anadarko, OK 73005  
*Email not available*

### **Delaware Tribe of Indians**

Dr. Brice Obermeyer, Designated representative for Section 106 and projects  
1200 Commercial Street  
Roosevelt Hall RM 212  
Emporia State University  
Emporia, KS 66801  
[bobermeyer@delawaretribe.org](mailto:bobermeyer@delawaretribe.org)

### **Tuscarora Environmental Program (Tuscarora Nation)**

Neil Patterson, Jr., Director, designated representative for Environment/NEPA  
2045 Upper Mountain Road  
Sanborn, NY 14132  
[npatterson@hef.org](mailto:npatterson@hef.org)

### **DTE Pipeline**

Chris Zona, Vice President – Planning & Business Development  
One Energy Plaza, Room 2130 WCB  
Detroit, MI 48226  
[zonac@dteenergy.com](mailto:zonac@dteenergy.com)

### **Constitution Pipeline Company**

Alan Armstrong, President and CEO for Williams  
Binghamton Office  
P.O. Box 340  
Kirkwood, NY 13795  
[PipelineExpansion@williams.com](mailto:PipelineExpansion@williams.com)

### **Time Warner Cable/Charter Communications**

Stefan Anninger, Investor Relations  
400 Atlantic Street, 10th Floor  
Stamford, CT 06901  
[investor@charter.com](mailto:investor@charter.com)

**Verizon Communications**

John G. Stratton, Executive Vice President and President of Operations  
1095 Avenue of the Americas  
New York, NY 10036  
[info@verizon.com](mailto:info@verizon.com)

**New York State Electric and Gas**

Mark S. Lynch, President and Chief Executive Officer  
P.O. Box 5224  
Binghamton, NY 13902-5224  
*Email not available*

**Millennium Pipeline Co., LLC**

Joseph Shields, President  
One Blue Hill Plaza, 7th floor  
PO Box 1565  
Pearl River, NY 10965  
(877) 213-1940  
*Email not available*

**LOCAL DOCUMENT REPOSITORIES**

**Windsor Library**

107 Main Street  
Windsor, NY 13865

**Deposit Free Library**

159 Front Street  
Deposit, NY 13754



## **Appendix D**

### Meeting Log

## Bluestone Wind Project Outreach and Meeting Log

Date of Outreach/Meeting	Location/Type of Outreach/Meeting	Attendees	Purpose	Comments/Follow-up
January 11 and 12, 2017	Public Notices in the local papers		Advertise the January 26, 2017 Open House	
January 13, 2017	Notification Letters	PIP Stakeholders	Inform stakeholders of PIP and January 26, 2017 Open House	
January 26, 2017	Windsor High School	Approximately 80 members of the public	Open House Information Session	Presented project and discuss key topics through use of powerpoint and board at various stations. Stations included regulation, bird/bats, noise, construction and maps of the Facility Area.
January 31, 2017	Call	U.S. Army Corps of Engineers and EDR	Brief introduction to the Project	Additional coordination required during PSS development and through the process.
February 8, 2017	City of Binghamton	Broome County Executive, Calpine and EDR	Introduce the Project and provide an overview of Article 10 regulations	
March 16, 2017	Email	Broome County DPW and EDR	Introduce the Project and try to setup a time to meet	Followed up with phone calls, left voice mail.
March 23, 2017	Phone conversation	Oneida Indian Nation and EDR	Discuss cultural resources in the Facility Area, including "stone landscapes"	

## Bluestone Wind Project Outreach and Meeting Log

Date of Outreach/Meeting	Location/Type of Outreach/Meeting	Attendees	Purpose	Comments/Follow-up
March 30	Meeting at SHPO office	SHPO, Calpine, EDR	Introduce the Project, Discuss the Facility Area and other available studies or protocols that can be provided by SHPO for use on Bluestone (i.e., Constitution cultural studies). Also discussed "stone landscapes".	SHPO requested the CRIS be used for submittals in Article 10.
March 31, 2017	NYSDEC Albany	NYSDEC, Calpine, WEST and EDR	Discuss avian work plans	Follow-up meeting/call to be scheduled
April 2017	Monthly call with Town Supervisors	Calpine and Town Supervisors of Windsor and Sanford	General update	
April 9, 2017	Meeting Town of Sanford	Calpine, Fisher presented to the Town of Sanford Town Board	Public update – presented on roads, construction and general Article 10 process	
June 21, 2017	Meeting	Delaware-Otsego Audubon, Calpine, WEST and EDR	Introduce the Project, discuss Article 10 and the avian work plans	Follow-up with Delaware-Otsego Audubon and other researchers to obtain additional background data. Provide copies of avian work plans to Delaware-Otsego Audubon as part of Article 10 process
June 2017	Monthly call with Town Supervisors	Calpine and Town Supervisors of Windsor and Sanford	General update	
August 9, 2017	Public Notices in the local papers		Notice the filing of the PSS	

## Bluestone Wind Project Outreach and Meeting Log

Date of Outreach/Meeting	Location/Type of Outreach/Meeting	Attendees	Purpose	Comments/Follow-up
August 10 & 11, 2017	Letter to Members Listed on the Stakeholder List		Notice the filing of the PSS	
August 11, 2017	Letters to elected officials		Notice the filing of the PSS	

## **Appendix E**

### Sanford Wind Laws

**A LOCAL LAW OF THE TOWN OF SANFORD AMENDING LOCAL LAW #1-1992  
ENTITLED "RENEWABLE ENERGY SYSTEMS"**

Be it enacted by the Town Board of the Town of Sanford as follows:

**Section 1.**

Local Law #1-1992 entitled "Land Use Management Local Law" be and hereby is amended by this Local Law #1 of 2017 to add a new Article XIV as follows:

Article XIV. Renewable Energy Systems

Section 1401. Legislative intent.

This Article is adopted to advance and protect the public health, safety, and welfare of the Town of Sanford, including:

- 1) Taking advantage of a safe, abundant, renewable, and low-carbon emitting energy resource;
- 2) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses and farm operations; and
- 3) Increasing employment and business development in the region by furthering the installation and development of renewable energy systems.

These renewable energy regulations are intended to supplement existing zoning ordinances and land use practices, and ensure these systems are appropriately designed, sited and installed. However, to the extent that a provision of this Local Law conflicts with any other local law or zoning regulation of the Town, the provision of this Local Law shall apply. These regulations are in place to balance the need to improve energy sustainability through increased use of renewable energy systems such as solar energy systems and wind energy conversion systems with concerns for preservation of public health, welfare, and safety, as well as environmental quality, visual and aesthetic values, and existing neighborhood social and ecological stability. Further, the intent is to minimize any adverse impacts on the character of the neighborhoods, property values, scenic, historic, and environmental resources of the Town.

Section 1402. Wind Energy Conversion Systems (WECS).

A. Definitions.

**ACCESSORY FACILITIES or EQUIPMENT:** Any structure other than a wind turbine, including substations, meteorological towers, overhead and underground electrical lines, guy wires, access roads, operations and maintenance building or other facility related to the use and purpose of deriving energy from such tower.

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

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

**BOARD:** The Planning Board of the Town of Sanford.

DECOMMISSIONING PLAN: A plan that includes all of the elements set forth in Section 1402.6.

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

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

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

SPECIAL PERMIT: The official document or permit by which an Applicant is allowed to construct and use a WECS as granted or issued by the town.

TOWER FACILITY: Site where one or more wind energy-deriving tower(s) or wind turbines will be located, including all accessory facilities or equipment.

TOWN: The Town of Sanford, New York.

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

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

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

b. Non-Commercial - A WECS that is incidental and subordinate to another use on the same parcel and which primarily produces energy for on-site consumption; provided, however, that if such parcel uses the WECS for net-metering with a utility company, such WECS may be considered non-commercial unless net revenue is produced.

WIND MEASUREMENT TOWER or METEOROLOGICAL TOWER (MET TOWER): A tower used solely for the measure of meteorological data such as temperature, wind speed, and wind direction.

#### Section 1402.1. Authority

No WECS shall be constructed in the Town except in accordance with this Article. Unless a building permit, site plan approval and a Special Permit are received. Notwithstanding anything to the contrary, the Board is hereby authorized to approve, approve with conditions, or disapprove a WECS Special Permit applications in accordance with this Article.

#### Section 1402.2. Requirements for Commercial and Non-Commercial WECSs.

A. A Non-Commercial WECS may be permitted as a customary accessory use in all zoning districts and without the necessity of site plan review or special permit, subject to Town Code and Uniform Code requirements applicable to accessory uses, to the extent not inconsistent with this Article. In addition

to any other building permit requirements or requirements applicable to accessory uses, the following shall apply to non-commercial WECSs:

- (1) If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, receipt of such agency approvals shall be a pre-condition to the building permit.
- (2) All wind turbine towers shall be set back from adjacent property lines, right of ways, easements, public ways, power lines (not to include individual residential feed lines), and any pre-existing structures by a distance at least equal to its fall zone as certified by a New York State Licensed Professional Engineer plus an additional twenty-five percent (25%) of its fall zone.
- (3) The minimum distance between the ground and any part of the rotor blade shall be no less than fifteen (15) feet.
- (4) An emergency telephone number shall be provided to the Town.
- (5) All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point at least twelve (12) feet above the ground. Setbacks for any anchor point for guy wires or cables shall be a distance of thirty (30) feet from any adjacent property lines.
- (6) WECS shall be sufficiently secure so as to prevent access by unauthorized individuals.
- (7) The color of the WECS shall be a single, non-reflective matte finished color or other industry standard color which minimizes negative visual impact.
- (8) Wind energy-deriving towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Use of nighttime and overcast daytime condition stroboscopic lighting to satisfy FAA lighting requirements shall be subject to Board on-site review, with specific respect to Section 1402.5, subsection (F)1 of this Article.

B. A Commercial WECS is permitted where indicated in the Schedule of Regulations, but shall be subject to receipt of site plan approval and a special permit in accordance with this Section 1402.

#### Section 1402.3. Special Permit Required.

A. All applicants for a special permit for a commercial WECS shall, in addition to the other requirements in the Town Code, comply with the procedures set forth in this Section 1402. The Board is the officially designated agency or body of the community that is authorized to review, analyze, evaluate, and make decisions with respect to granting or denying special permits for commercial WECSs and facilities (except where the application is subject entirely to Article 10 of the Public Service Law).

B. An application for a special permit for a commercial WECS shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The Applicant shall provide proof that the landowner, if different than the Applicant, consents to the filing of the Application or the Applicant shall provide a copy of the agreement between the Applicant and the landowner authorizing the Applicant to use the landowner's property as proposed in the application. At the discretion of the Board, any false or misleading statement in the application may subject the Applicant to denial of the application without further consideration or opportunity for correction.

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

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



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

Section 1402.4. Application Requirements.

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

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

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

C. Name and address of all owners of record of abutting parcels and those within fifteen hundred (1,500) feet of the property lines of parcel where development is proposed.

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

E. A survey of the parcel.

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

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

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

I. Photography assessing the visibility from key viewpoints, existing tree lines, and proposed elevations. Pictures shall be digitally enhanced to simulate the appearance of the as-built above ground site facilities as they would appear from distances within a three (3) mile radius of such wind turbines. Pictures from specific locations may be required by the Board and all pictures shall be no smaller than 5" x 7".

J. Documentation of the proposed intent as well as a justification for the height of any wind energy-deriving tower and justification for any clearing required.

K. Preliminary report prepared by the Applicant describing:

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

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

(3) Proposed mitigation measures for visual impacts and other environmental impacts of the WECS, if any,

(4) Proposed safety measures to mitigate wind energy-deriving tower structural failure.

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

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

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

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

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

Q. Insurance certificates in compliance with Section 1402.5(H).

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

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

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

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

V. The Board, upon request in writing by the applicant, may waive specific requirements of this Section when in its opinion such information is not necessary for the Board to take into account when considering an application. Any such waiver will not have the effect of nullifying the spirit and intent of these standards, the Comprehensive Plan, or any other regulations or ordinance, if such exist.

#### Section 1402.5 Standards for Design.

Every Commercial WECS shall be subject to the following requirements.

A. Location – Applicants for a WECS special permit shall locate, erect, and site wind energy-deriving towers in accordance with the following requirements:

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

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

(3) WECS shall be located in a manner that minimizes significant negative impacts on bird and bat species. No individual tower facility shall be installed in any location where, when considering any mitigation strategies of Applicant, there are still likely to be significant, negative impacts on birds or bats. The Applicant shall present and implement a plan for such mitigation.

(4) All WECS shall be set back from adjacent Non-Participant property lines, right of ways, easements, public ways, power lines (not to include individual residential feed lines and not otherwise directly connected to the WECS), and any pre-existing structures by a distance at least equal to its fall zone as certified by a New York State Licensed Professional Engineer plus an additional twenty-five percent (25%) of its fall zone.

(5) The level of noise produced during WECS operation shall not exceed 50 (dBA) measured from the exterior wall of the nearest Non-Participant residence.

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

B. Construction, Notice and Safety Considerations

(1) An emergency telephone number shall be provided to the Board and posted at the operations and maintenance building so that the appropriate people may be contacted should any WECS need immediate attention.

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

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

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

(5) Each wind energy-deriving tower shall conform to the following specifications:

(a) WECS shall use tubular towers

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

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

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

(7) No communication antennae's may be affixed to or made part of any commercial WECSs. No advertising shall be depicted on any part of any commercial WECSs.

C. Lighting. Wind energy-deriving towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Use of nighttime and overcast daytime condition stroboscopic lighting to satisfy FAA lighting requirements shall be reviewed with specific respect to Section 1402.5, subsection (F)1 of this Article.

D. Utility Service. All collection lines from the wind generation electricity generation facilities to on-site collection substations shall be underground to the maximum extent practicable given topography and other constraints.

E. Height

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

(2) Any WECS (commercial and non-commercial) or Met Tower which is otherwise compliant with this Local Law shall be excluded from the requirements and restrictions of Section 520 of the Land Use Management Local Law.

F. Environmental Impact.

(1) Scenic / View Impact – Appropriate viewshed studies assessing potential impacts on scenic views within the Town shall be submitted for consideration by the Board. The wind turbines at a tower facility shall each be of substantially the same design, construction material, finishing and color.

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

(3) Accessory Structures / Facilities – Transmission facilities or buildings shall be located behind ridges or vegetation, where feasible, to screen from visibility.

(4) Bird/Bat Migration Study – Appropriate bird and bat migration studies shall be submitted. The applicant shall solicit input for the NYSDEC on such studies.

G. Operating Considerations.

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

(2) Ownership Changes – If the ownership of a WECS operating under a special permit changes, subject to the requirements of Section 1405, the special permit shall remain in force and all conditions of the special permit will continue to be obligations of succeeding owners. The Town Clerk shall be notified and the ownership change registered with the Town. All signs required under provisions of this Article shall be changed accordingly.

(3) Modifications – Subject to Section 1405, any and all substantial modifications, additions, or changes to a WECS authorized to operate under this Article, whether structural or not, shall be made by application to the Board except where modification is required for routine maintenance and repairs which become necessary in the normal course of use of such WECS or become necessary as a result of natural forces, such as wind or ice. Additionally, any modification resulting in significant modifications to the public health, safety, welfare, environment, of the Town or the visual or sound impacts of the project, must be reviewed and approved by the Board.

H. Certifications.

(1) Post-Installation - A post-installation field report identifying the facilities generation of electricity and any unanticipated impacts upon the environment shall be submitted to the Town within sixty (60) days of when such information becomes available.

(2) Insurance / Liability – Prior to the commencement of construction of the WECS or Met Tower, the Applicant shall provide the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of public liability insurance, of a level to be determined by the Board in consultation with the Town’s insurer, to cover damage or injury which might result from the failure of a tower or towers or any other part(s) of the generation or transmission facility. The public liability insurance policy shall specifically include the Town and its officers, boards, employees, committee members, attorneys, agents, and consultants as additional named insureds (using endorsement # CG2026), with coverage of at least \$1,000,000 per occurrence / \$2,000,000 aggregate (\$2,000,000 and \$5,000,000, respectively, for WECS subject to Article 10 of the Public Service Law).

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

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

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

(6) Continuing Obligations – All requirements detailed in Section 1402.5(H) shall remain in force for the life of the special permit.

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

#### Section 1402.6. Abandonment of use.

A. All permit applications for a Commercial WECS or a Wind Measurement Tower shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the WECS or Met Tower. Prior to issuance of a building permit, the owner or operator of the WECS or Met Tower shall post a performance bond or other suitable financial guarantee in a face amount of not less than 110% of the estimated cost of complete decommissioning and removal to ensure proper, safe removal of the WECS or Met Tower and accessory facilities in accordance with the decommissioning plan described below. The amount of the financial guarantee shall be reviewed by the Applicant and the Board every five years and may be changed based upon majority vote of the Board. The form of the guarantee must be reviewed and approved by the Town Attorney, and the guarantee must remain in effect until the system is fully removed and final inspection is completed by the Code Enforcement Officer. Prior to removal of a WECS or Met Tower, a demolition permit for removal activities shall be obtained from the Town of Sanford.

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

(a) WECS removal shall include removal of all aboveground equipment, and removal of foundations to a depth of four (4.0) feet below grade. Below ground accessory facilities, such as collection lines, are not required to be removed, unless otherwise required by applicable law. In addition, access roads may be left in place if written consent is received by the Town from the landowner. However, all WECS equipment or materials or accessory facilities installed underground must be fully removed and the land reclaimed where such equipment or materials will (i) interfere with or prevent continued compliance by the landowner with any Environmental Laws, (ii) give rise to any liability to the Town or the landowner under any Environmental Laws, or (iii) form the basis of any claim, action, suit, proceeding, hearing or investigation under any Environmental Laws. "Environmental Laws" shall mean any applicable law (including common law), statute, regulation, ordinance, order, code, guidance standard recognized by regulatory authorities, or other legal requirement relating to protection of the environment, Hazardous Material(s) and/or worker health and safety adopted by any applicable federal, state, or local governmental authority. "Hazardous Material" means any pollutant, contaminant, hazardous or toxic substance, waste, and any other material (a) subject to regulation or governed by any Environmental Law; and (b) the presence, or discharge of, or exposure to which could result in liability as a result of its impact or potential impact on human health or the environment; and including asbestos and asbestos containing material; petroleum, petroleum products and waste oil; any flammable explosives, radioactive materials, or toxic mold.

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

(c) Revegetation of restored soil areas with native seed mixes, excluding any invasive species.

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

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

(3) Upon cessation of activity of a fully constructed WECS or Met Tower for a period of 18 months, the Town may notify the owner and/or operator of the facility to implement the decommissioning plan. Within 140 days of notice being served, the owner and/or operator can either restore operation equal to 50% of approved capacity, or implement the decommissioning plan which must then be fully complete within 12 months of the beginning of its implementation.

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

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

#### Section 1402.7 Wind Measurement Towers.

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

B. Applications for Wind Measurement Towers. A Met Tower shall be permitted as a customary accessory use in the Agricultural-Residential zoning district and without the necessity of site plan review, subject to Town Code and Uniform Code requirements applicable to accessory uses, to the extent not inconsistent with this Article. A Special Permit application for a Wind Measurement Tower shall include:

1. Building permit application, including all materials required thereby.
2. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
3. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner:
  - i. confirming that the property owner is familiar with the proposed application(s) and
  - ii. authorizing the submission of the application.
4. Address of each proposed wind measurement tower location, including Tax Map section, block and lot number.
5. Proposed development plan and map, including a site plan for the property as described in Section 524 of this Local Law.
6. Decommissioning Plan, including a security bond for removal.
7. If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, evidence indicating the applicant's receipt of such agency approvals.

C. Standards for Wind Measurement Towers.

1. All met towers shall be set back from adjacent property lines, right of ways, easements, public ways, power lines (not to include individual residential feed lines), and any pre-existing structures by a distance at least equal to its fall zone as certified by a New York State Licensed Professional Engineer plus an additional twenty-five percent (25%) of its fall zone.
2. All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point at least twelve (12) feet above the ground. Setbacks for any anchor point for guy wires or cables shall be a distance of fifty (50) feet from any Non-Participant.
3. Wind Measurement Towers shall be sufficiently secure so as to prevent access by unauthorized individuals.
4. Wind Measurement Towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Use of nighttime and overcast daytime condition stroboscopic lighting to satisfy FAA lighting requirements shall be subject to Board on-site review to determine visual impact on adjacent parcels.
5. Special permits for Wind Measurement Towers shall be issued for a period of up to three (3) years. Permits shall be renewable upon application to the Planning Board.
6. Upon expiration of the special permit, the wind measurement tower shall be fully removed and the land reclaimed in accordance with the Decommissioning Plan.

Section 1403. Geothermal energy systems.

A. Definitions.

(1) A "closed loop system" uses buried high-density polyethylene (HDPE) plastic piping installed in drilled and grouted boreholes that conductively exchanges thermal (heat) energy with the ground via circulating water or a water/antifreeze mixture through the piping system.

(2) An "open loop system" is a series of standard water wells that extract and use groundwater directly as a heat-exchange source then return the heated or cooled groundwater back to the aquifer.

(3) A "direct exchange system" uses buried copper tubing that conductively exchanges heat energy with the ground via circulating a refrigerant through the tubing.

B. There are several types of geothermal systems, also known as "ground source heating pumps". They include closed loop, open loop, and direct exchange systems and are distinguished by the type of ground heat exchange (GHX) installed in the earth for heat transfer.

C. The closed loop and direct exchange (DX) GHXs may be installed vertically in drilled boreholes or horizontally in excavated trenches then backfilled. The open loop systems are installed only in vertical drilled boreholes.

D. When geothermal systems are proposed in conjunction with applications for the approval of sewage disposal and water supply facilities at a particular project site, the installation is also subject to guidelines issued by Broome County Department of Health Services (SCDHS) regarding the installation of geothermal wells.

E. Geothermal energy systems shall be permitted, installed, and erected within the Town pursuant to a building permit so long as they meet the provisions of this Local Law and all applicable sections of the Town Code. Further, no building permit shall be issued to construct a geothermal energy system until all other applicable permits have been secured. Subject to compliance with this Local Law and all other sections of the Town Code, geothermal energy systems shall be permitted in all zoning districts as customary accessory uses.

#### Section 1403.I. Permitted geothermal systems and locations.

A. Permitted geothermal systems eligible to receive a building permit are those that (1) are of a system listed in Section 1403(A) (2) comply with the applicable general requirements in Section 1403.2 and 1403.3 satisfy the following basic criteria:

(1) An open loop system using standard water well(s) to both extract and return groundwater from/to the same aquifer and with well screens set within 50 vertical feet of one another.

(2) An open loop system that is not connected to a potable water system.

(3) An open loop system where the depth to groundwater is at least 20 feet below the surface.

(4) A vertical closed loop system using standard HDPE "U-bends" installed into drilled boreholes and grouted fully from bottom to top per industry standards.

(5) A horizontal closed loop system using standard HDPE pipe installed into horizontal trenches and backfilled per industry standards.

(6) A DX-to-earth contact system including either horizontal, diagonal or vertical loops and DX-to-water system including vertical loops.

(7) Is not proposed to be located within the following areas of potential sensitivity:

(a) One-hundred-year flood hazard zones considered a V or AE Zone on the FEMA flood maps.

(b) Tidal or freshwater wetland or within 100 feet landward of the aforementioned.

(c) Regulated tidal or freshwater surface water body.

(d) Coastal erosion hazard areas.



- (e) Historic and/or culturally significant resources, in an historic district, or historic district transition zone.
- (f) Identified wellhead protection areas and aquifer protection districts.
- (g) Lake Protection Overlay District.

B. Other geothermal systems that are not eligible for a building permit under the requirements of Subsection A, including those within areas of potential sensitivity listed in Subsection A(7) of this Section, may be allowed if a special permit is granted by the Town Planning Board, subject to the criteria set forth in Article VI, Section 611, and contingent on obtaining such required permits or approvals from other regulatory agencies, such as the New York State Department of Environmental Protection Agency (USEPA) and New York State Department of Environmental Conservation.

Section 1403.2. General requirements.

All permit applications shall be submitted to the Code Enforcement Officer on forms it provides and shall comply with all the requirements therein, including but not limited to the following:

A. Application for permit. Permit applications shall include, but not be limited to, the following items which may be satisfied by documentation supplied by the design engineer, installer or equipment manufacturer as applicable:

- (1) Demonstrate compliance with applicable building permit requirements.
- (2) A plot plan on an approved property survey no greater than a scale of one inch equals 40 feet depicting the limits of the setback zone distance from structures, property lines and public roads.
- (3) Certification by the design engineer and/or installer that the geothermal system complies with all applicable regulations and all applicable state and/or local building codes, including but not limited to those applicable to the use, storage or disposal of hazardous materials and chemicals.
- (4) Subsequent to installation and on or before final inspection, certification by the design engineer and/or installer that the geothermal system was installed as designed and that the design and installation complies with the relevant industry standards and guidelines outlined below in Subsection B of this section, including but not limited to Air Conditioning Contractors of America (ACCA) Manual J heat pump unit sizing for residential systems, ACCCA Manual N or comparable load calculation techniques for commercial systems, and manufacturer-specified closed loop and DX field design guidelines.
- (5) A one-line diagram of the electrical components on the plan in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code, Electric Code of the Town of Sanford (if any) and the New York State Uniform Fire Prevention and Building Code.
- (6) An engineering analysis of the geothermal energy systems showing compliance with the New York State Uniform Fire Prevention and Building Code and certified by a licensed professional engineer.
- (7) Soil studies. Soil studies shall be required for geothermal energy systems having installations to be located on nonstandard soil conditions such as gravel, sand, muck, dune, beach, or dredge spoil (as determined by the Town Code Officer). No soil studies shall be required for all other geothermal energy systems, provided the manufacturer thereof submits a certification stating that the geothermal energy system and its foundation are suitable for installation in the soil at the proposed location.
- (8) A chemical data sheet including amounts of each chemical used in the system.
- (9) A spill prevention plan.

B. Design standards and guidelines.

(1) The design and installation standards of geothermal systems, including related wells and boreholes for the GHX, shall conform to applicable industry standards, including, but not limited to, those listed below by type of system, and shall comply with the Sanford Town Code:

(a) All systems: the American National Standards Institute (ANSI), the International Ground Source Heat Pump Association (IGSHPA), the American Society for Testing and Materials (ASTM), the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), the Air-Conditioning and Refrigeration Institute (ARI), ACCA, Refrigeration Section of the International Building Code, and other similar certifying organizations. The manufacturer specifications shall be submitted as part of the application.

[1] The individual piping loops and circuits, and fully constructed piping network for all geothermal systems shall be pressure tested for integrity of original material and joints prior to backfill in accordance with the manufacturer's instructions and the governing standards or guidelines.

[2] Materials used to backfill horizontal GHXs and the buried, horizontal piping for vertical GHXs shall be suitable granular soil and shall be free from frozen lumps, ashes, refuse, vegetable or organic matter, rocks, or boulders over 150 mm (six inches) in any dimension, or other materials that may damage the piping. The backfilled excavations shall be compacted in accordance with industry standard practice and governing guidelines and regulations.

[3] To avoid any cross-contamination, geothermal systems shall not be cross-connected with building plumbing or water systems.

(b) Open loop systems: the National Ground Water Association (NGWA) and the American Water Works Association (AWWA).

(c) Closed loop systems: the International Ground Source Heat Pump Association (IGSHPA) and the NGWA.

(d) Direct exchange (DX) systems: the Canadian Standards Association (CSA), the National Association of Corrosion Engineers (NACE), the American Society of Mechanical Engineers (ASME) and in accordance with manufacturer's guidelines, methods and standards.

(2) For closed-loop systems, the following specifically apply:

(a) Closed loop borefield installers must be trained and accredited by IGSHPA and certified by the piping manufacturer in polyethylene pipe heat-fusion or electro-fuse welding techniques, whichever is used.

(b) Closed loop borefields that will supply greater than 50 tons of heating/cooling capacity must be designed by an IGSHPA certified geothermal designer in good standing with the IGSHPA.

(c) To the extent possible, non-toxic, non-hazardous materials shall be used in all closed loop systems. If antifreeze solutions are used as a circulating fluid in the buried ground heat exchanger, only antifreeze recommended by IGSHPA such as methanol, ethanol and food-grade propylene glycol shall be permitted.

(d) The borehole annulus (space between the borehole wall and the piping) shall be filled and sealed through its entire depth with a high-solids bentonite clay grout (at least twenty-percent solids by weight), from the bottom of the borehole to the top using the tremie method of grouting.

(e) All horizontal closed-loop systems shall be no more than 20 feet deep.

(3) For open horizontal loop systems, the following specifically apply:

(a) Open loop system contractors must be registered with the NYSDEC for drilling and installing wells and installing and start-up of submersible pumps and a copy of a NYSDEC well completion report must be submitted after the installation of the wells.

(b) Well drilling contractors must appropriate state and local authorities of the location of wells installed as part of an open loop geothermal system.

(c) Open loop systems with rated pumping capacity of greater than 45 gallons per

minute (gpm), or systems of lesser capacity proposed on a site with existing water supply wells and for which the combined pumping capacity of proposed and existing wells exceeds 45 gpm, must obtain a well permit from the NYSDEC Division of Water.

(d) Open loop systems with a rated pumping capacity of greater than 45 gpm shall employ use of a plate-frame or shell-in-tube heat exchanger (HX) installed between the well piping and building hydronic loop to prevent cross-contamination of the return water by refrigerant, biocides, or corrosion inhibitors.

(e) Heat pump coils and HS material of construction for open loop systems must be compatible with the groundwater chemistry per manufacturer's limits.

(f) Water extraction.

[i] Open loop systems may utilize a waterway to the extent permissible under federal, state or local municipal laws or regulations.

[ii] Installation requirements for open loop wells shall be the same as those for potable water wells with respect to the means to prevent aquifer contamination (grouting, etc.), or in conformance with standards, regulations, or guidelines established by the Town Engineer, NYSDEC, NGWA, and AWWA.

[iii] Any water table drawdown caused by an extraction well or wells shall not cause harm to the environment or otherwise impact the use of existing water supply wells on neighboring properties.

(g) Discharge of water.

[i] Discharge of water from open loop systems into storm or sanitary sewer systems shall be prohibited, except upon written approval of the BCDHS, NYSDEC, or other authority having jurisdiction.

[ii] Discharge of water from open loop systems into a waterway or tidal or freshwater wetland is not allowed unless approved by applicable federal, state and local authorities.

[iii] Underground injection of water discharge from an open loop system shall be subject to the following conditions:

[A] Returned water shall contain no treatment or additives or other introduced chemicals.

[B] The return well shall recharge the same aquifer from which the supply water is extracted and recharge shall occur within 50 vertical feet of the supply well screen.

[C] The return well shall discharge the water below the water table depth to prevent aeration of the return water which can lead to precipitation of iron or other minerals and premature plugging of the well screens.

[D] The return well shall be located a minimum distance of 200 feet from wells on adjacent properties.

[E] The return well shall be located a minimum distance of 100 feet from the on-site well.

[F] The return well shall recharge the groundwater from which supply water is extracted.

(h) Return water practices shall not cause erosion, harm to the environment or flooding at the surface or other nuisance conditions on neighboring properties.

(i) Geothermal systems shall not encroach on public drainage, utility roadway or trail easements of any nature.

(j) The use of open loop systems within identified wellhead protection areas is prohibited.

(4) For DX systems, the following apply:

(a) DX system contractors shall demonstrate that they have successfully completed a DX system installers training course and are certified by an applicable equipment and material manufacturer to install DX systems.

(b) Piping and tubing shall be of a material equivalent to or better than Type Air Conditioning Refrigeration (ACR) piping, tubing and associated fittings in accordance with the appropriate ASTM standard and ASME standard.

(c) Below-grade joints shall be purged with inert gas and brazed in accordance with American Welding Society (AWS) standards. Piping tubing and fittings shall be installed in accordance with CSA standards.

(d) DX system contractors shall perform joining of all refrigerant connections per CSA standards.

(e) All underground Type ACR piping and tubing shall have a cathodic protection system which shall be designed and installed in accordance with the appropriate CSA standards and local site-specific conditions.

(f) For vertical DX boreholes that are drilled into saturated aquifer materials (below the water table), the borehole annulus shall be filled and sealed through its entire depth with a geothermal grout from the bottom of the borehole to the top using the tremie method of grouting per CSA standards.

(g) Horizontal DX GHXs and vertical DX boreholes lying above the water table shall be backfilled and compacted as specified in Subsection B(1)(a) of this Section. Due consideration shall be given to settling of the excavated area.

C. As-built drawing. Upon completion of construction, a sealed as-built drawing must be provided showing the locations of buried wells, closed loops, DX boreholes and horizontal connector piping, triangulated from two points on the property such as a building corner or other permanent structure. Offsets must also be shown from the nearest property line, and on-site septic systems and private water wells.

D. Setbacks.

(1) All horizontal closed-loop systems shall be no more than 20 feet deep.

(2) Unless otherwise specified, geothermal energy systems shall be located a minimum distance of 25 feet from any property line.

(3) Aboveground equipment associated with geothermal pumps shall not be installed in the front yard of any lot or the side yard of a corner lot adjacent to a public right-of-way and shall meet all required setbacks for the applicable zoning district.

(4) All geothermal energy systems shall be located a minimum distance of:

(a) Ten feet from any water, sewage or utility line.

(b) Ten feet from any building foundation.

(c) Twenty-five feet from any potential source of contamination, such as underground fuel tanks, except a supply well in an open loop system shall be a minimum of 50 feet from such potential source of contamination.

(d) Fifty feet from any storm water recharge structure.

(e) Seventy five feet from any sewage disposal structure, such as a septic tank or cesspool or leaching field, except a supply well in an open loop system shall be a minimum of one hundred feet from such sewage disposal structure.

(f) One Hundred Feet from potable water wells

(5) All setbacks or separation distances shall be verified by a qualified water supply engineer or hydrogeologist in order to protect against thermal impacts, water level drawdowns and groundwater impacts or structures.

Section 1403.3. Decommissioning.

A. If the geothermal system remains nonfunctional or inoperative for a continuous period of one year, the system shall be deemed to be abandoned and shall constitute a public nuisance. The owner shall

remove the abandoned system at his/her expense in accordance with the below after obtaining a demolition permit.

B. Closed loop piping systems shall be decommissioned by flushing and filling the piping with potable water and capping off the ends. If the heat transfer fluid contains regulated materials (e.g., antifreeze, biocides or corrosion inhibitors), the heat transfer fluid shall be contained and disposed of in accordance with applicable regulations.

C. Open loop wells shall be decommissioned per NYSDEC requirements.

D. The heat pump and any external mechanical equipment shall be removed.

E. Pipes or coils below the land surface shall be filled with grout to displace the heat transfer fluid. The heat transfer fluid shall be captured and disposed of in accordance with applicable regulations. The top of the pipe, coil or boring shall be uncovered and grouted.

F. Water body geothermal systems shall be completely removed from the bottom of the body of water.

#### Section 1404. Solar energy production systems.

##### A. Definitions.

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

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

**BOARD:** The Planning Board of the Town of Sanford.

**NON-PARTICIPANT:** A parcel of land which is not subject to any lease or other contract for SEPF development by Applicant.

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

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

1. Commercial - A SEPF that primarily produces energy for off-site sale or consumption, or any SEPF that has a capacity of 200 kilowatts or more.
2. Non-Commercial - A SEPF that is incidental and subordinate to another use on the same parcel and which primarily produces energy for on-site consumption; provided, however, that if such parcel uses the SEPF for net-metering with a utility company, such SEPF may be considered non-commercial unless net revenue is produced.

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

Section 1404.1. Permitted locations.

A. A Commercial SEPF shall be constructed pursuant to a special permit from the Board, so long as the SEPF meets the criteria set forth in § 1404.3, subject to obtaining all other necessary approvals including site plan review. A Non-Commercial SEPF shall be constructed pursuant to a building permit only and without the necessity of site plan review or special permits, so long as the SEPF meets the criteria set forth in § 1404.2; provided, however, that a Non-Commercial SEPF shall require a special permit from the Board if such facility is located in the areas listed in Subsection B below.

B. Areas of potential sensitivity:

- (1) One-hundred-year flood hazard zones considered a V or AE Zone on the FEMA Flood Maps.
- (2) Historic and/or culturally significant resources, in an historic district, or historic district transition zone.
- (3) Within a tidal or freshwater wetlands.
- (4) Adjacent to, or within, the control zone of any airport, subject to approval by the Federal Aviation Administration.
- (5) Within the Oquaga Lake Protection Overlay District.

C. Nothing herein shall supersede or limit any other code section contained within this chapter that may pertain to SEPFs, including but not limited to, site plan review.

Section 1404.2. Non-Commercial SEPFs as Accessory Uses.

A. A Non-Commercial SEPF may be permitted as a customary accessory use in all zoning districts, subject to Town Code and Uniform Code requirements applicable to accessory uses, to the extent not inconsistent with this Article, and subject to the following:

- (1) A Non-Commercial SEPF as an accessory use shall be limited to one or more roof-, wall- and/or ground-mounted solar collector devices and solar-related equipment.
- (2) Solar carports shall be permitted over existing and proposed parking facilities. For the purposes of this Article, solar carports shall not be considered a structure as defined by the Town Code.
- (3) Roof-Mounted SEPFs: SEPFs mounted on a roof shall not exceed the maximum height restrictions of the zoning district within which they are located. Panels facing the front yard must be mounted at an angle that is no greater than 20 degrees greater than the angle of the roof's surface with a maximum distance of 24 inches between the roof and the highest edge of the system.
- (4) Ground-Mounted SEPFs: SEPFs mounted on the ground shall adhere to the height and setback requirements of the underlying zoning district. Systems are limited to 20% lot coverage. All such systems installed in residential districts shall be installed in the side or rear yards.
- (5) Installations shall be compliant with all NYS requirements, including but not limited to, those set forth in Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code.

Section 1404.3. Commercial SEPFs; Special Permit Required.

A. A Commercial SEPF may be permitted where indicated in the Town's Schedule of Regulations. All applicants for a special permit for a Commercial SEPF shall, in addition to the other requirements in the Town Code, comply with the procedures set forth in this Section 1404. The Board is the officially designated agency or body of the community that is authorized to review, analyze, evaluate, and make decisions with respect to granting or denying special permits for SEPFs and facilities (except where the application is subject entirely to Article 10 of the Public Service Law).

B. An application for a special permit for a Commercial SEPF shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The Applicant shall provide proof that the landowner, if different than the Applicant, consents to the filing of the Application or the Applicant shall provide a copy of the agreement between the Applicant and the landowner authorizing the Applicant to use the landowner's property as proposed in the application. At the discretion of the Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.

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

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

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

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

#### Section 1404.4 Special Permit Application Requirements.

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

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

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

C. Name and address of all owners of record of abutting parcels and those within fifteen hundred (1,500) feet of the property lines of parcel where development is proposed.

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

E. A survey of the parcel.

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

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

H. Completed State Environmental Quality Review Act (SEQRA) Long Environmental Assessment Form (EAF) and Broome County 239 referral form.

I. Photography assessing the visibility from key viewpoints, existing tree lines, and proposed elevations. Pictures shall be digitally enhanced to simulate the appearance of the as-built above ground site facilities as they would appear from distances within a three (3) mile radius of such wind turbines. Pictures from specific locations may be required by the Board and all pictures shall be no smaller than 5" x 7".

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

K. Preliminary report prepared by SEPF siting agency describing:

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

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

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

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

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

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

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

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

Q. Insurance Certificates meeting the requirements of Section 1404.3(I)(3) below.

R. Plans to prevent the erosion of soil both during and after construction, excessive runoff, and flooding of other properties, as applicable. There should be pre-construction and post-construction drainage calculations for the site completed by a certified engineer. From this the engineer must show how there will be no increase in runoff from the site.

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

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



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

V. The Board, upon request in writing by the applicant, may waive specific requirements of this Section when in its opinion such information is not necessary for the Board to take into account when considering an application. Any such waiver will not have the effect of nullifying the spirit and intent of these standards, the Comprehensive Plan, or any other regulations or ordinance, if such exist.

#### Section 1404.5. Requirements for Commercial SEPFs.

A Commercial SEPF shall comply with the following standards:

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

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

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

D. Buffer and setback restrictions.

(1) A minimum 30% of the parcel shall be preserved as natural and vegetative open space. Site plans for the property shall be developed that provide for the preservation of natural vegetation in large unbroken blocks that also allow contiguous open spaces to be established when adjacent parcels are developed.

(2) A minimum one hundred (100) foot setback from non-participant residential, agricultural and specially zoned parcels, a minimum seventy-five (75) foot setback from adjacent Town, County and State roads, and a minimum fifty (50) foot setback from all other adjacent properties, shall be maintained.

(3) A buffer of natural and undisturbed vegetation, supplemented with evergreen plantings in accordance with Town standards, as needed, shall be provided around all SEPF equipment to provide screening from such adjacent roads and parcels.

E. Design standards. The applicant shall submit a site plan map and drawing which depict and include the elements found in Section 524.1, as well as the following:

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

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

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

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

(5) All mechanical equipment of a SEPF, including any structure for batteries or storage cells, shall be completely enclosed by a minimum eight-foot-high anchored mini-mesh chain-link

fence with two-foot tip out and a self-locking gate. Said fence shall contain five-inch-high by sixteen-inch-wide grade-level cutouts every 75 feet to permit small animals to move freely into and out of the site. Landscape screening shall be provided in accordance with the landscaping provisions of this chapter.

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

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

(8) All lighting shall be depicted and conform to the Town's exterior lighting standards and shall not unreasonably disturb adjacent parcels.

(9) Fire access roads and access for fire apparatus equipment shall be provided, as approved by the Town Fire Marshal.

(10) All stormwater and drainage shall be contained on site in accordance with the Town's standards.

(11) Soil or material removal shall be in accordance with Section 511, Extraction of Quarried Stone, and Section 516, Fences to Excavation.

(12) For any SEPF to be constructed in one of the areas listed in Section 1404.1(B), the site plan and drawings shall account for such sensitive areas and provide mitigation to the extent reasonably necessary as determined by the Board.

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

F. Signs. A sign not to exceed 2.25 square feet shall be attached to a fence adjacent to the main access gate and shall list the facility name, owner and phone number. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.

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

#### I. Operating Considerations.

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

(2) Ownership Changes – If the ownership of a commercial SEPF operating under a special permit changes, subject to the requirements of Section 1405, the special permit shall remain in force and all conditions of the special permit will continue to be obligations of succeeding owners. The Town Clerk shall be notified and the ownership change registered with the Town. All signs required under provisions of this Article shall be changed accordingly.

(3) Modifications – Subject to Section 1405, any and all substantial modifications, additions, or changes to a SEPF authorized to operate under this Article, whether structural or not, shall be made by application to the Board except where modification is required for routine maintenance and repairs which become necessary in the normal course of use of such SEPF or become necessary as a result of natural forces, such as wind or ice. Additionally, any modification resulting in significant modifications to the public health, safety, welfare, environment, of the Town or the visual or sound impacts of the project, must be reviewed and approved by the Board.

#### J. Certifications.

(1) Post-Installation - A post-installation field report identifying the facilities generation of electricity and impacts upon the environment shall be submitted to the Town within sixty (60) days of when such information becomes available.

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

(3) Insurance / Liability – Prior to the commencement of construction of the SEPF, the Applicant shall provide the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of public liability insurance, of a level to be determined by the Board in consultation with the Town's insurer, to cover damage or injury which might result from the failure of an SEPF or any other part(s) of the generation or transmission facility. The public liability insurance policy shall specifically include the Town and its officers, boards, employees, committee members, attorneys, agents, and consultants as additional named insureds (using endorsement # CG2026), with coverage of at least \$1,000,000 per occurrence / \$2,000,000 aggregate (\$2,000,000 and \$5,000,000, respectively, for an SEPF subject to Article 10 of the Public Service Law).

(4) Continuing Obligations – All requirements detailed in Section 1402.5(H) shall remain in force for the life of the special permit.

#### Section 1404.4. Abandonment.

A. All applications for a SEPF shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the SEPF. Prior to issuance of a building permit, the owner or operator of the facility or structure shall post a performance bond or other suitable financial guarantee in a face amount of not less than 110% of the estimated cost of complete decommissioning and removal to ensure proper, safe removal of the facility and related structures in accordance with the decommissioning plan described below. The form of the guarantee must be reviewed and approved by the Town Attorney, and the guarantee must remain in effect until the system is fully removed and final inspection is completed by the Code Enforcement Officer. Prior to removal of a SEPF, a demolition permit for removal activities shall be obtained from the Town of Sanford.

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

(a) Removal of aboveground and belowground equipment, structures and foundations.

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

(c) Revegetation of restored soil areas with native seed mixes, excluding any invasive species.

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

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

(3) Upon cessation of activity of a fully constructed SEPF for a period of 18 months, the Town may notify the applicant, owner and/or operator of the facility to implement the decommissioning plan. Within 120 days of notice being served, the applicant, owner and/or

operator can either restore operation equal to 50% of approved capacity, or implement the decommissioning plan which must then be fully complete within 12 months of the beginning of its implementation.

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

(5) If the applicant, owner and/or operator fails to fully implement the decommissioning plan within the 12 month time period (or 180 days, in the case of (A)(2) above) and restore the site as required, the Town may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and may, in accordance with the law, recover all expenses incurred for such activities from the bond or guarantee and from the defaulted applicant, owner and/or operator. Any cost incurred by the Town which has not been fully paid by the applicant, owner and/or operator shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes.

#### Section 1405. Farm waste energy system.

##### A. Definition.

**FARM WASTE ENERGY SYSTEM** - Any device or combination of devices or components which convert waste from farming operations into electrical or heat energy.

B. Location. A farm waste energy system is only permitted at a farm operation located within a NYS certified agricultural district and subject to the issuance of a special permit from the Planning Board.

C. Use classification. A farm waste energy system shall be classified as an accessory use to a farm operation. A farm waste energy system shall not be permitted as a principal use.

D. Registered design professional. The design of a farm waste energy system shall be prepared and sealed by a registered design professional.

E. Exemption(s): The design of a farm waste energy system that has obtained approval from the NYSDEC (e.g., solid waste and air pollution control permits) shall not be required to be prepared and sealed by a registered design professional unless required otherwise by such state department. A copy of applicable NYSDEC approval shall be submitted for the Town to permit such exemption.

F. Setbacks. A farm waste energy system shall be:

- (1) Located a minimum of one hundred (100) feet from a road right-of-way;
- (2) Located a minimum of one-hundred (100) feet from a residential or non-agricultural structure, well, watercourse or water body.

G. Location of Lines. All exterior electrical and/or plumbing or pumping lines must be buried underground.

#### Section 1406. Additional Requirements for Special Permits

The following provisions apply to all special permits required by any of the sections contained in this Article.

##### A. Decision on and Renewal of Special Permits.

(1) The Board reserves the right to approve the application, deny the application, or grant the application with certain stated conditions. All action upon the application shall be by written decision based upon substantial evidence submitted to the Board.

(2) Retention and Reimbursement of Expert Assistance

(a) The Board may hire, at applicant's expense, any consultant and/or expert necessary to assist the Board in reviewing and evaluating the application and any requests for re-certification and to complete any periodic inspections for structural and operational integrity which are deemed reasonably necessary by the Board.

(b) An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Board in connection with review of any application. The Board, by resolution, shall set the initial deposit. These funds shall accompany the filing of an application and the Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town now less than monthly for its services in reviewing the application and performing its duties. If at any time during the review process the escrow account has a balance of less than \$2,500.00, applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$2,500.00. Such additional escrow funds must be deposited with the Town before any further action or consideration is taken on the application. In the event the amount held in escrow by the Town is more than the amount of the actual cost of the Town's experts/consultants at the conclusion of the review process, the difference shall be promptly refunded to the applicant.

(c) The total amount of fund set forth in Section 1406 may vary by the scope and complexity of the project, the completeness of the application and other information as may be needed by the Board or its consultant/expert to complete the review process.

B. Extent and Parameters of Special Permits; Recertification.

(1) At any time between 12 months and six months prior to the five-year (or in the case of a permit for a meteorological tower, three-year) anniversary date after the effective date of the special permit and all subsequent fifth anniversaries of the effective date of the original special permit, the holder of the permit shall submit a signed written request to the Board for recertification. In the written request, the holder of such special permit shall include the following:

(a) The name of the holder of the special permit.

(b) If applicable, the name or number of the special permit.

(c) The date of issuance of the original special permit.

(d) Whether any of the structures have been moved, relocated, rebuilt or otherwise modified since the issuance of the original special permit and, if so, in what manner.

(e) That the project is still in compliance with the special permit and in compliance with all applicable codes, rules, laws and regulations, including without limitation, this Article, as it may be amended from time to time.

(f) Where a decommissioning plan was required for issuance of the special permit, an updated decommissioning plan, including an updated estimate for the cost of decommissioning, which accounts for new technologies, industry practices and methods, and any change to costs and expenses. Any bond or financial guarantee may be adjusted at the Board's reasonable discretion based on the updated estimate.

(2) If, after such review, the Board determines that the permitted activity is in compliance with the special permit and all applicable codes, rules, laws and regulations, then the Board shall issue a recertification special permit, which may include any new provisions or conditions that are mutually agreed upon or required by applicable statutes, laws, local laws, ordinances, codes, rules and regulations. If, after such review, the Board determines that the permitted activity is not in compliance with the special permit and all applicable codes, rules, laws and regulations, then the Board may refuse to issue a recertification special permit, and in such event, such previously

permitted activity and facilities shall not be used after the date that the applicant receives written notification of such decision by the Board. Any such decision shall be in writing and supported by substantial evidence contained in a written record.

(3) If the holder of a special permit does not submit a request for recertification of such special permit within the time frame noted in Section 1406(B), then such special permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary (or third anniversary, in the case of a Met Tower) of the original special permit or a subsequent fifth anniversary (or third anniversary, in the case of a Met Tower), unless the holder of the special permit adequately demonstrates to the Board that extenuating circumstances prevented a timely recertification request. If the Board agrees that legitimate extenuating circumstances were present, the Board may permit the holder to submit a late recertification request or application for a new special permit.

(4) Any special permit granted hereunder shall be:

- (a) non-exclusive;
- (b) not assigned, transferred or conveyed without the express prior written consent of the Board, and such consent shall not be unreasonably withheld or delayed upon the Town's receipt of proof of the ability of the transferee or successor to meet all the requirements of this Local Law; and
- (c) subject to revocation, termination, canceled or modified following a hearing upon due prior written notice to the applicant for a violation of the conditions and provisions of the special permit or for a material violation of this Local Law, such remedies being in addition to any and all other legal or equitable remedies available to the Town.

#### Section 1406. Severability.

Should any provisions of this article be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this article as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

#### Section 2. Separability

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

#### Section 3. Repealer

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

#### Section 4. Effective Date

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

**A LOCAL LAW OF THE TOWN OF SANFORD AMENDING LOCAL LAW #1-1992  
ENTITLED “RENEWABLE ENERGY AMENDMENTS TO THE AGRICULTURAL  
ZONING DISTRICT”**

Be it enacted by the Town Board of the Town of Sanford as follows:

**Section 1.**

Local Law #1-1992 entitled “Land Use Management Local Law” be and hereby is amended by this Local Law #2 of 2017 as follows:

1. “ARTICLE IV. LAND USE MANAGEMENT DISTRICT REGULATIONS” is hereby amended to provide as follows:

401 Through 402 and 404 through 408 - Remain the same.

403. Replace schedule in its entirety. SEE ATTACHED

2. Section 515. Number of Principal Uses. is hereby amended to provide as follows:

There shall be only one (1) principal use on a lot in Agricultural (A), Residential (R), Special (S), and Lake Protection Overlay (LPO) Districts; provided, however, that Commercial Wind Energy Conversion Systems and Commercial Solar Energy Conversion Facilities may be a secondary principal use on a lot in Agricultural (A).

**Section 2.** Separability

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

**Section 3.** Repealer

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

**Section 4.** Effective Date

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

As Amended by LL 2-2006; 4/17/06

AGRICULTURAL "A" PERMITTED USES SECTION 502	DEVELOPMENT PERMITTED	LOT REQUIRED	YARD REQUIRED				MAXIMUM BUILDING HEIGHT	MINIMUM GROSS FLOOR AREA	REQUIRED (OFF STREET) PARKING (1 space = 10' x 20')	REQUIRED (OFF STREET) LOADING (1 space = 17' x 40')	SITE PLAN REVIEW	SIGNS	REMARKS				
			PRINCIPAL USE	ACCESSORY USE													
PRINCIPAL	ACCESSORY	AREA	WIDTH	ROAD FRONT	ROAD REAR	EACH SIDE	ROAD FRONT	ROAD REAR	EACH SIDE	REAR							
1. Agricultural use	One (1) principal building	2.46	20'	50'	40'	20'	Not permitted	30'	30%	35'	See remarks	750 sq. ft.	1. Two (2) spaces for each dwelling unit. 2. One (1) space for each: a. Five (5) seats in religious institutions b. Each two (2) employees in a school c. Each two (2) hundred square feet of a public building. d. All other uses as determined under site plan review. 3. See Section 502.	Two (2) spaces for all non-residential uses.	See Section 524 for all uses except agricultural.	See Section 504-508.	1. No height limitations except one (1) and two (2) family dwelling units. 2. See Sections 519 and 520.
2. One (1) family dwelling unit	Accessory buildings and uses not conducted as a business e.g. private garage, tool house, farm buildings, swimming pool																
3. Two (2) family dwelling unit																	
4. Religious institutions																	
5. Schools																	
6. Hospital, nursing home																	
7. Outdoor recreation																	
8. Wildlife refuge																	
9. Stable																	
10. Cemetery																	
11. One mobile home per parcel of land																	
12. Special uses upon issuance of Special Permit by the Board of Appeals as listed below and Article VI.																	
a. Home occupation																	
b. Sand, gravel, stone, topsoil extraction per Section 511																	
c. Extraction of Quarried Stone																	

See regulations above



As Amended by LL 2-2006; 4/17/06

AGRICULTURAL "A" PERMITTED USES SECTION 402	DENS. CITY PERMITTED	LOT REQUIRED		YARD REQUIRED				MAXIMUM LOT & COVER-AGE	MAXIMUM BUILDING HEIGHT	MINIMUM GROSS FLOOR AREA	REQUIRED (OFF-STREET) PARKING (1 space = 10' x 20')	REQUIRED (OFF-STREET) LOADING (1 space = 12' x 40')	SITE PLAN REVIEW	SIGNS	REMARKS
		AREA	WIDTH	PRINCIPAL USE	ACCESSORY USE	ROAD FRONT	ROAD REAR								
PRINCIPAL AGRICULTURAL "A"															
ACCESSORY															
12. Special uses upon issuance of Special Permit (cont'd): c. Public utility substations d. Airport, aircraft landing strip e. Family unit *f. Public garages *g. Rental store **h. Sawmills i. Resorts (hotels, motels, cabins, boarding houses, bed & breakfasts) j. Hunting, fishing, gun and riding clubs k. Condominium resorts and hunting camps l. Boys and girls camps m. Golf courses n. Recreation clubs (yacht, boat, beach, golf country) o. Other uses upon the finding by the Town ZBA that such use is the same general character as those permitted	One (1) principal building  See Section 315.	2 ac.	200'	50'	25'	40'	30'	30%	35'	750 sq. ft.	1. Two (2) spaces for each dwelling unit. 2. One (1) space for each: a. Five (5) seats in religious institutions b. Each two (2) employees in a school. c. Each two (2) hundred square feet of a public building. d. All other uses as determined under site plan review. 3. See Section 502.	Two (2) spaces for all non-residential uses.  See Section 524 for all uses except agricultural.	See Sections 504-508.	1. No height limitations except one (1) and two (2) family dwellings units. 2. See Sections 519 and 520.	

See regulations above.



**TOWN OF SANFORD  
BROOME COUNTY, NEW YORK**

**LAND USE  
MANAGEMENT  
LOCAL LAW  
#1 - 1992**

FILED 12/07/1992

AMENDED: LOCAL LAW #3-1996  
LOCAL LAW #1-1997  
LOCAL LAW #2-1997  
LOCAL LAW #2-1999  
LOCAL LAW #1-2004  
LOCAL LAW #3-2004  
LOCAL LAW #1-2005

January 11, 2005

TOWN OF SANFORD  
LAND USE MANAGEMENT LOCAL LAW #1 - 1992

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TOWN OF SANFORD, NEW YORK

LAND USE MANAGEMENT LOCAL LAW #1 - 1992, WITH AMENDMENTS

- ARTICLE I. Title, Enacting Clause, Purposes, Application of Regulations
- II. Definitions
- III. Establishment of Zoning Districts
- IV. Land Use Management District Regulations
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- VII. Amendments
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- XII. Effective Date

Note: Amendments by Local Laws:

- \* Amended by Local Law #3 - 1996
- \*<sup>2</sup> Amended by Local Law #1 - 1997
- \*<sup>3</sup> Amended by Local Law #2 - 1997
- \*<sup>4</sup> Amended by Local Law #1 - 2003
- \*<sup>5</sup> Amended by Local Law #3 - 2004
- \*<sup>6</sup> Amended by Local Law #1 - 2005

**ARTICLE I: TITLE, ENACTING CLAUSE, PURPOSES**  
**APPLICATION OF REGULATIONS**

Section 101. Title

This Local Law #1 may be known and cited as the "Land Use Management Local Law of the Town of Sanford, Broome County, N.Y."

Section 102. Enacting Clause

The Town Board of the Town of Sanford in the County of Broome of the State of New York hereby ordains, enacts and publishes as follows:

Section 103. Purposes

- A. The purposes of this Local Law and the Land Use Management District and regulations herein set forth and outlined on the Land Use Management Map are to provide for the orderly growth of the Town, to encourage the most appropriate use of land, to protect and conserve the value of property, to prevent the overcrowding of land, and to promote the health, safety and general welfare of the public. The purposes are also based upon the comprehensive plan dated May, 1992 and submitted to the Town Board.
- B. \*<sup>6</sup> The provisions of the Lake Protection Overlay Zone, as set forth herein and particularly in Section 526, are intended to protect the unique and sensitive natural environment of the lake shore areas adjacent to Oquaga Lake in the Town of Sanford. Its purpose is based on the recognition that:
- i) The economic and environmental well being and health, safety, and general welfare of the Town is connected with the preservation of its lake shoreline areas;
  - ii) The shoreline zone has unique physical, biological, economic, and social attributes;
  - iii) Future land development and redevelopment should not be conducted at the expense of these attributes;
  - iv) Property values will be enhanced when the natural features of the shoreline zone are preserved;
  - v) Pollution, impairment or destruction of the shoreline area and waters of the lake should be prevented or minimized.

Section 104. Application of Regulations

Except hereinafter provided, no building or structure shall be erected, moved, altered, or expanded, and no land, building or structure or part thereof, shall be occupied or used unless in conformity with the regulations herein specified for the district in which it is located.

**ARTICLE II: DEFINITIONS**

For the purpose of this Local Law, certain terms and words are defined as follows:

**ACCESSORY USE OR BUILDING:** A use or building customarily incidental and subordinate to the principal use or building and located on the same lot.

**ADMINISTRATIVE OFFICER:** The person duly designated by the Town Board to administer and enforce this Local Law.

**ADULT USES:** See Article IX.

**AGRICULTURE:** Shall mean the use of land for agricultural purposes including farming, dairying, horticulture, floriculture, and animal and poultry husbandry and such accessory uses incidental to the normal agricultural activities.

**AIRPORT:** A tract of land or water that is maintained for the landing and departure of airplanes together with facilities to shelter, repair and supply of airplanes and the comfort of passengers.

**ALTERATION:** Any change, rearrangement, or addition to a building other than repairs, and any modification in construction.

**AUTOMOBILE:** A wheeled automotive vehicle designed for transportation primarily and commonly propelled by an internal combustion engine.

**BAR:** Establishments licensed to sell alcoholic beverages for on premises consumption.

**BASEMENT OR CELLAR:** A story underground or partly underground. A basement shall be counted as a story for the purposes of height measurement if the vertical distance between the basement ceiling and the average grade level of the adjoining ground is more than half the total distance from floor to ceiling. (See Cellar)

**\*BED & BREAKFAST (B&B) ESTABLISHMENT:** A private, owner-occupied residential dwelling that makes available five (5) or fewer sleeping units for overnight accommodations to transient paying guests, with or without the inclusion of one (1) morning meal per paying guest as part of the accommodations provided. \* Added by LL 2-2006; 4/17/06

**BLOCK:** The length of a street between two intersections.

**BOARDING HOUSE:** A dwelling occupied by one family with three or more boarders, roomers or lodgers in the same household, who are lodged with or without meals and in which there are provided such services as are incidental to its use as a temporary residence for part of the occupants. A rooming house shall be deemed a boarding house.

**BOAT HOUSE:** A building or structure used exclusively for the use or storage of boats and equipment used in connection therewith, whether on the property, shoreline, or over the water.

**BUILDING:** Any structure having a roof supported by columns or by walls.

**BUILDING, ACCESSORY:** A use or building customarily incidental and subordinate to the principal use or building and located on the same lot.

**BUILDING AREA:** The total of areas taken on a horizontal plane at the main finished grade level of the principal building and all accessory buildings exclusive of uncovered porches, terrace and steps. All dimensions shall be measured between exterior faces of walls.

**BUILDING FRONT:** That plane or planes directed to the street or determined by the Board of Appeals to be the front.

**BUILDING FRONT LINE:** The line parallel to the front lot line transecting the point in the building face which is closest to such lot line.

**BUILDING, FRONT LINE OF:** The line of that face of the building nearest to the front line of the lot. This face shall include bay windows, covered porches, whether enclosed or unenclosed, or any projections thereof.

**BUILDING HEIGHT:** The vertical distance from the mean finished grade as measured along the front wall of a building to the highest point of the building.

**BUILDING LINE:** A line passing through that point on a building or structure, including projections, nearest a stated lot line and parallel to such lot line.

**BUILDING, PRINCIPAL:** A building in which the principal use of the lot, on which it is located, is conducted.

**CAMPING UNIT:** See Travel Trailer.

**CAR WASH:** Motor vehicle laundries.

**CELLAR OR BASEMENT:** A story more than one-half the volume of which is below the adjoining finished grade surrounding it.

**CEMETERY:** An area used or intended for the interment of the deceased.

**CENTERLINE:** A line equidistant from two opposite sides or boundaries.

**CLINIC:** An office building used by more than one member of the medical profession, for the

out-patient diagnosis, treatment and care of human ailments.

CLUBHOUSE, MEMBERSHIP: Includes YMCA, YWCA, fraternity, sorority, lodge, religious and similar membership clubs which may have dormitory accommodation on the premises.

CLUB, PRIVATE: A building or use catering exclusively to its members and their guests for recreational or athletic purposes, or not operated primarily for gain or profit.

COMMUNITY CENTER: Includes public or private meeting hall, place of assembly, museum, art gallery, library, place of further education, church, not operated primarily for gain or profit.

CONTRACTOR'S YARD: Building and other construction material and storage of equipment for the intent, not of abandonment and in good repair.

COVERAGE: That percentage of lot area covered by the building area.

DOCK: Any structure or fixed platform built on floats, columns, open timber, piles or similar open-work supports, or cantilevered structures anchored to the shore including piers and wharfs and designed to provide access from the shore to the water for swimming, boating or other recreational or commercial uses, including but not limited to boat slips and berths. All structural descriptions provided above which are placed on the waterside of the mean high water mark shall be defined as a dock.

DORMITORY: A building used for housing such as fraternity, sorority, nurses' home.

DRIVESTRIP: The traveled portion of a street, or road, including shoulder where provided.

DRIVEWAY: Land used by vehicular traffic as access to, and situated on, the property or lot.

DWELLING, ONE FAMILY: A detached building containing one dwelling unit.

DWELLING, TWO FAMILY: A detached building containing two dwelling units.

DWELLING, MULTIPLE: A building or portion thereof containing three or more dwelling units.

DWELLING UNIT: A building or portion thereof providing complete housekeeping facilities for one (1) family.

EFFICIENCY APARTMENTS: A housekeeping unit designed for a family unit of two people and limited to one bedroom.

ELECTRICAL DISTRIBUTION SUBSTATION: A location with or without a building having

equipment designed to receive energy from a high-voltage distribution supply system, so as to convert it to a form suitable for local distribution.

**ELEVATION:** A point on and measured along a perpendicular vertical plane from a given point above or below it.

**ENCLOSED:** Shall mean that structure or structures protected from the elements by means of walls other than fences.

**ENCLOSED MANUFACTURING INDUSTRIES:** Shall mean that manufacturing, processing, fabricating or repair establishment that is not in violation of the Zoning Ordinance.

**ENCLOSED SERVICE AND REPAIR:** Shall mean that service and repair intended for the maintenance of machinery and equipment that is not in violation of the Zoning Ordinance.

- FAMILY:**
- a) any number of individuals related by blood, marriage or adoption, and their domestics and servants, if any, living and cooking together on the premises, as a single housekeeping unit.
  - b) not more than two (2) persons, living and cooking together on the premises as a single housekeeping unit though not related by blood, marriage or adoption, or
  - c) more than (2) persons not related by blood, marriage, or adoption, living together on the premises as a functional family unit subject to the issuance of a special permit by the Town Board of Appeals

**FLOOR AREA, GROSS:** Shall be the total area of all floors within the exterior walls of the building.

**FLOOR AREA, HABITABLE:** The floor area of rooms in a dwelling unit used for bedrooms, living rooms, dining rooms, and kitchens.

**FREIGHT OR TRUCKING TERMINAL:** A plot of land or structure intended for the dispatching, trans-shipment, storage and receiving of cargo and material, together with its necessary services to maintain itself and its function.

**GARAGE, ATTACHED:** A garage having a wall or a portion thereof common to a principal building.

**GARAGE, PRIVATE:** An enclosed space for the storage of motor vehicles, provided that no business, occupation or service is conducted for profit therein.

**GARAGE, PUBLIC:** Any garage available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, painting, servicing or equipping motor vehicles.

GASOLINE STATION: Any building or land that is used for the sale of motor fuel, oil and motor vehicle accessories, and which may or may not include facilities for lubricating, washing or servicing motor vehicles, but not including painting or major repairs to vehicles.

GRADE, FINISHED: The completed surfaces of ground, lawns, walks, paved areas, and roads brought to grades as shown on plans or designs related thereto, or in existence at the time the certificate of occupancy is issued.

GRADE, MEAN FINISHED: The mean finished grade is the average grade level of the ground measured at the front wall of the building.

\*<sup>5</sup>GUEST QUARTERS: Any structure, or portion thereof, which is detached from the main dwelling unit on a parcel, which contains one or more bedrooms, whether or not bathrooms or kitchens are present. Guest quarters shall constitute a principal use for purposes of this Law.

HOME OCCUPATION: Any use involving only the employment of persons residing on the premises and customarily conducted entirely within a dwelling, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof.

HOSPITAL: A place for the in and out patient diagnosis, treatment of human ailments, which includes sanitarium, clinic, rest home, nursing home, convalescent home, home for the aged.

HOTEL: A building containing rooms which are used, rented or hired out to be occupied for sleeping purposes and where a general kitchen and dining room may be provided within the building or in an accessory building.

JUNK YARD: Any business or activity involving the use of premises outside a building, which includes the collection, storage, burning, dumping, recycling, disassembling, salvaging, sorting or otherwise handling or arranging for sale, resale, storage or disposal or otherwise of bodies, engines, or parts of autos, or of any other second-hand or used property of whatever material it is composed or any other waste material of wood, paper, cloth, cardboard, plastics, metal, stone, cement, or otherwise, whether or not conducted for profit.

LIVING AREA: That area comprised of the enclosed year-round-occupied-living accommodations within a residence, exclusive of basements, garages, open porches, patios and awning overhangs.

LOADING SPACE: Any off-street space at least twelve feet wide and forty feet long, which is used for the temporary location of one licensed motor vehicle, not including access driveway, and having direct access to a street alley.

LOT: A parcel of land occupied or capable of being occupied by a building or other use of land and having common ownership.



LOT AREA: The total area within the property lines excluding any part lying within the boundaries of a public street, or proposed public street.

LOT CORNER: A lot situated at the intersection of two (2) or more public streets or highways.

LOT DEPTH: The mean horizontal distance between the front and rear lot lines.

LOT FRONTAGE: The horizontal length of a front lot line.

LOT LINE, FRONT: A lot line which abuts and is a common boundary with a right-of-way. In case of corner lots, the front lot line shall be determined as the common boundary with the shortest street line.

LOT WIDTH: The horizontal length of the front building line.

MEAN HIGH WATER LEVEL: The approximate average high water level for a given body of water at a given elevation, determined by reference from survey information provided by the United States Geological Service (USGS).

MEDICAL OFFICE: Includes medical, dental and clinical offices for the diagnosis and treatment of human ailments.

MOBILE HOME: A one-unit dwelling which has the following distinguished characteristics

- a) Manufactured as movable or portable dwelling for year-round occupancy and for installation on a concrete foundation, or a mobile home stand, or piers, with or without a basement or cellar.
- b) Designed to be transported on its own chassis and wheels and connected to utilities after placement on a stand, foundation or piers.
- c) May contain parts that can be folded, collapsed, telescoped when being towed and expanded later to provide additional living space.

MOBILE HOME LOT: A plot of land for rent within a mobile home park on which one mobile home may be located.

MOBILE HOME PARK: A parcel of land under single or joint ownership, which is improved for the placement of mobile homes for non-transient use and which is offered to the public for the placement of two or more mobile homes.

MODULAR HOME: A housing unit constructed off site consisting of more than one segment and designed to be permanently anchored to a foundation and to become a fixed part of the real estate.

MORTUARY, FUNERAL HOTEL: A building intended for the preparation, exhibit, and visitation of a deceased person prior to burial.

MOTEL: A building containing rooms which are rented or hired out as a series of sleeping units for automobile transients, each sleeping unit consisting of at least a bedroom and a bathroom.

MOTOR VEHICLE: Any device in, upon or by which any person or property is or may be transported upon a public street or highway, except such as are operated exclusively by human power.

MOTOR VEHICLE SALES SHOWROOM: An enclosed establishment for the display and sale of new and used motor vehicles, trailers, mobile homes, and boats (and shall not include open display or storage of such vehicles).

MUNICIPAL BUILDINGS: Includes government buildings, municipal community hall, fire house, public works building.

NON-CONFORMING USE: A use of land or of building or portion thereof, lawfully existing on the effective date of this ordinance or subsequent amendment thereto, which does not conform to the uses permitted in the district in which it is located.

NON-RESIDENTIAL LAND USE: All uses of land and buildings except for dwelling purposes.

NOXIOUS MATTER: Material which is capable of causing injury to living organisms by chemical reaction, or is capable of causing detrimental effects upon the psychological, social, or economic well being of individuals.

NURSING HOME: Any building where persons are housed and furnished with meals and nursing or convalescent care.

OFFICE BUSINESS: Includes all business, professional, banking, finance, real estate, medical, dental, clinical, governmental and utility service company offices.

OWNER: The person or persons holding title or an interest in the property.

PARKING SPACE, OFF-STREET: Any area having appropriate means of vehicular access to a street, intended for the temporary storage of vehicles.

PERSON: Shall mean and include any person, firm, partnership, association, corporation, company or organization of any kind.

PERSONAL SERVICES: Includes beauty parlors, shoe repair and shoe shine shops, photographic studios, laundromats, laundry and dry cleaning establishments, and business

providing similar services of a personal of a personal nature.

**PLANNED SHOPPING CENTER:** Shall consist of a grouping of compatible uses, designed and developed as a unit under single ownership or unified control.

**PROFESSIONAL:** A person who is duly licensed under the New York State Education Law.

**PROFESSIONAL RESIDENCE-OFFICE:** A residence in which the occupant has a professional office such as an architect, accountant, chiropractor, dentist, doctor of medicine, landscape architect, land surveyor, lawyer, optometrist, osteopath, professional engineer, or psychologist, which is clearly secondary to the dwelling use for living purposes and/or does not change the residential character thereof.

**PUBLIC ASSEMBLY USE:** Includes auditorium, theater, public hall, school hall, meeting hall, church and temple or other places of public meeting.

**PUBLIC UTILITY FACILITY:** A building, structure, pole, overhead or underground lines, mains, easements, rights-of-way or lot used for or in connection with the transmission, distribution or regulation of water, gas, electric, telephone, or other public utility service by a municipal corporation or by a corporation subject to regulations by a state and/or federal regulatory agency.

**QUARRY:** Land used for the purpose of extracting stone, sand, gravel, clay, lime or top soil, or other natural material of a similar nature, for sale or use as a commercial operation.

**RECREATION, INDOOR:** Includes indoor bowling alley, theater, pool hall, ice and roller skating rinks, gymnasium, table tennis hall, swimming pool, hobby workshop and similar places of indoor commercial recreation.

**RECREATION, OUTDOOR:** Includes yacht club, golf course, trap, skeet and archery range, swimming pool, skating rink, riding stable, park, lake and beach, tennis court, outdoor recreation stadium and skiing facility.

**REFUSE:** All putrescible and non-putrescible solid wastes including garbage, rubbish, ashes, incinerator residue, street cleanings, dead animals, offal and solid commercial or industrial wastes.

**RELIGIOUS INSTITUTION:** Includes church, temple, parish house, convent, seminary, and retreat house affiliated with a recognized religious organization.

**RESIDENTIAL USE:** Includes one-family dwelling, two-family dwelling, multiple-family dwelling, and professional residence-office.

**RESTAURANT:** Establishment for the sale and on-premises consumption of food and beverages, including alcoholic beverages.

**RETAIL STORE:** Includes enclosed restaurant, café, shop and store for the sale of retail goods, personal service shop and department store; and shall exclude any drive-up service, free-standing retail stand, gasoline service and automobile repair service, new and used car sales and services, trailer and mobile home sales and service.

**ROOM, HABITABLE:** In any dwelling unit, the rooms used for normal occupancy by persons such as bedrooms, living room, dining room and kitchen.

**SANITARY LANDFILL:** A method of refuse disposal performed by depositing refuse in a natural or man-made depression or trench, compacting it to its smallest practical volume, and covering it with compacted earth in a systematic and sanitary manner as to render the filled land free from health and nuisance problems. Permission for disposal of hazardous materials subject to review by the Broome County Health Department.

**\*<sup>2</sup>SAWMILL:** Any permanent building, site, or place used for milling or cutting of timber into dimensional lumber, whether finished or unfinished.

**SCHOOL:** Includes parochial, private and public schools, nursery school, college, university, and accessory uses; and shall exclude commercially operated school of beauty culture, business, dancing, driving, music and similar establishment.

**SERVICE AREA:** Includes those parts of any lot which are used primarily to provide access for servicing the use on the lot, including land used for delivery of goods, storage and collection of wastes and provision for maintenance.

**SIGN:** A structure, building or part thereof, or device attached thereto, for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public. A sign does not include the flag or insignia or any nation, state or city; nor any political, educational, charitable, philanthropic, religious advertising campaign, provided that such advertising shall not be displayed for a period exceeding thirty days.

**SIGN, ADVERTISING OR BILLBOARD:** A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the same lot.

**SIGN, BUSINESS:** A sign which directs attention to a business, profession, commodity, service or entertainment conducted or provided upon the same lot, including "For Sale" and "For Rent" signs relating to the lot on which they are displayed.

**SIGN, FLASHING:** Any illuminated sign on which the artificial light is not maintained stationary and constant in intensity and color at all times when in use.

**SIGN, GROUND:** A sign erected on a free standing frame, mast or pole located in or on the ground.

**SIGN, ILLUMINATED:** Any sign designed to give forth any artificial light, or designed to reflect such light deriving from any sources which is intended to cause such light or reflection.

**SPECIAL USE PERMIT:** Permission or approval granted by the Board of Appeals in accordance with Article VI in situations where provision therefor is made by the terms of this Local Law.

**STABLE:** A building in which horses and other domesticated animals are housed for public or private use, remuneration, hire or sale.

**STORAGE, ENCLOSED:** Enclosed buildings used for the keeping of goods, wares, supplies or equipment.

**STORAGE, OPEN:** Land used for the keeping of goods, wares, supplies, or equipment.

**STORY:** That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it.

**STORY, HALF:** A story under the gable, hip or gambrel roof, the wall plates of which on at least two (2) opposite interior walls are not more than two (2) feet above the floor of such stories.

**STREET:** A road or highway maintained by state or municipal authority; the word street includes all drivestrips, malls, sidewalks and other appurtenances located within the right-of-way boundaries of a street.

**STREET BOUNDARY:** That common property line between a public right-of-way and the non-highway property abutting it.

**STREET, CENTERLINE:** A line midway between and parallel to two street frontage property lines.

**STREET, FRONTAGE:** Those lot lines which abut a public street.

**STREET GRADE:** The officially established grade of the upon which a lot fronts. If there is no officially established grade, the existing grade of the shall be taken as the street grade.

**STREET LINE:** The right-of-way line of a street as dedicated by a deed or record. Where the width of the street is not established, the street line shall be considered to be twenty-five feet from

the center of the street.

**STRUCTURE**: Anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground.

**SWIMMING POOL**: Any artificial body of water designed with a water impervious lining, having a depth at any point greater than two feet, used or intended to be used for swimming or bathing, and constructed or installed of permanent materials other than earth in or above the ground out-of-doors.

**TEMPORARY RESIDENCE**: Any habitable unit which is not the occupant's legal address for a period not to exceed ten (10) months.

**THEATER**: A building or part of a building devoted to the performing arts.

**THEATER, DRIVE-IN**: Open land with its appurtenant facilities, devoted primarily to the showing of moving pictures or theatrical productions, to patrons seated in automobiles or on outdoor seats.

**TOURIST HOME OR BED AND BREAKFAST**: A dwelling in which overnight accommodations are provided for transient guests for compensation.

**TRAVEL TRAILER**: Includes any vehicle used as sleeping or living quarters, mounted on wheels or on supports and includes an automobile trailer or travel trailer equipped with living or sleeping facilities, a house car, a vehicle which is customarily self-propelled, towed by an automobile or truck and is used for carrying goods, property, machinery, boats, camping equipment, or as an office, and is capable of being transported on public roads.

**TRAILER PARK**: Shall mean any site, lot, field, or track of ground upon which two or more trailers are placed, and shall include any building, structure, tent, vehicle or enclosure used or intended to be used as a part of the equipment of such park.

**TREE, SHADE**: Includes trees such as maple, oak, sycamore, fir, spruce, hemlock, birch, ash, tulip, maidenfern, linden, locust, alder, dogwood, magnolia, chestnut, hawthorn, which are at least ten feet in height, and at least two inches in diameter measured at a point six inches above finished ground level.

**TRUCK**: A wheeled vehicle designed for transport of goods and materials primarily and commonly propelled or towed by means utilizing an internal combustion engine.

**USE**: The specific purpose for which land, building or structure is designed, intended, arranged, used or maintained.

**USE, ACCESSORY**: A use of land, including improvements necessary thereto, customarily

incidental and subordinate to the principal use and located on the same lot with such principal use.

USE, PERMITTED: Any use specifically allowed in the district, excluding illegal uses.

VACANT LOT: A parcel of land having no building or other structure or facilities thereon.

WAREHOUSE: Includes warehouse, wholesale establishment, discount house, bulk storage and bulk sales outlet.

YARD: An open space on the same lot with a building, unoccupied and unobstructed from the ground upward except as otherwise provided herein.

YARD, FRONT: The area extending across the full width of a lot and lying between the front lot line of lot and the front building line of the principal building.

YARD, REAR: An open unoccupied space on the same lot with the building between the rear line of the building and the rear line of the lot and extending the full width of the lot.

YARD, SIDE: An open unoccupied space on the same lot with the building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

*Local Law Filing*

NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET, ALBANY, NY 12231

**(Use this form to file a local law with the Secretary of State.)**

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Sanford \_\_\_\_\_ *FILED* \_\_\_\_\_

Local Law No. 4 of the year 2006.

DEC 18 2006  
STATE RECORDS  
DEPARTMENT OF STATE

A local law amending the Town of Sanford Land Use Management Local Law

Be it enacted by the Town Board \_\_\_\_\_ of the

Town of Sanford \_\_\_\_\_ as follows:

See attached sheets.

(If additional space is needed, attach pages the same size as this sheet, and number each.)



A LOCAL LAW AMENDING THE TOWN OF  
SANFORD LAND USE MANAGEMENT LOCAL LAW

Be it enacted by the Town Board of the Town of Sanford as follows:

Section 1.

The Land Use Management Local Law of the Town of Sanford, Broome County, N.Y. be and hereby is amended by this Local Law as follows:

The following area situate on County Route 28 (formerly Old NYS Route 17) presently located in an Agricultural (A) District is hereby rezoned and designated Residential (R) District, subject to all regulations created and established relative to said Residential (R) District:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Sanford, Broome County, State of New York, bounded as follows:

Easterly by Broome County Tax map no. 201-1-16;  
Southerly by the lands of Pennsylvania Lines, LLC (the railroad property);  
Westerly by Kenyon Hill Road;  
Northerly by County Route 28 (formerly Old NYS Route 17).

Said parcel contains the following tax map parcels:

<u>Tax Map No.</u>	<u>Address</u>	<u>Reputed Owner(s)</u>
201.04-1-5	2822 Old Rt.17	Joan P. Koch
201.04-1-6	2830 Old Rt 17	Rose Ann Wank
201.04-1-7	2840 Old Rt.17	David M. Katen
201.04-1-8	2808 Old Rt.17	Robert Macumber
201.02-1-15	2852 Old Rt.17	Haden & Pauline Creagh
201.04-1-9 (portion of)	800 Kenyon Hill Rd	Garrell B. Wuebben
201.02-1-25.1(portion of)	123 NYS Rte 41	Dew-Dec Farms,Inc.

Section 2. Separability

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

**Section 3.Repealer.**

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

**Section 4. Effective Date**

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

C:\Documents and Settings\user\All Work Files\Sanford Local Laws\Dew Dec etc Land Use LL amend.wpd

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as Local Law No. 4 of 2006 of the Town of Sanford was duly passed by the Town Board on December 12, 2006 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ was duly passed by the \_\_\_\_\_, and was \_\_\_\_\_ by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_, 2006, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 2006 of the \_\_\_\_\_ of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ and was \_\_\_\_\_ by the \_\_\_\_\_ on \_\_\_\_\_. Such local law was submitted to the people by reason of a \_\_\_\_\_ referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the \_\_\_\_\_ election held on \_\_\_\_\_, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 2006 of the \_\_\_\_\_ of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ and was \_\_\_\_\_ by the \_\_\_\_\_ on \_\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Chaner revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of \_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the \_\_\_\_\_ election held on \_\_\_\_\_ became operative.

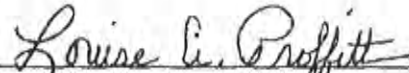
6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 2006 of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

Dated: December 12, 2006

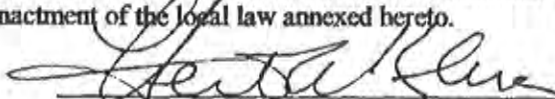
  
\_\_\_\_\_  
Louise A. Proffitt, Town Clerk of the  
Town of Sanford

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK :  
: ss:  
COUNTY OF BROOME :

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

  
\_\_\_\_\_  
Herbert A. Kline

Town Attorney  
\_\_\_\_\_  
Title

Town of Sanford  
\_\_\_\_\_

Date: December 12, 2006  
\_\_\_\_\_

## ARTICLE III. ESTABLISHMENT OF LAND USE MANAGEMENT DISTRICTS

### Section 301. Land Use Management Districts

For the purpose of this Local Law, the Town of Sanford is hereby divided into the following districts:

	District	Abbreviations	Section
A)	Residential	R	401
B)	Residential Multiple	RM	402
C)	Agricultural	A	403
D)	Mobile Home District	R-MH	404
E)	Commercial	C	405
F)	Special	S	406
G)	Limited Industrial	L-I	407
H)* <sup>6</sup>	Lake Protection Overlay	LPO	526

### Section 302. Land Use Management District Map

- A. The Land Use Management Districts are shown, defined and bounded on the map accompanying this Local Law entitled "Official Land Use Management District Map-Town of Sanford," which with all explanatory matter thereon is hereby made by this Local Law. The Land Use Management District Map dated May, 1992, as amended, shall be on file in the Office of the Town Clerk.
- B. \*<sup>3</sup> Local Law #1 - 1992, the Land Use Management Local Law of the Town of Sanford, be and hereby is amended by Local Law #2-1997 as follows:  
The Land Use Management Map referenced in Section 302 is hereby amended by changing the Land Use Management District designation of the property located at 108 Shaver Hill Road, Tax Map #187.03-1-18 from "Residential" to "Agricultural".
- C. \*<sup>6</sup> The Lake Protection Overlay District includes all land surrounding Oquaga Lake and extending to the centerline of Oquaga Lake, Hanson, and Golf Course Roads, which surround Oquaga Lake. This boundary extends across all underlying zoning districts.

**Section 303. Interpretation of Land Use Management District Boundaries.**

Where uncertainty exists with respect to boundaries of any land use management district as shown on the Land Use Management District Map, the following rules shall apply:

- A) Questions concerning exact location by the district boundary lines shall be resolved by the Board of Appeals.
- B) Where district boundaries are indicated as approximately following the center lines of streets, railroad lines, or streams, such center lines shall be construed to be such boundaries.
- C) Where district boundaries are indicated that they approximately follow the lot lines, such lot lines shall be construed to be the boundaries.
- D) Where district boundaries are indicated that they are approximately parallel to the center lines of streets, such district boundaries shall be construed as being parallel thereto and such distances therefrom as indicated on the Land Use Management District Map. If no distance is given, such dimensions shall be determined by the use of the scale shown on the Land Use Management District Map.

**ARTICLE IV. LAND USE MANAGEMENT DISTRICT REGULATIONS**

The following schedules of land use management districts define the requirements for each land use management district in the Town of Sanford, Broome County, N.Y.

## ARTICLE V. SUPPLEMENTARY REGULATIONS

### Section 501. Supplementary Regulations

The provisions of this Local Law shall be subject to such additions, modifications, or exceptions as provided herein by the following.

### Section 502. Special Parking and Loading Requirements

- A) The Planning Board may require off-street parking and loading spaces for any use if they find that for any particular use minimum spaces are not sufficient for the safety and general welfare of the public.
- B) All parking and loading spaces shall be on the same lot as the building, except that with the approval of the Planning Board and upon issuance of a special use permit by the Board of Appeals, parking spaces may be provided by the applicant on other property, provided such land lies within four hundred (400) feet of an entrance to the principal building.
- C) Parking spaces for any number of separate uses may be combined in one parking lot, but the required space assigned to one use may not be assigned to another at the same time, except for churches, theaters or assembly halls.
- D) Where any non-residential district or use abuts a residential district or use, the parking space and loading space shall be no closer than twenty-five (25) feet to the property line abutting the residential district.
- E) Lighting used to illuminate off-street parking and loading areas shall be indirect or diffused and installed so as not to reflect direct rays upon adjoining property.

### Section 503. Accessory Uses

- A) Garages
  - \*<sup>4</sup>(1) For purposes of this Local Law, an attached garage or detached garage or carport shall be deemed a part of the principal building and regulated as such.
  - (2) No garage shall be designated to accommodate more than three (3) vehicles in any Residential District, nor more than two (2) vehicles per residential unit in any Residential-M District.

B) Outbuildings, storage sheds, greenhouses, and all similar accessory use buildings.

Each lot in a Residential or Special district may have one (1) of the above such accessory use building detached from the principal structure for private use, subject to any more specific regulations set forth in this law.

C) Fences, Walls, and Hedges

Fences, walls, and hedges are permitted within any required yard subject to any more specific regulations set forth in this law.

Section 504. Signs

No signs or billboard shall be permitted on any district except as specifically permitted herein as follows in Sections 505-508.

Section 505. Signs - Residential and Agricultural Districts

A) Permitted signs when located on the immediate property subject to the following limitations:

1) One (1) sign not exceeding six (6) square feet in area may advertise the real property or any part thereof upon which said sign is located as for sale or rent.

2) One (1) sign for a church, institutional, recreational or other public use, provided such sign shall not exceed sixteen (16) square feet in area.

B) Signs necessary for the protection of a public utility installation or necessary to the public welfare, not exceeding four (4) square feet in area.

C) One (1) sign identifying any non-residential building or use permitted in residential districts, not exceeding six (6) square feet in area.

D) General Regulations - Residential and Agricultural Districts: Each sign permitted in any residential and agricultural district shall conform to the following:

1) A sign shall not be located closer than eight (8) feet to any lot line.

2) A ground sign shall not be constructed to a height greater than six (6) feet from the ground.



3) Roof signs shall be prohibited.

Section 506. Signs - Commercial and Industrial Districts

A) Permitted Signs - When located on the immediate property subject to the following limitations:

1) Signs permitted under Section 505

2) One (1) identifying sign not larger than one (1) square foot for each linear foot of frontage occupied by the establishment, advertising a business, a profession or activity conducted on the premises, but not to exceed 325 square feet per sign.

3) A directory sign provided that it announces only services offered within the buildings located on the premises whereon the sign is located, not exceeding ten (10) square feet in area.

B) General Regulations - Commercial and Industrial Districts

Business signs shall be permitted in Commercial and Industrial Districts subject to the following restrictions:

1) Ground Signs

a) No business sign shall be located within three (3) feet of any lot line

b) No advertising sign shall be located within thirty (30) feet of any front lot line, or within fifteen (15) feet of any other lot line, if a corner lot, it will comply with front yard regulations

c) No ground sign shall be erected exceeding thirty (30) feet in height from the ground

2) Roof signs

a) No roof sign shall be erected closer than three (3) feet to any outside building wall

b) A roof sign shall be securely fastened

c) A roof sign, including supports and braces shall be

constructed entirely of nonflammable material

d) No portion of a roof sign shall be located less than three (3) feet above roof level

e) No portion of a roof sign shall exceed the building limitation set forth for the district in which it is located.

3) Projecting signs

a) A projecting sign shall be double faced. The area of neither face shall not exceed total of fifty (50) square feet

b) No projecting sign except marquees shall overhang a public sidewalk or highway

c) No projecting sign exceeding ten (10) square feet in area on either face of fifty (50) pounds in weight shall be attached to a frame building or the wooden framework of a building

d) Except as permitted in subparagraphs 3, projecting signs shall be attached to masonry walls by (i) galvanized expansion bolts at least three-eighths (3/8) inch in diameter or (ii) by bolts extending through the wall with metal washers or platers of adequate size on the inside of the wall

e) The distance measured between the faces of any projecting sign shall not exceed eighteen (18) inches.

4) Wall signs

A wall sign shall not project beyond the end or top of the wall to which it is attached.

5) Only ground signs shall be allowed for each lot or parcel within a commercial district.

Section 507. Other Provisions Regulating Signs

Signs shall comply with the following:

A) Billboards are not permitted in any district except as provided in Section 505 and Section 506

B) Flashing, oscillating or revolving signs are not permitted

- C) Signs may be illuminated by a steady white light, provided that the light does not shine directly onto other properties
- D) No attached sign shall extend with a street line, unless the street line is also a building line, in which case it may extend over the street line for a distance not exceeding one foot
- E) Back to back signs may be counted as one sign with one face
- F) Signs shall be located in such a manner as not to restrict vision and impair safety.

#### Section 508. Non-Conforming Signs

All legal non-conforming signs may remain. However, any changes or modifications shall be in conformity with these regulations.

#### Section 509. Areas

##### A) Lots in Two Districts

Where a district boundary line divides a lot in single or joint ownership of record at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than thirty (30) feet into the more restricted portion, provided the lot has frontage on a street in the less restricted district.

##### B) Required Area or Yards

No space necessary under this Local Law to satisfy the area, yard or other open space requirements in relation to any building or use, whether now or subsequently built or occupied, shall be counted as part of a required open space in relation to any other lot or building.

#### Section 510. Yards

##### A) Projection in Yards

Every part of a required yard shall be open from its lowest part to the sky unobstructed, except for the ordinary projections of sills, cornices, pilasters, chimneys, eaves, balconies, and ornamental features, provided that no such projections may extend more than three (3) feet into any required yard.

##### B) Obstruction of Vision

In all districts, on a corner lot, within the triangular area formed by the

intersection of two (2) street property lines and a third line joining them a point twenty-five (25) feet away from their intersection, there shall be no obstruction to vision between the height of two (2) feet and the height of ten (10) feet above the grade of the connecting line. The grade of the connecting line is determined by the grades of its intersections with the street centerlines.

C) Porches

Any open or enclosed porch shall be considered a part of the building in the determination of the size of yard or lot coverage.

D) Fire Escapes

Open fire escapes may extend into any required yard not more than four (4) feet six (6) inches.

Section 511. Extraction of Quarried Stone

- A) The removal of less than 1,000 tons of quarried stone for sale over a period of twelve successive months, except when incidental to the construction of a building on the same premises shall meet the following requirements:
- 1) All surface drainage existing or developing by or through the excavation operations shall be controlled by the owner to prevent erosion debris and other loose materials from filling any drainage course, roads, culverts or bridges. All provisions to control natural drainage water shall meet with the approval of the Town Highway Superintendent.
  - 2) No excavation, blasting, or stock piling of materials shall be located within two hundred (200) feet of any of the roads, bridges or culverts without the approval of the Highway Superintendent.
  - 3) No power-activated sorting machinery shall be located within three hundred (300) feet of any roads, bridges, or culverts, without the approval of the Highway Superintendent, and all such machinery shall be equipped with satisfactory dust elimination devices.
  - 4) Excavation slopes in excess of two (2) to one (1) grade, from the 25 foot center of the road right-of-way shall not be permitted. A one (1) foot vertical and two (2) feet horizontal grade shall be adequately fenced when the vertical rise exceeds four (4) feet. Adequacy of the fence shall be determined by the Highway Superintendent.
  - 5) Extension of an existing non-conforming operation shall not be permitted.

6) If at any time a stone quarry is in violation of the above regulations, it shall be the responsibility of the landowner to return the parcel of land to an acceptable condition as determined by the Code Enforcement Officer which may include but is not limited to requiring the landowner to fill in holes and pits, remove mounds of stone and/or dirt, grade the land and take other steps required to protect the public health, safety and welfare.

B) The removal of 1,000 tons or more of quarried stone for sale over a period of twelve successive months must comply with Title 27 of the Environmental Conservation Law of the State of New York.

#### Section 512. Gasoline and Motor Vehicle Service Stations

No gasoline or motor vehicle service station lot shall be located within three hundred (300) feet of any lot occupied by a school, hospital, library or religious institution. Measurement shall be made between the nearest respective lot lines. All service stations shall be so arranged and all gasoline pumps shall be so placed as to require all servicing on the premises and outside the public way; and no gasoline pump shall be placed closer to any side property line than fifty (50) feet, nor closer to any street property line than twenty-five (25) feet. No building or structure shall be located closer than ten (10) feet to any side or rear lot line. No signs shall extend beyond the pumps.

#### Section 513. Septic Tanks and Cesspools

Where in the opinion of the Planning Board a public sanitary sewer main is not reasonably accessible, other proper provisions shall be made for the disposal of sanitary waste. Individual septic tanks may be permitted in the case of lots of not less than one acre.

A) No such septic tanks shall be permitted in swampy areas with a seasonal or permanent high water table, or in areas that are subject to flooding.

B) All septic tank installations shall conform to the requirements of the Broome County Health Department.

#### Section 514. Motor Vehicle Storage in All Districts

In any district, not more than two (2) unlicensed motor vehicles (excluding farm equipment) may be parked or stored on any parcel of land in the front, side or rear yards, unless such motor vehicles are stored or parked in a completely enclosed structure. The term motor vehicle shall be defined in the same manner as stated in the Vehicle and Traffic Law of New York State.

#### Section 515. Number of Principal Uses

There shall be only one (1) principal use on a lot in Agricultural (A), Residential (R), Special (S), and Lake Protection Overlay (LPO) Districts.

Section 516. Fences to Excavation

Excavations with slopes exceeding one (1) to two (2) degrees shall be protected from encroachment by a fence at least five (5) feet in height.

Section 517. Building Coverage, Open Porches, Carports and Garages

In determining the percentage of building coverage of a lot or the size of yards, porches or carports open at the sides but roofed, and all principal and accessory buildings shall be included.

Section 518. Fences

- A. In any Residential or Lake Protection Overlay district any fence or wall except a retaining wall or a building wall permitted by this Local Law shall not exceed six (6) feet in height when erected within any open area, unless that portion of the fence or wall which exceeds six (6) feet contains openings of fifty (50) percent or more of the area of the portion of the fence or wall above six (6) feet high. Barbed wire fencing shall not be permitted except in agricultural districts.

Section 519. Height Exceptions

Except within five thousand (5,000) feet of an aircraft landing strip, nothing herein contained shall be interpreted to limit or restrict the height of church spires, cupolas, bell and clock structures.

Section 520. Height Exceptions by Special Use Permits

No radio or television towers, water or cooling towers, gas holder, elevator bulkhead, chimney, fire or observation towers, or essential public utility structures or similar structures in excess of sixty (60) feet may be erected unless reviewed by the Planning Board and after issuance of a special use permit by the Board of Appeals.

Section 521. Construction Approved Prior to Adoption or Amendment to Local Law

Nothing herein contained shall require any change in plans or construction of a non-conforming building for which a building permit has been issued.

Section 522. Issuance of a Permit for Construction of a Pond

No man-made pond shall be constructed until a pond permit has been issued by the Code

Enforcement Officer. All applicants shall submit the following:

- A) Name, address and telephone number of the applicant.
- B) The proposed location of the pond including the name of the road and the tax map number of the parcel of land.
- C) A plot plan showing the size and location of the pond including the following:
  - 1) the size of the pond and the estimated gallons of water in the pond;
  - 2) the distance of the pond from the road; and
  - 3) the type and location of drainage ditches and overflow channels.
- D) The applicant must show that approval of the Department of Environmental Conservation has been obtained or that such approval is not required.
- E) The application must be submitted to the Town Highway Superintendent and he must approve the pond prior to issuance of the permit.

### Section 523. Non-Conforming Uses, Buildings and Structures

The lawful use of any building or land existing at the time of the enactment or amendment of this Local Law may be continued, although such use does not conform with the provisions of this Local Law.

#### A) Temporary Uses and Structures

Temporary permits may be issued by the Board of Appeals for a period not exceeding one (1) year, for nonconforming uses incident to construction projects, provided such permits are conditioned upon agreement by the owner to remove the structure or use upon expiration of the permit. Such permits may be renewed upon application for an additional period not exceeding one (1) year.

#### B) Discontinuance

When a non-conforming use has been discontinued for a period of twelve (12) months, such use shall not thereafter be re-established, and any future use shall be in conformity with the provisions of this Local Law.

C) Change of Use

No non-conforming use shall be changed to other than a conforming use for the district in which it is situated. Once changed to a conforming use, no building or land shall be permitted to revert to a non-conforming use.

D) Restoration

A non-conforming building damaged by fire or other similar acts of God may be repaired or rebuilt provided that the non-conformity shall not be increased and that construction starts within a period of one (1) year from the date of the damage.

E) Extension

A non-conforming use, building or structure shall not be extended, expanded or enlarged.

\*6SECTION 524. Site Plan Review

A building permit shall not be issued for any of the uses in the Schedule of Regulations which require site plan review until a site plan for such lot or plot has been duly approved by the Planning Board in accordance with the following procedures.

Even if a site plan review is not required pursuant to the Schedule of Regulations herein, site plan review shall be required prior to the issuance of a building permit for any use in a Commercial, Limited Industrial, or Lake Protection Overlay District.

SECTION 524.1 Submission of Site Plan

Prior to the issuance of a building permit, a site plan for such lot or tract as a scale of 1"=50' or a scale less to the inch, prepared by an architect, landscape architect, civil engineer, surveyor, land planner or other competent person, (unless, in view of the specific nature of that application, preparation by such a professional is expressly waived by the Planning Board) including thereon the following information shall be submitted to the Town Planning Board for approval:

- a. Preliminary architectural or engineering plans including elevations showing the use, location and dimensions of proposed building and open spaces.
- b. A site plan showing the location of buildings, location and dimensions



of driveways, driveway intersections with streets, parking areas and maneuvering areas.

- c. A storm drainage and grading plan for analysis of proposed handling of surface water runoff and erosion control, including, where applicable under State or Federal Requirements, a Storm Water Notice of Intent and a Storm Water Pollution Prevention Plan.
- d. A plan showing utilities and utility easements including method of sewage disposal in detail. If a private disposal system is used, plans for the system shall bear the stamped approval of the Broome County Health Department.
- e. Plans for all signs to be erected including dimensions, elevations and sign locations.
- f. A landscape plan, prepared by a professional landscape architect or other competent person employed by a commercial garden center, showing landscaping to be installed and maintained in front, side and rear yards as developed, including shade trees, deciduous shrubs, evergreens, defined areas of well-kept grassed areas and ground cover. All such landscaping, grassed areas and ground cover areas shall be maintained in a healthy growing condition at all times.
- g. Plan of lighting of any interior roadway, driveway, parking area, and off-street loading area.
- h. In all cases where the Planning Board shall deem it advisable to determine whether or not the facility will be in conformation with the applicable performance standards or other provisions of this ordinance, the Planning Board shall require adequate testing procedures and shall utilize expert assistance at the expense of the applicant.

#### SECTION 524.2 Site Plan Action

The Town Planning Board shall review said site plan and additional information and shall approve, approve with modifications or disapprove said site plan with regard to achieving without limitations thereto the following objectives:

- a. A harmonious relationship between such uses and uses located in adjacent districts as reflected in the Comprehensive Plan.
- b. The maximum safety of vehicular access and egress from the site to existing and prospective streets and highways.
- c. The maximum adequacy of interior circulation and parking facilities with particular attention to vehicular and pedestrian safety.
- d. The adequacy of transitional landscaping and setbacks in regards to achieving maximum compatibility and protection to adjacent property.

Any approval of site plan review by the Planning Board pursuant to this article shall be valid only for so long as the premises which are the subject of site plan approval are used for the specific use and purposes stated in that application; therefore, if at any future time the applicant or a successor in interest, assignee or lessee shall wish to dedicate the premises to any other use, he shall make a new application for site plan review in accordance with the provisions of this section. Should any previously approved site plan activity be discontinued for a period of more than 180 consecutive days (except for uses that typically close on a seasonal basis), such prior site plan approval shall lapse, and an application shall be made for re-issuance of said approval prior to the reopening of said activity.

#### SECTION 524.3 Building Permit

Building permits shall be issued by the Enforcement Officer in cases where site plan approval is required only after receipt of approval from the Planning Board. The Planning Board shall transmit the application with its written finding to the Enforcement Officer within 75 days. A failure to act within 75 days of the receipt of the application will permit the Enforcement Officer to act without the Planning Board's recommendation.

- a. Changes – an applicant wishing to make any changes in a duly reviewed site plan shall make application for a new building permit.
- b. In the event that an applicant fails to obtain a building permit within one year of site plan approval, the site plan approval of the Planning Board shall be null and void.

#### SECTION 524.4 Standards

The Town Planning Board shall apply the standards listed for each applicable District and the objectives of Section 524.2 to determine that the requirements of this section are met.

\*2SECTION 525. Sawmills. A special use permit shall be required for the operation of a

sawmill in an Agricultural or Limited Industrial District, pursuant to the requirements set forth in Sections 605-610. In addition to the general requirements specified in Sections 606 and 607, which are applicable to all special use permit requests, the following specific requirements for a sawmill shall be complied with unless such requirements are modified by the Planning Board in the special use permit review process.

A) Any sawmill proposed for use in an Agricultural District shall conform to the following requirements:

- 1) No mill yard site shall be located within 1000 feet of any school, hospital, religious institution or library.
- 2) Notification of any proposed sawmill location shall be given to all properties within one-quarter mile of the proposed mill yard prior to the public hearing required under §605(8).
- 3) An appropriate buffer strip of no less than 500 feet shall be provided between the mill yard and any abutting residential property. Said buffer strip should preferably be wooded.
- 4) In order to mitigate noise impact on neighboring properties, the mill operator shall:
  - a. Maintain EPA-approved mufflers in proper and working condition at all times for all vehicles used on-site during operation;
  - b. Limit all on-site manufacturing operations to Monday - Saturday, 6:00 a.m. to 7:00 p.m. No truck operation or deliveries shall occur after 9:00 p.m.
- 5) If within one year after commencement of sawmill operation, the Town Clerk receives bona fide complaints filed by near-by land owners, the Zoning Board shall analyze the complaints to determine if noise impacts are significant. If the Board determines that the noise impacts are significant, the Board shall provide certified notification to the mill operator. Upon receipt of such certified notification from the Board, the mill operator shall develop, within 45 days of such notification, a noise control program acceptable to the Board. (The mill operator shall be allowed to continue operations during this period).

Upon Board approval of the noise control plan, the plan shall be implemented within 60 days or such other reasonable time as the Board may specify.

The Board reserves the right to hold a public hearing prior to requiring additional noise control measures.

- 6) Changes in hours of operations, installation of additional equipment, substantially increased wood production, or construction of additional structures shall require Board approval.
  - 7) In addition to the standard requirements for Site Plan Review, any applicant shall submit certain additional information with their application. A worksheet will be provided by the Office of Code Enforcement.
  - 8) Extension of an existing non-conforming operation shall not be permitted.
- B) In addition to the special use permit requirements, all saw mills proposed for location in a Limited Industrial District shall conform to the requirements set forth in subparagraphs (A)(4), (A)(5) and (A)(7) of this section.

Additionally, the Board may, in its discretion, require conformance to the requirement set forth in subparagraphs (A) (1), (A) (2) , (A) (3), (A) (6), or (A)(8) of this section."

#### \*6SECTION 526 LAKE PROTECTION OVERLAY DISTRICT.

##### 526.1 ALLOWABLE USES

- A. Properties that fall within the Lake Protection Overlay District, as described in this Law, and shown on the zoning district map shall comply with the standards set forth in this section regulating activity within the Lake Protection Overlay District. These requirements shall be considered in addition to use restrictions or other applicable regulations for each zoning district.
- B. In the event that regulations imposed by this ordinance conflict with regulations of an underlying zoning district, the regulations established by this ordinance shall prevail to the extent of the conflict and no further.

##### 526.2 REQUIREMENTS TO RECEIVE SITE PLAN APPROVAL

Prior to the issuance of any building permit, and prior to any building construction, reconstruction, alteration, earth moving or removal of vegetation within the Lake Protection Overlay District, all of the following criteria must be met:

- i) A Site Plan application meeting the requirements outlined in Section 524 and Section 526.4 shall be submitted to the Code Enforcement Officer for review and approval by the Town Planning Board;

ii) Site Plan Approval shall be withheld pending verification that the applicant has received all required county, state or federal permits.

iii) This ordinance is intended to supplement the New York State Department of Environmental Conservation's (DEC) authority over the review of applications and issuance of permits for construction activities. If a permit or approval has been issued by the DEC for a building, structure, or any grading, filling, earth moving, clearing, or removal of vegetation within the jurisdiction and scope of DEC regulations set forth above, a copy of such permit shall be filed with the Code Enforcement Officer, and such permit or approval shall be attached to and made a condition of performance for any permit issued under this Section.

## B. Site Plan Data Required

In addition to the site plan information required pursuant to Section 524.1, any application for Site Plan Review in a Lake Protection Overlay District shall contain the following additional information:

- i. a perimeter line which encompasses all proposed activities, and identifies the location and extent of the Lake Protection Overlay District boundary, together with all rights of ways and easements which may be affected by the project.
- ii. A detailed description of outdoor lighting. All lighting fixtures must direct light downward and prevent spillover of lighting to adjacent properties. Use of exterior lighting continuously during nighttime hours shall be discouraged.
- iii. A plan for controlling traffic to the lakefront, detailing construction and maintenance of paths, stairs or boardwalks.
- iv. If applicable, a grading Plan that delineates areas of cut and fill, and identifies changes in topography and drainage. If the area to be graded exceeds 2,500 square feet the applicant shall submit a map showing the existing contours of the site and finished contours to be achieved by grading. Contours shall be sufficiently detailed to define the topography over the entire site (generally at two-foot intervals).
- v. Detailed drawings and descriptions of all temporary and permanent soil erosion and sedimentation control measures, and bank stabilization measures.
- vi. Detailed visual analysis, containing photographs of the existing views and photo simulation showing the completed project from various vantage points..
- vii. Detailed drawings delineating areas to be cleared of vegetation before and during development activities, with area calculations and descriptions of the vegetation to be removed, and detailed drawings and descriptions of proposed vegetation restoration for those same areas.

C. Any application for Site Plan Review in the Lake Protection Overlay District shall be immediately forwarded to the Oquaga Lake Improvement Association.

D. Due notice, referral to the appropriate agencies and a public hearing shall be conducted on each application for a site plan review in a Lake Protection Overlay District, in accordance with the notice and procedural provisions set forth in sections 605-607 of this Article.

## 526.4 MISCELLANEOUS REGULATIONS

A. No structures, other than docks, shall be allowed to extend over the water. Docks shall be subject to the requirements set forth in Section 526.5.

B. The use of Pesticides and Lawn Fertilizers shall not be permitted in the Lake Protection Overlay District.

C. Maximum building heights for single-family detached dwellings shall not exceed thirty-five (35) feet.

D. Accessory structures shall not exceed a maximum height of fifteen (15) feet.

E. Outdoor storage of boats and equipment shall be adequately buffered using trees, vegetation and/or berms to screen the items being stored from adjacent properties and from the lake. The adequacy of the buffering shall be determined by the Town Planning Board as part of the site plan review and approval process.

### 526.3 SETBACK REQUIREMENTS

(Section 526.3 amended by LL 1-2006; 4/11/06 - new language is underlined)

A. All structures proposed to be built within the Lake Protection Overlay (LPO) District shall be set back according to the requirements below, except for the following uses: pump houses, recreational docks at approximate water level, storm water and erosion control devices, movable picnic tables and benches, and stairways and walkways. For purposes of this section, fences, boathouses, sheds, garages, storage units, and cabanas shall all be included in the definition of a structure.

B. No structure shall be allowed within 35 feet of ordinary high water mark.

C. Where the imposition of the above setback precludes the location of a dwelling, other primary structure or any other structure within the meaning of this section, the applicant may request an area variance for relief of the setback requirement. The Town's Zoning Board of Appeals shall review each application in accordance with Article VI of this Law. In considering any variance pursuant to this section, the Zoning Board of Appeals shall take into consideration each of the standards listed in §526.4(A) of the LUMLL, and shall grant the variance only upon a determination that those factors are impacted by the proposed project to the minimum extent possible.

**D. No variance shall be granted for any use or structure in violation of the intent and purpose of this Article.**

### 526.4 SITE PLAN APPROVAL STANDARDS

A. In addition to Site Plan Review Standards set forth elsewhere in this Law, the following standards shall be considered by the Town Planning Board when reviewing any Site Plan submission in the Lake Protection Overlay District:

- i. The Site Plan shall demonstrate that the impact to fish, birds, wildlife and native vegetation is minimized by preserving natural habitat.
- ii. The Site Plan shall demonstrate that erosion and sedimentation shall be prevented, and that the risk of structural loss due to future changes in lake levels is minimized.
- iii. The Site Plan shall demonstrate that the natural character and aesthetic value of the shoreline is maintained by minimizing the visual impact of the development.
- iv. Site development shall be fitted to the topography and soil so as to create the least potential for vegetation loss and site disturbance.
- v. All structures shall be located to maintain an open and unobstructed view to the waterfront from adjacent properties, roadways and pedestrian ways, to the maximum extent possible.

F. Where practical, trees with a diameter of six (6) inches or greater shall be retained on the site.

G. Commercial vessels used for dock construction shall not be permitted on the Lake when there are no outstanding permits for dock construction.

#### 526.5 DOCKS

A. A permit shall be required prior to commencement of construction, modification or installation of any dock, except that a permit is not required to repair, maintain or replace in-kind an existing dock where:

1. Its current configuration has been previously permitted,
2. The repairs do not change the size, shape, location or height, and
3. No work on cribbing below mean high water level is proposed.

B. Permits shall be subject to the following conditions:

1. Piers and docks shall have a maximum height above Mean High Water Mark of eighteen inches (18"). There shall be no superstructure permitted above the decks of piers or docks.

2. No pier or dock shall be constructed in a configuration other than straight or T-, L- or U- shaped.

3. The width of any dock shall not exceed twelve (12) feet, and the length shall not exceed twenty-five (25) feet from the Mean High Water Mark out into the Lake.

4. Every dock shall have a minimum clearance or setback of ten (10) feet from adjacent property lines, as extended at a ninety-degree angle from the lakefront.

5. Lighting of the surface of any pier or dock shall be provided in such a manner as not to produce any offensive glare when viewed from the water or land. The use of lowmast lighting fixtures and deflector shields to direct lighting downward shall be required to reduce or eliminate glare. Any waterfront electrical work must be installed and certified by a licensed electrician.

6. The number of private piers or docks permitted for each waterfront lot used for single-family residential purposes shall not exceed the following:

- i. One hundred (100) feet or less of water frontage: a total of one (1) such structure, which may be in the straight configuration only.
- ii. One hundred one (101) to two hundred fifty (250) feet of water frontage: a total of two (2) such structures, in any permitted configuration.
- iii. Two hundred fifty one (251) or more feet: a total of three (3) such structures, in any permitted configuration.

7. No dock construction shall be permitted between the dates of May 15 and September 15 of each year. Maintenance and repair of existing docks, and reinstallation of temporary docks, shall be permitted.

C. A permit is required from the Department of Environmental Conservation for work lakeward of the Mean High Water Level, including the construction of seawalls or riprap, installation of waterlines and cables, placement of sand, and dredging.



## ZONING BOARD OF APPEALS RULES

### **SECTION 601. General Governing Rules**

601.1.1 The Zoning Board of Appeals of the Town of Sanford shall be governed by the provisions of all applicable state statutes, local laws, ordinances and these rules.

601.1.2 The term "Board" as used in these rules shall mean the duly appointed Zoning Board of Appeals of the Town of Sanford.

601.2.1 The Board shall become familiar with the community goals, desires and policies as expressed in a "comprehensive plan," and in rendering decisions shall be guided by such plan, and grant the minimum relief which shall ensure that the goals and policies of the plan are preserved and substantial justice is done.

### **SECTION 602. Officers and Duties**

602.1.1 The officers of the Board shall consist of a chairman, acting chairman and secretary.

602.2.1 Chairman. The chairman shall be designated by the Town Board. He/She shall perform all duties required by law, ordinance and these rules. He/She shall preside at all meetings of the Board. The chairman shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board. The chairman shall appoint any committees found necessary to carry out the business of the Board. The chairman may administer oaths and compel the attendance of witnesses as necessary to carry the business of the Board. The chairman's signature shall be the official signature of the Board and shall appear on all decisions as directed by the Board.

602.3.1 Acting Chairman. An acting chairman shall be designated by the Board of Appeals to serve in the absence of the chairman. He/She shall have all the powers of the chairman during his/her absence, disability or disqualification.

602.4.1 Secretary. A secretary shall be designated by the Board of Appeals. The secretary, subject to the direction of the Board and the chairman, shall keep minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of all Board examinations and other official actions.

602.5.1 Vacancies. Should any vacancy on the Board occur for any reason, the secretary shall give immediate notice thereof to the Town Clerk for the Town Board.

602.5.2 Should such a vacancy occur among the officers of the Board subject to election by the Board, such office shall be filled by election, for the unexpired term, at the next meeting of the Board.

602.5.3 Should the office of chairman become vacant, the secretary shall add such fact to the notice required in section 602.5.1 of these rules. The acting chairman shall handle the duties of the chairman until such time as the Town Board shall appoint a new chairman.

### **SECTION 603. Meetings**

603.1.1 Regular Meetings. The regular meetings of the Board shall be held on the last Tuesday of each month at 7:00 pm in the Sanford Town Hall, unless there is no activity on the agenda, in which case the meeting may be canceled.

603.1.2 Annual Meeting. The annual organizational meeting of the Board shall be the first regular meeting of the year.

603.2.1 Special Meetings. Special meetings of the Board may be called by the chairman. At least forty-eight (48) hours' written notice of the time, place and business of the meeting shall be given each member of the Board.

603.2.2 The chairman shall call a special meeting within ten (10) days of receipt of a written request from any three members of the Board, which request shall specify the matters to be considered at such special meetings.

603.3.1 Cancellation of Meetings. Whenever there are no appeals or applications for variance or other business at a regular meeting, the chairman may dispense with such meeting by notice to all members not less than forty-eight (48) hours prior to the time set for such meeting.

603.4.1 Proceeding. The order of business at regular meetings shall be as follows: (a) roll call; (b) reading and approval of minutes of preceding meeting; (c) action on held-over cases; (d) public hearing (when scheduled; see section 606.4.1); (e) other business; (f) adjournment.

603.5.1 Meetings. All meetings of such Board of Appeals shall be open to the public to the extent provided in article 7 of the Public Officers Law.

### **SECTION 604. Voting**

604.1.1 Quorum. A quorum shall consist of a majority of the members of the Board.

604.1.2 No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the chairman to call a special meeting for a subsequent date. All subsequent hearings shall be re-advertised in accordance with the requirements of the applicable law.

604.2.1 Voting. All matters relating to a petition for appeal or application for special permit shall be decided by roll call vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the Board unless otherwise specified herein.

604.2.2 A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.

604.2.3 No member of the Board shall sit in hearing or vote on any matter in which he/she is personally or financially interested. Said member shall not be counted by the Board in establishing the quorum for such matter.

604.2.4 No member shall vote on the determination of any matter requiring public hearing unless he/she has attended the public hearing thereon; however, where such member has familiarized himself/herself with such matter by reading the record, he/she shall be qualified to vote.

## **SECTION 605. Appeals and Procedures**

605.1.1 Appeals. The Board shall hear and decide appeals from and review any order, requirement, decision, interpretation, or determination made by an administrative official charged with the enforcement of any ordinance or local law adopted pursuant to article 16 of the Town Law. It shall also hear and decide all matters referred to it or upon which it is required to pass under any other law. Such an appeal may be taken by any person aggrieved, or by any officer, department, board or bureau of the town.

### **605.1.2 Filing of Appeals**

a. An appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the administrative officer charged with the enforcement of such ordinance or local law.

b. The applicant must file a notice of appeal with the administrative official from whom the appeal is taken and with the Board of Appeals and the notice of appeal must specify the grounds therefor and the relief sought. If Planning Board review is not necessary, the notice of appeal shall be accompanied by fee of fifty dollars (\$50.00), seven (7) sets of plans, and other descriptive matter to portray clearly the intentions of the applicant. Such plans shall show the location of all buildings, parking, access and circulation, open space, landscaping, and any and all other information necessary for the Board of Appeals to make a determination. If Planning Board review is necessary, the fee shall be seventy-five dollars (\$75.00) and twelve (12) sets of plans and accompanying documentation shall be required.

c. The administrative official from whom the appeal is taken shall be responsible, at the direction of the Board of Appeals, for providing the applicant with proper forms including environmental quality review forms, if applicable, and for instructing the applicant in the manner for completing the filing said forms. All information thereon shall be completed before an appeal is considered filed.

d. The administrative official from whom the appeal is taken shall forthwith transmit six (6) copies of all the papers constituting the record upon which the action appealed from was taken to the Board, one (1) copy of all such papers to the attorney for the Town, and five (5) copies to the Planning Board, if such review is required. If the appeal involves a property in the Lake Protection Overlay District (LPO), the official shall also send one copy of such papers to the Oquaga Lake Improvement Association.

e. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board prior to the hearing of appeal.

f. The proper forms must be filed no later than the 10th day of the prior month for an appeal requiring review by the Broome County Planning Department and no later than the 20th day of the prior month for appeals not requiring Broome County review. If the petition for the appeal is not filed by said dates, then the appeal will not be heard at the Zoning Board of Appeals meeting held during the month immediately following the month when the appeal is filed, and will be scheduled for a subsequent monthly meeting.

605.1.3 Amendments to Appeals. Appeals may be amended fifteen (15) days prior to the public hearing thereon.

605.1.4 Notice to Applicant. The applicant shall be notified by letter within five (5) days of the hearing on his/her application or of his/her failure to complete his/her application properly.

605.1.5 Assistance to the Board. The Board shall have authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board. Such department, agency or employee shall be reimbursed for any expenses incurred as a result of such assistance.

605.1.6 Stay upon Appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the Board, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay, would, in his/her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

605.1.7 Compliance with State Environment Quality Review Act. The Board shall comply with the provisions of the State Environmental Quality Review Act under article 8 of the Environmental Conservation Law and its implementing regulations as codified in title 6, part 617 of the N.Y. Comp. Codes R. & Regs.

## **SECTION 606. Hearings**

606.1.1 Time of Hearing. The Board shall schedule a hearing of all appeals or applications within ninety (90) days of the filing of the complete appeal or application.

606.2.1 Notice of Hearing—Zoning Appeals. The Board shall give notice of the hearing at least five (5) days (section 267, subdivision 7, Town Law) prior to the date thereof by publication in the official town newspaper.

606.2.2 Notice of Hearing—Official Map Appeals. The Board shall give public notice of the hearing at least ten (10) days prior to the date thereof by publication in a newspaper of

general circulation in the town, in accordance with section 279 of the Town Law, for appeals from the Town Official Map.

606.2.3 Notice of Hearing—Appeal to Build on Unimproved or Unmapped Street. Same as section 6.2.1. See section 280-a, subdivision 3, of the Town Law.

606.2.4 Notice to Park Commission or Planning Agency. At least five (5) days before such hearing, the Board of Appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of the property affected by such appeal; and to the county, metropolitan or regional planning agency, as required by section 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of the matter under consideration, as defined in subdivision 1 of section 239-m of the General Municipal Law.

606.3.1 Form of Notice. Such notice shall state the location of the building or lot, the general nature of the question involved, the date, time and place of the hearing and the nature of the relief sought.

606.4.1 Proceedings. The order of business at a hearing shall be as follows: (a) roll call; (b) the chairman shall give a statement of the case and read all correspondence and reports received thereon; (c) the applicant shall represent his/her case; (d) those opposed shall present their arguments; (e) rebuttal by both sides; (f) additional cases; (g) adjournment of hearings; (h) call to order of regular meeting (when applicable; see Section 3.4.1).

606.5.1 General Rules. Any party may appear in person or by agent or by attorney.

606.5.2 The chairman, or in his/her absence, the acting chairman, may administer oaths and compel the attendance of witnesses.

606.5.3 The proceedings for appeals and special permits before the Board shall be tape-recorded, unless the chairman or the vice chairman deems it necessary to have a transcript of the proceeding prepared by a stenographer.

## **SECTION 607. Referrals**

607.1.1 Zoning Referrals. All matters requiring referral as specified by any ordinance or law enacted under article 16 of the Town Law shall be so referred to the proper agency for its recommendation. Within thirty (30) days (or as specified in the particular ordinance) after receipt of a full statement of such referred matter, said agency shall report its recommendations thereon to the Board, with a full statement of the reasons for such recommendations. If such agency fails to respond within the prescribed time the Board may act without such report. The Board shall not act contrary to any said agency's recommendations without first fully setting forth in the official record the reasons for such contrary action. The chairman shall read all such reports at the hearing on the matter under it.

607.2.1 County Zoning Referrals. Prior to taking action on any matter which would cause change in the regulations or use of land or buildings on real property as specified in section

239-m of the General Municipal Law, the Board shall make referrals to the county planning agency.

Within thirty (30) days after receipt of a full statement of such referred matter, the planning agency to which referral is made, or an authorized agent of said agency, shall report its recommendations thereon to the Board, accompanied by a full statement of the reasons for such recommendations. If such planning agency disapproves the proposal, or recommends modification thereof, the Board shall not act contrary to such disapproval or recommendation except by vote of a majority plus one of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action. The chairman shall read the report of the county planning agency at the public hearing on the matter under review.

If such planning agency fails to report within such period of thirty (30) days or such longer period as may have been agreed upon by it and the referring agency, the Board may act without such report.

## **SECTION 608. Decisions**

608.1 Time of Decisions. Decisions by the Board shall be made within sixty-two (62) days from the date of the final hearing. The time within which the Board must render its decision may be extended by mutual consent of the applicant and the Board.

608.2 Filing of Decision and Notice. The decision of the Board of Appeals shall be filed in the office of the town clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

608.3 Form of Decision. The final decision on any matter before the Board shall be made by written order signed by the chairman. Such decision shall state the findings of fact which were the basis for the Board's determination. After such determination, the Board may reverse or affirm, wholly or partly, or may modify the order or requirement of the administrative official appealed from. The decision shall also state any conditions and safeguards necessary to protect the public interest.

608.4 Basis for Decisions. In reaching said decision, the Board shall be guided by standards specified in the applicable ordinance as well as by the community goals and policies, specified in the comprehensive plan and by the findings of the Board in each case.

608.5 Findings—General Contents. The findings of the Board and the supporting facts shall be spelled out in detail regardless of whether these are based on evidence submitted or on the personal knowledge of the Board.

The Board shall show in its findings that it has:

- a. Made a thorough review of the question including:
  - (1) Considering all information or evidence;
  - (2) Hearing all parties in question;
  - (3) Taking into account any intimate knowledge it has of the subject;

b. Made a personal inspection of the parcel in question and from this examination certain findings were ascertained.

608.6 Conflicts with Other Laws or Regulations. In reviewing any application on any matter, the standards in any applicable local law or ordinance or state statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.

608.7 Expiration of Permits. Unless otherwise specified, any order or decision of the Board for a permitted use or a variance or special permit shall expire if a building or occupancy permit for the use is not obtained by the applicant within ninety (90) days from the date of the decision; however, the Board may extend this time an additional ninety (90) days.

608.8 Filing of Decisions. Decisions of the Board shall be filed in the office of the Town Clerk and shall be a public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.

#### **Section 609. Use Variances.**

609.1 Use Variances. The Board, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of the ordinance or local law.

609.2 Planning Board Referral. The Zoning Board shall refer the application to the Town Planning Board for its review and recommendation at least thirty (30) days before the public hearing. The Planning Board shall make its recommendation at least ten (10) days prior to the scheduled public hearing. If the Planning Board does not return a recommendation within the scheduled time, it shall be deemed to have recommended in favor of granting the application.

609.3 Finding of Facts for Use Variance. No such variance shall be granted by a Board without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board that:

- a. Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence;
- b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- d. That the alleged hardship has not been self-created.

#### 609.4 Granting of Use Variance

a. The Board, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

b. The Board shall, in the granting of use variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

### **Section 610. Area Variances**

610.1 Area Variances. The Board shall have the power, upon an appeal from a decision or determination of an administrative official charged with the enforcement of such ordinance or local law, to grant area variances from the area or dimensional requirements of such ordinance or local law.

610.2 Findings of Fact for Area Variances. In making its determination, the Board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:

a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

c. Whether the requested area variance is substantial;

d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

610.3 Granting of Area Variances. The Board, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

### **SECTION 611. Special Use Permits**



The Board of Appeals is empowered by the Town Board to issue special use permits for certain allowed uses as set forth in subsection 611.6 of this section.

611.1. Procedure. Due notice, referral to the appropriate agencies and a public hearing shall be conducted on each application for a special use permit, in accordance with the notice and procedural provisions set forth in sections 605-607 of this Article.

611.2. Planning Board Referral. The Zoning Board shall also refer the application to the Town Planning Board for its review and recommendation at least thirty (30) days before the public hearing. The Planning Board shall make its recommendation at least ten (10) days prior to the scheduled public hearing. If the Planning Board does not return a recommendation within the scheduled time, it shall be deemed to have recommended in favor of granting the application.

611.3. Conditions. After the public hearing has been conducted, the Board of Appeals may issue a special use permit for uses which meet the following criteria:

- a. The applicable provisions prescribed for each special use permit use have been met.
- b. Both the proposed and the current land use or activity conform with all applicable regulations governing the zoning district where it is or will be located, and all other applicable provisions for the district for which the said use is permitted have been met.
- c. The land use or activity is designed, located and operated so as to protect the public health, safety and welfare.
- d. The land use or activity will encourage and promote a suitable and safe environment for the surrounding neighborhood and will not cause substantial injury to the value of other property in the neighborhood.
- e. The land use or activity will be compatible with existing adjoining development and will not adversely change the established character or appearance of the neighborhood.

611.4. Site Plan Review. If site plan review is not required by the Planning Board, the Board of Appeals shall also determine that:

- a. Effective landscaping and buffering is provided.
- b. Adequate off-street parking and loading are provided.
- c. Ingress and egress to parking and loading areas are so designed as to minimize the number of curb cuts and will not unduly interfere with traffic or abutting streets.
- d. Site development shall be such as to minimize erosion and not produce increased surface water runoff onto abutting properties.
- e. Existing streets and utilities servicing the project are adequate.
- f. Significant existing 'green space' is preserved to the extent practicable.

g. Adequate lighting of the site and parking areas is provided and exterior lighting sources are designed and located so as to produce minimal glare on adjacent streets and properties.

611.5. Restrictions. The Board of Appeals shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit use.

611.6. Special Uses Permitted. Only those special uses which have been listed in Schedules - Section 401 through 407, section 512, Section 521 and Section 525 shall be eligible for review for approval for a special use permit by the Board of Appeals.

611.7. Expiration. A special use permit is not transferable. Such special use permit shall authorize only one special use, and shall expire if the special use ceases for more than six (6) months for any reason.

## **ARTICLE VII: ADMINISTRATION**

### **\*6SECTION 701. Enforcement**

This ordinance shall be enforced by a person designated as the Enforcement Officer by the Town Board who shall in no case except under written order of the Board of Appeals, grant any building permit or certificate of occupancy for any building or premises where the proposed construction, alteration or use thereof would be in violation of any provision of this ordinance. If the Enforcement Officer shall find any violation of this ordinance, he shall serve written notice of said violation upon the violator. From the date of such written notice, or from such date as may be designated in said notice, said person in violation shall have thirty (30) days to comply with the provisions of this ordinance.

### **\*6SECTION 702. Planning Board**

The Town Board shall appoint a Planning Board, the creation and powers and duties of which shall be in accordance with the provision of the Town Law of the State of New York.

### **\*6SECTION 703. Board of Appeals**

The Town Board shall appoint a Board of Appeals, the creation and powers and duties of which shall be in accordance with the provision of the Town Law of the State of New York.

### **\*6SECTION 704. Amendment of Land Use Management Local Law**

#### **704.1 Amendment**

The Town Board may, from time to time, on its own motion or on petition, after public notice and hearing, amend, supplement, change, modify or repeal this ordinance, in accordance with all applicable provisions of the Town Law.

#### **704.2 Fee**

If a petition for a change of zoning is made by a member of the public, the petition shall be accompanied by a fee of seventy-five dollars (\$75.00).

#### 704.3 Planning Board Review

Any proposed amendment shall be submitted to the Town Planning Board for a report and recommendation prior to any action thereon by the Town Board. If the Planning Board recommends against the enactment of any proposed amendment, such amendment shall become effective only by a favorable vote of four (4) members of the Town Board.

#### 704.4 Notice to Adjoining Landowners

Notice of any hearing shall be mailed by the Enforcement Officer, no earlier than twenty (20) days and no later than ten (10) days prior to the public hearing, to all property owners of any property affected by a proposed re-zoning of a parcel or parcels, and to all property owners within a distance of 500 feet of any affected parcels on both sides of the Street on which the parcel(s) fronts, and the adjoining property owner or owners to the side and rear of the parcel(s) affected immediately adjacent extending five hundred feet therefrom, as the names and addresses appear on the latest completed assessment roll. In addition, the Board shall give any other notice required by law. The Enforcement Officer shall file an affidavit attesting that he/she has mailed written notice of the proposed amendment, and shall list the names and addresses of the persons to whom such notice was mailed.

### \*<sup>6</sup>SECTION 705. PROFESSIONAL FEES

In the review of any applications, the Planning Board, Zoning Board of Appeals, and the Town Board may refer any application presented to it to such engineering, planning, lighting, legal, technical or environmental consultant as the Board shall deem reasonably necessary to enable it to review the application as required by law. Charges made by these consultant(s) shall be in accord with the charges usually made for such services in the Broome or Delaware County region or pursuant to an existing contractual agreement between the Town and the consultant. The applicant shall reimburse the Town for the cost of the consultant services upon submission of a voucher. The same consultants shall be used in any review requested regarding the same application by the Planning Board, Zoning Board of Appeals, and the Town Board, and these consultants shall prepare one report providing the data, information, and recommendations requested. In all instances, duplications of consultants' reports shall be avoided wherever possible in order to minimize the cost of the consultants' report to the applicant.

## ARTICLE VIII: BUILDING PERMITS

### \*<sup>6</sup>Section 801. Building Permit

No building permit or certificate of occupancy shall be issued by the Enforcement Officer except in compliance with the provisions of this Local Law.

### Section 802. Application for Building Permit

A building permit must be obtained prior to the commencement of any excavation or construction whatsoever upon the site where the building or structure is being erected, altered or moved in any district, such permit to be issued by the Code Enforcement Officer or other designated official who shall be appointed by the Town Board. All applications for building permits must be on forms furnished by the Town which shall require the following information:

- A) The name and address of the owner and the applicant
- B) The nature of the permit sought and the intended use of the building or proposed building or structure
- C) A layout or plot plan showing the exact size and location on the lot of the building and/or accessory buildings with dimensions given
- D) The number and location of off-street parking and/or loading spaces and access as set forth in this Local Law for the use intended
- E) Such additional information as the Administrative Officer, Board of Appeals, Planning Board or Town Board shall require.

No building permit shall be issued for any building or structure where the said construction, alteration or use thereof would be in violation of any provisions of this Local Law except upon a written order of the Board of Appeals. No building permit shall be issued for any building located on a lot which does not adjoin a street or highway maintained by the Town of Sanford, County of Broome, or State of New York, unless a special permit is granted by the Board of Appeals pursuant to Section 280A of the Town Law.

No building permit shall be issued for construction on any premises which are not served by public sewage disposal system and public water distribution system until a preliminary approval has been obtained from the Broome County Health Department for a private sewerage system and a private water supply system.

#### Section 803. Expiration of Building Permit

A building permit shall be void at the expiration of one hundred eighty (180) days after the date of issuance, unless footing forms and foundation stakes are placed ready for inspection within such one hundred eighty day period; or if none are to be placed in connection with the proposed building or addition, construction is actually commenced within such one hundred eighty day period. A building permit may be renewed once for an additional one hundred eighty (180) days.

#### Section 804. Revocation of Building Permit

The Code Enforcement Officer may revoke a building permit theretofore issued in the following instances:

- A) Where he finds that there has been any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the building permit was based;
- B) Where he finds that the work performed under the permit is not being prosecuted

in accordance with the provisions of the application, plans or specifications; or

- C) Where the person to whom a building permit has been issued fails or refuses to comply with a stop order issued by the Building Official.

#### Section 805. Stop Work Orders

Whenever the Code Enforcement Officer has reasonable grounds to believe that work on any building or structure is being carried out in violation of the provisions of the applicable building laws, ordinances or regulations, or not in conformity with the provisions of an application, plans or specifications on the basis of which a building permit was issued, or in an unsafe and dangerous manner, he shall notify the owner of the property, or the owner's agent, or the person performing the work, to suspend all work, and any such persons shall forthwith stop such work and suspend all building activities until the stop order has been rescinded. Such order and notice shall be in writing, shall state the conditions under which the work may be resumed and may be served upon a person to whom it is directed either by delivering it personally to him, or by posting the same upon a conspicuous portion of the building under construction and sending a copy of the same by registered mail.

#### \*6Section 806. Fees for Permits

Fees for building permits shall be determined by the Town Board by resolution from time to time, and a schedule thereof shall be kept on file in the Town Clerk's Office.

#### Section 807. Certificate of Occupancy

A certificate of occupancy shall be applied for simultaneously with the application for a building permit. Said certificate of occupancy shall be issued by the Code Enforcement Officer when the completed structure and its intended use comply with all the provisions of this Local Law. Said certificate of occupancy shall be issued within ten (10) days from the date of such erection or alteration is inspected and certified as complying with all the provisions of this Local Law by the Code Enforcement Officer.

A record of all certificates of occupancy shall be maintained by the Code Enforcement Officer. Copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building affected.

No building shall be occupied prior to issuance of a certificate of occupancy by the Code Enforcement Officer. However, for good cause shown where it is impossible to complete all the plans for the building and the lot on which the building is situated, at a time when in the opinion of the Code Enforcement Officer may issue a conditional certificate of occupancy which shall expire in a reasonable time, to be fixed by the Code Enforcement Officer, but not to exceed eight (8) months.

The Code Enforcement Officer shall issue a building permit or certificate of occupancy if the applicant has met all the applicable provisions of this Local Law and all applicable provisions of the New York State Building and Construction Code, as amended.

## ARTICLE IX: ADULT USES

### Section 901. Definitions

For the purposes of Article IX only, the following terms or words shall be interpreted or defined as follows:

- 1) **ADULT USES**: A business or commercial establishment having as its predominant commercial purpose the operation of an adult bookstore, an adult mini-motion picture theater, an adult motion-picture theater, an adult entertainment cabaret, a massage establishment or any combination of the above.
- 2) **ADULT BOOKSTORE**: An establishment having as a substantial portion of its stock-in-trade sexual devices, books, magazines, films for sale or viewing on the premises, by use of motion-picture devices, or any other coin-operated means, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or an establishment with a section devoted to the sale or display of such material, which excludes minors by virtue of age.
- 3) **ADULT MINI-MOTION-PICTURE THEATER**: An enclosed building with a capacity of less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein, when such establishment is customarily not open to the public generally, but only to one (1) or more classes of the public, excluding any minor by reason of age.
- 4) **ADULT MOTION-PICTURE THEATER**: An enclosed building with a capacity of fifty (50) or more persons used regularly and routinely for presenting films or material having as a dominant theme, material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein, when such establishment excludes any minor by reason of age.
- 5) **ADULT ENTERTAINMENT CABARET**: A public or private establishment which is licensed to serve food and/or alcoholic beverages, which feature topless dancers and/or bottomless dancers, strippers, male or female impersonators or similar entertainers, or employees appearing in a bottomless and/or topless manner of dress.
- 6) **MASSAGE ESTABLISHMENT**: Any establishment having a fixed place of business where any person, firm, association, or corporation engages in, carries on, or permits to be engaged in or carried on, any of the activities referred to in subparagraph (a) below.
  - a) The activities referred to herein are any method of pressure on or

friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in the practice of massage.

b) Article IX shall not apply to licensed hospitals, licensed nursing homes, or clinics or persons holding an unrevoked certificate of practice any of the healing arts under the law of the State of New York, or persons working under the direct supervision and in the presence of any such persons or in any such establishments nor shall this Article apply to barbers or cosmetologists lawfully carrying out their particular profession of business and holding a valid unrevoked license or certificate of registration issued by the State of New York.

- 7) **PERSON:** Any person, firm, partnership, corporation, association or legal representative, acting individually or jointly.
- 8) **SPECIFIED ANATOMICAL AREAS:** (1) less than completely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- 9) **SPECIFIED SEXUAL ACTIVITIES:** (1) human genitals in a state of sexual stimulation or arousal; (2) acts of human masturbation, sexual intercourse or sodomy; and (3) fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

#### Section 902. Restrictions

- 1) Location Restrictions - Adult uses, including but not limited to adult motion-picture theaters, adult mini-motion picture theaters and adult bookstores shall be permitted in a Commercial District, subject to all zoning regulations for Commercial District.
- 2) The creation, operation, establishment, causing the establishment or permitting the establishment of an adult entertainment business shall include the opening of such business as a new business, the relocation of such business, or the conversion of an existing business location to any of the uses described in Section 901 hereof.
- 3) Regulations
  - a) There shall be no exposure of the interior of any adult use establishment or the outside displays of products, wares, books, magazines or any stock in trade of any adult use establishment.
  - b) The legal age for admittance to any adult use establishment is eighteen (18) years of age.

## **ARTICLE X: PENALTIES**

### **\*6Section 1001. Penalties**

#### **A. Violations**

Any violation of this Local Law is an offense punishable by a fine not exceeding two hundred fifty dollars (\$250.00) or by any imprisonment for a period not exceeding fifteen (15) days, or by both such fine and imprisonment. Each day a violation is continued shall be deemed a separate offense.

#### **B. Action to Abate Nuisance.**

In the event that any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used, or any land is divided into lots, blocks, or sites in violation of this ordinance or regulation made thereunder, in addition to other remedies, the Town Board may institute any appropriate action or proceedings to prevent such unlawful act, to restrain, correct or abate such violation or to prevent any illegal act thereunder.

## **ARTICLE XI: SEPARABILITY**

### **Section 1101. Separability**

The invalidity of any section or provision of this Local Law shall not invalidate any other section or provision.

## **ARTICLE XII: EFFECTIVE DATE**

### **Section 1201. Effective Date**

Upon enactment by the Town Board, this Local Law shall become effective as provided by law.



# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
162 WASHINGTON AVENUE, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

City

Town

Village

of Sanford

Local Law No. 2 of the year 1999

A local law amending the Land Use Management Local Law of the Town of Sanford,  
(Insert Title)

Broome County, New York (Local Law #1-1992) (Siting of Wireless

Telecommunications Facilities)

Be it enacted by the Town Board of the  
(Name of Legislative Body)

County

City

Town

Village

of Sanford as follows:

See attached sheets

# COPY

(If additional space is needed, attach pages the same size as this sheet, and number each.)

THE TOWN OF SANFORD

LOCAL LAW NUMBER 2 OF 1999

A LOCAL LAW AMENDING THE LAND USE MANAGEMENT LOCAL LAW OF THE TOWN OF SANFORD, BROOME COUNTY, NEW YORK (LOCAL LAW #1-1992) (SITING OF WIRELESS TELECOMMUNICATIONS FACILITIES)

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF SANFORD AS FOLLOWS:

**Section 1.** The Town Board of the Town of Sanford finds and determines that:

- a. A resolution was duly adopted by the Town Board of the Town of Sanford (hereinafter referred to as "Town Board") on June 8, 1999 fixing 7:00 P.M. on Tuesday, July 13, 1999, in the Town of Sanford Town Clerk's Office, 146 Front Street, Deposit, New York, as the time and place for a public hearing to be held by the Town Board with respect to the within Local Law amending the Land Use Management Local Law of the Town of Sanford, Broome County, New York with reference to Siting of Wireless Telecommunications Facilities.
- b. Notice of Said public hearing was duly published in the Deposit Courier, the official newspaper of the Town of Sanford (hereinafter referred to as "Town") on or about June 30, 1999, and duly posted on the Town Clerk's signboard maintained by the Town Clerk pursuant to subdivision 6 of section 30 of the Town Law on or about June 30, 1999.
- c. The within Local Law has heretofore been referred by the Town Board to the Broome County Department of Planning and Economic Development pursuant to the provisions of Section 239-m of the General Municipal Law on or about June 9, 1999.
- d. The Broome County Department of Planning and Economic development has issued a report, in response to said referral with reference to the within Local Law.
- e. A copy of said report of the Broome County Department of Planning and Economic Development shall be retained on file in the office of the Town Clerk of the Town.
- f. The within Local Law has heretofore been referred by the Town Board to the Planning Board of the Town for recommendation in relation thereto on or about April 14, 1999.
- g. The Planning Board of the Town has issued a report, in response to said referral with reference to the within Local Law.
- h. A copy of said report of the Planning Board shall be retained on file in the office of the Town Clerk of the Town.
- i. A public hearing was duly held by the Town Board at the time and place fixed therefor, and all parties in attendance had an opportunity to be heard in relation thereto.

- j. Pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) it has been determined by the Town Board that adoption of the within Local Law would not have a significant effect upon the environment and could be processed by other applicable governmental agencies without further regard to the State Environmental Quality Review Act.
- k. The Town Board, after due deliberation, finds it to be in the best interests of the Town to adopt the within Local Law.

**Section 2.** The Land Use Management Local Law of the Town of Sanford, Broome County, New York (Town of Sanford Local Law #1-1992) (hereinafter referred to as "Land Use Management Local Law"), duly adopted by the Town Board of the Town on December 1, 1992 and thereafter amended from time to time, be and the same is hereby amended by adding thereto and inserting therein the following new article to be designated "Article XIII: Siting of Wireless Telecommunications Facilities", to read and provide as follows:

**ARTICLE XIII: SITING OF WIRELESS TELECOMMUNICATIONS FACILITIES**

**SECTION 1301. Purpose and Legislative Intent:**

The Telecommunications Act of 1996 (herein after referred to as the Act), in effect, affirmed the authority of a local government, such as the Town, over decisions regarding the placement, construction and modification of Wireless Telecommunications Facilities.

The Town Board of the Town finds and determines that Wireless Telecommunications Facilities and related facilities may pose a unique hazard to the safety, public welfare and environment of the Town and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. In order to insure that the placement, construction and modification of Wireless Telecommunications Facilities is consistent with the Town's land use policies, the Town is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Local Law is to minimize the negative impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of the environmental impacts of such facilities, and protect the health (consistent with the Act), safety and welfare of Town and its residents.

**SECTION 1302. Title:**

This local Law may be known, cited, and referred to as the Wireless Telecommunications Facilities Siting Law of the Town of Sanford. For purposes of Article XIII of the Land Use Management Local Law, this Local Law may be known, cited, and referred to as the Law.

**SECTION 1303. Severability:**

- a. If any word, phrase, sentence, part, section, subsection, or other portion of this Law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other

portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The invalidity of any provision of this Law shall not affect the validity of any other provision of this Law which can be given effect without such invalid provision.

- b. Any Tower Special Use Permit issued under this Law shall be comprehensive and not severable. If any part of a Tower Special Use Permit issued hereunder is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon election by the Town Board.

### **SECTION 1304. Definitions:**

For purposes of this Law, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **ACCESSORY FACILITY** or **STRUCTURE**: An accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **ACT**: The Telecommunications act of 1996
3. **APPLICANT**: Any person submitting an Application to the Town for a Tower Special Use Permit for Wireless Telecommunications Facilities.
4. **APPLICATION**: The form approved by the Town Board, together with all necessary and appropriate documentation that an Applicant submits in order to receive a Tower Special Use Permit for Wireless Telecommunications Facilities.
5. **ANTENNA**: A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to, radio, television, cellular, paging, Personal Telecommunications Services (PCS), and microwave telecommunications.
6. **BOARD**: The Town Board of the Town of Sanford, which is the officially designated board of the Town of Sanford to which Applications for a Tower Special Use Permit for Wireless Telecommunications Facilities must be made, and which is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking Tower Special Use Permits for Wireless Telecommunications Facilities. The Board may, at its discretion, request that other official agencies of the Town accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting, recertifying or not recertifying or revoking Tower Special Use Permits for Wireless Telecommunications Facilities.

7. **BREAK POINT**: The location on a Telecommunications Structure which, in the event of a failure of the Telecommunications Structure, would result in the Telecommunications Structure falling or collapsing within the boundaries of the property or lot on which the Telecommunications Structure is placed.
8. **CAMOUFLAGED TOWER**: Any Tower or supporting structure that, due to design, location, or appearance, partially or completely hides, obscures, conceals, or otherwise disguises the presence of the Tower and one or more Antennas or Antenna arrays affixed thereto.
9. **COLLAPSE ZONE**: The area in which any portion of a Telecommunications Structure could or would fall, collapse or plunge to the ground or into a river or other body of water. The collapse zone shall be no less than the lateral equivalent of the distance from the Break Point to the top of the structure plus ten feet, such being not less than one-half (1/2) times the height of the structure.
10. **COLLOCATION**: The use of the same Wireless Telecommunications Facilities or Telecommunications Structure to carry two or more Antennae for the provision of wireless services by two or more persons or entities.
11. **COMMERCIAL IMPRACTICABILITY** or **COMMERCIALLY IMPRACTICABLE**: These terms shall have the meaning in this Law and any Tower Special Use Permit granted hereunder as is given to those terms and applied under section 2-615 of the New York Uniform Commercial Code (UCC).
12. **COMPLETED APPLICATION**: An Application that contains all information and/or data necessary to enable the Board to evaluate the merits of the Application, and to make an informed decision with respect to the effect and impact of the Wireless Telecommunications Facilities on the Town in the context of the permitted land use for the particular location requested.
13. **COUNTY**: Broome County.
14. **DIRECT-TO HOME SATELLITE SERVICES** or **DIRECT BROADCAST SERVICE** or **DBS**: Only programming transmitted or broadcast by satellite directly to subscribers' premises without the use of ground receiving equipment, other than such equipment at the subscribers' premises or in the uplink process to the satellite.
15. **EPA**: The United States Environmental Protection Agency, or its duly designed and authorized successor agency.
16. **FAA**: The Federal Aviation Administration, or its duly designated and authorized successor agency.
17. **FCC**: The Federal Communications Commission, or its duly designated and authorized successor agency.
18. **FREE STANDING TOWER**: A Tower that is not supported by guy wires and ground anchors or other means of attached or external support.

19. **FULL EAF:** The Full Environmental Assessment Form approved by the New York Department of Environmental Conservation.
20. **HEIGHT:** When referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna.
21. **NIER:** Non-Ionizing Electromagnetic Radiation.
22. **PERSON:** Any individual, corporation, estate, trust, partnership, joint venture, association of two (2) or more persons having a joint common interest, limited liability company, or any other entity.
23. **PERSONAL WIRELESS FACILITY:** See definition for 'Wireless Telecommunications Facilities'.
24. **PERSONAL WIRELESS SERVICES** or **PWS** or **PERSONAL TELECOMMUNICATIONS SERVICE** or **PCS:** These terms shall have the same meaning given to those terms or used in the Telecommunications Act of 1996.
25. **SITE:** See definition for Wireless Telecommunications Facilities.
26. **STATE:** The State of New York.
27. **TELECOMMUNICATIONS:** The transmission and reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
28. **TELECOMMUNICATIONS STRUCTURE** or **TELECOMMUNICATIONS TOWER** or **TOWER:** A structure, tower or location designed, intended to be used, or used in the provision of services described in the definition of Wireless Telecommunications Facilities.
29. **TEMPORARY:** In relation to all aspects and components of this Law, something intended to, or that does, exist for fewer than ninety (90) days.
30. **TOWER SPECIAL USE PERMIT:** The authorization by which an Applicant is permitted to place, construct, use, or modify Wireless Telecommunications Facilities, subject to the requirements imposed by the Law and the conditions attached to the issuance of the Tower Special Use Permit by the Town Board.
31. **TOWN:** The Town of Sanford, New York.
32. **TOWN BOARD:** The Town Board of the Town of Sanford.
33. **VISUAL EAF:** A Visual Environmental Assessment Form.
34. **WIRELESS TELECOMMUNICATIONS FACILITIES** or **TOWER** or **SITE** or **PERSONAL WIRELESS FACILITY:** A structure or location designed, or intended to be used, or used to support Antennas. It includes without limit, free standing Towers,

guyed Towers, monopoles, and similar structures that employ camouflage technology, including, but not limited to structures such as a church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an Antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, personal Telecommunications services, or microwave Telecommunications, but excluding those used exclusively for fire, police or other dispatch Telecommunications, or exclusively for private radio or television reception or exclusively for private citizen's bands, amateur radio or other similar Telecommunications.

**SECTION 1305. Overall Policy and Desired Goals for Tower Special Use Permits for Wireless Telecommunications Facilities:**

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities conforms to the Town's purpose and intent of this Law, the Town Board ( acting pursuant to section 274-b of the Town Law and other applicable provisions) hereby authorizes the Town Board to grant Tower Special Use Permits pursuant to this Law. The Town Board hereby adopts an overall policy with respect to a Tower Special Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

1. implementing an Application process for person(s) seeking a Tower Special Use Permit for Wireless Telecommunications Facilities;
2. establishing a policy for examining an application for, and issuing a Tower Special Use Permit for, Wireless Telecommunications Facilities that is both fair and consistent.
3. establishing reasonable time frames for granting or not granting a Tower Special Use Permit for Wireless Telecommunications Facilities, or recertifying or not recertifying, or revoking the Tower Special Use Permit granted under this Law.
4. promoting and encouraging, wherever possible, the sharing and/or collocation of Wireless Telecommunications Facilities among service providers;
5. promoting and encouraging, wherever possible, the placement of Wireless Telecommunications Facilities in such a manner as to cause minimal disruption to aesthetic considerations of the land, lot, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities.

**SECTION 1306. Tower Special Use Permit Application and Other Requirements:**

- a. All Applicants for a Special Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this Section. The Town Board is the officially designated agency or body of the community to whom applications for a Special Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking Special Use Permits for Wireless Telecommunications Facilities. The Town Board may at its discretion delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the Town Board with respect to the granting or not granting, recertifying or not recertifying or revoking Special Use Permits for Wireless Telecommunications Facilities.

- b. An Application for a Tower Special Use Permit for Wireless Telecommunications Facilities shall be signed by the Applicant, (or by a person acting on behalf of the Applicant who has prepared the same and who has knowledge of the contents and representations made therein) attesting to the truth and completeness of the information. The owner of the land on which the Wireless Telecommunications Facilities is proposed to be located, if different from the Applicant, shall also sign the Application. At the discretion of the Town Board, any material false or misleading statement in the Application may subject the Applicant to denial of the Application, without further consideration or opportunity for correction.
- c. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Town Board.
- d. The Applicant shall include a statement in writing:
  - 1. that the Applicant's proposed Wireless Telecommunications Facilities will be maintained in a safe manner, and in compliance with all conditions of the Tower Special Use Permit, without exception, (unless specifically granted relief by the Town Board in writing) as well as all applicable local codes, ordinances, and regulations, and all applicable County, State and Federal statutes, laws, codes, rules, and regulations;
  - 2. that the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in New York State.
- e. No Wireless Telecommunications Facilities shall be placed, constructed, used or modified in the Town unless and until a Tower Special Use Permit therefor has been granted by the Town Board pursuant to this Law. No construction or modification of Wireless Telecommunications Facilities, for which a Tower Special Use Permit has been issued, shall take place unless and until a building permit therefor has been issued by the Town Building and Code Inspector.
- f. All applications for a Tower Special Use Permit for the construction or installation of new Wireless Telecommunications Facilities shall be accompanied by a report containing the information hereinafter set forth, which said report shall be signed by a licensed professional engineer registered in the State.
  - 1. Name, address, and phone number of the person preparing the report;
  - 2. Name, address, and phone number of the property owner, operator, and Applicant, including information about the legal status of the Applicant;
  - 3. 911 address and tax map parcel number of the property;
  - 4. Land Use Management District or designation in which the property is situated;
  - 5. Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
  - 6. Location of nearest residential structure;
  - 7. Location of nearest habitable structure;
  - 8. Location and dimensions of all structures currently on the property and those proposed for the property which is the subject of the Application;



9. Location, and dimensions of all proposed and existing Antennae and all appurtenant structures;
10. Type, locations, and dimensions of all proposed and existing landscaping and fencing;
11. The number, type and design of the Wireless Telecommunications Facilities(s) Antenna(s) proposed and the basis for the calculations of the Telecommunications Tower's capacity to accommodate multiple users;
12. The make, model and manufacturer of the Tower and Antenna(s);
13. A description of the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
14. The frequency, modulation and class of service of radio or other transmitting equipment;
15. Transmission and maximum effective radiated power of the Antenna(s);
16. Direction of maximum lobes and associated radiation of the Antenna(s);
17. Applicant's proposed Tower maintenance and inspection procedures and related system of records;
18. Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC, though the certifying engineer need not be approved by the Board;
19. Certification that the proposed Antenna(s) will not cause interference with existing Telecommunications devices, though the certifying engineer need not be approved by the Town Board;
20. A copy of the FCC license applicable for the use of the Wireless Telecommunications Facilities;
21. Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, the site is adequate to assure the stability of the proposed Wireless Telecommunications Facilities on the proposed site, though the certifying engineer need not be approved by the Town Board ;
22. Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites;
23. Location, layout, and dimensions of off-street parking and loading facilities; vehicular entry, exit, and circulation on the site and neighboring roads;
24. Grading and drainage plan for the site;
25. Type, size and location of all proposed screening, signs, and physical features meant to protect adjacent land uses;
26. Applicant shall disclose in writing any agreement in existence prior to submission of the Application that would limit or preclude the ability of the Applicant to share any new Wireless Telecommunications Facilities that it constructs.

Where this section calls for a certification, such certification shall be by a qualified New York State licensed professional engineer, acceptable to the Town Board, unless otherwise noted.

- g. In the case of new Wireless Telecommunications Facilities, the Applicant shall be required to submit a written report demonstrating its efforts to secure shared use of existing Telecommunications Tower(s) or use of existing building or other structures within the Town. Copies of written requests and responses for shared use shall be provided to the Town Board.
- h. The Applicant shall furnish written certification that the Wireless Telecommunications Facilities, foundation and attachments both are designed and constructed ("As Built") to

meet all applicable County, State and Federal structural requirements for loads, including wind and ice loads.

- i. After construction and prior to receiving a Certificate of Occupancy, Applicant shall furnish written certification that the Wireless Telecommunications Facilities and related facilities are grounded, bonded so as to protect persons and property, and installed with appropriate surge protectors.
- j. The Applicant shall submit a completed Full EAF and a completed Visual EAF addendum. The Town Board may require submission of a more detailed visual analysis based on the results of the Visual EAF addendum. Applicants are encouraged to seek pre-application meetings with the Town Board to address the scope of the required visual assessment. The Applicant shall submit a completed environmental impact statement (EIS) if the same is required by applicable provisions of law.
- k. If requested by the Town Board, the Applicant shall furnish a Visual Impact Assessment which shall include:
  1. A "Zone of Visibility Map" which shall be provided in order to determine locations where the Tower may be seen.
  2. Pictorial representations of "before and after" views from key viewpoints both inside and outside of the Town, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers, or residents. If requested by the Applicant, the Town Board, acting in consultation with its consultants or experts, will provide guidance concerning the appropriate key sites at a pre-application meeting.
  3. An assessment of the visual impact of the Tower base, guy wires and accessory buildings from abutting and adjacent properties and streets.
- l. Any and all representations made by Applicant to the Town Board, on the record, during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the Town Board.
- m. The Applicant shall, in a manner approved by the Town Board, demonstrate in writing how it will effectively screen from view its proposed Wireless Telecommunications Facilities base and all related facilities and structures.
- n. All utilities leading to and away from any Wireless Telecommunications Facilities site shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code and shall be installed underground and in compliance with all applicable ordinances, local laws, codes, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate. The Town Board may waive or vary the requirements of underground installation of utilities whenever, in the opinion of the Town Board, such variance or waiver shall not be detrimental to the health, safety, general welfare or environment, including the visual and scenic characteristics of the area.

- o. All Wireless Telecommunications Facilities and accessory facilities shall be sited so as to have the least practical adverse visual effect on the environment and its character, and the residences in the area of the Wireless Telecommunications Facilities site.
- p. Both the Wireless Telecommunications Facilities and accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
- q. At a Telecommunications site, an access road and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation-cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- r. A Person who holds a Tower Special Use Permit for Wireless Telecommunications Facilities shall construct, operate, maintain, repair, modify or restore the permitted Wireless Telecommunications Facilities in strict compliance with all current technical, safety and safety-related codes adopted by the Town, County, State, or United States, including but not limited to the most recent editions of the New York State Uniform Fire Prevention and Building Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- s. A Person holding a Tower Special Use Permit granted under this Law shall obtain, at his own expense, all permits and licenses required by applicable law, rule, regulation or law, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the Applicant.
- t. Subject to, and in accordance with, the State Environmental Quality Review Act (SEQRA), the Town Board shall be the lead agency for the purpose of conducting the environmental review of the Application for Tower Special Use Permits. The Town Board shall conduct an integrated, comprehensive environmental review of the proposed project in combination with its review of the Application under this Law.
- u. An Applicant shall submit no fewer than eight (8) copies of the entire Completed Application to the Town Board and a copy of the Application to the town clerks of all towns, townships, and villages which adjoin the Town, any adjacent municipality, the Broome County Department of Planning and Economic Development, the clerk of the Broome County Legislature, the clerk of the Delaware County Legislature, the Wayne County (PA) Commissioner's Office, New York State Office of Parks, Recreation, and Historic Preservation, New York State Commissioner of Agriculture and Markets, and New York State Commissioner of Environmental Conservation.
- v. The Applicant shall examine the feasibility of designing a proposed Wireless Telecommunications Facilities to accommodate future demand for at least two (2) additional commercial applications, for example, future collocations. The scope of this examination shall be determined by the Town Board. The Wireless Telecommunications Facilities shall be structurally designed to accommodate at least two (2) additional Antenna Arrays

equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived by the Town Board, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Wireless Telecommunications Facilities is not technologically feasible, or is Commercially Impracticable and creates an unnecessary and unreasonable burden, based upon:

1. The foreseeable number of FCC licenses available for the area;
  2. The kind of Wireless Telecommunications Facilities site and structure proposed;
  3. The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
  4. Available space on existing and approved Wireless Telecommunications Facilities.
- w. The applicant shall submit to the Town Board a letter of intent committing the owner of the proposed new Tower, and his/her successors in interest, to negotiate in good faith for shared use of the proposed Tower by other Telecommunications providers in the future. This letter shall be filed with the Town Board. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the Special Use Permit. The letter shall commit the new Tower owner and their successors in interest to:
1. respond within 60 days to a request for information from a potential shared-use applicant.
  2. negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers.
  3. allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.
- x. Unless waived by the Town Board, there shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting may also include a site visit if required. Where the Application is for the shared use of an existing Telecommunications Tower(s) or other high structure, the Applicant should seek to waive any section or subsection of this Law that may not be required. At the pre-application meeting, the waiver requests, if appropriate, will be decided by the Town Board. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the Applicant.
- y. The holder of a Special Use Permit shall notify the Town of any intended modification of a Wireless Telecommunication Facility and shall apply to the Town to modify, relocate or rebuild a Wireless Telecommunications Facility.

**SECTION 1307. Location of Wireless Telecommunications Facilities:**

- a. Applicants for Tower Special Use Permits for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities or other tall structures in accordance with the following priorities, one (1) being the highest priority and seven (7) being the lowest priority:
1. on existing Wireless Telecommunications Facilities or other tall structures;
  2. collocation on a site with existing Wireless Telecommunications Facilities or structures;
  3. on any property used for a municipal purpose, such as for a municipal park, a municipal highway garage, a municipal gravel pit, a municipal hall, a school, or a school bus garage;
  4. within a limited industrial district within the Town;
  5. within a commercial district within the Town;
  6. within an agricultural district within the Town;
  7. within any other land use management district within the Town.

If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.

An Applicant may not by-pass sites of higher priority by stating the site presented is the only site leased or selected. An Application shall address collocation as an option and if such option is not proposed, the Applicant must explain why collocation is Commercially Impracticable or otherwise impracticable. Agreements between providers limiting or prohibiting collocation shall not be a valid basis for any claim of Commercial Impracticability or hardship.

- b. The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation, as to why sites of a higher priority were not selected, shall be included with the Application.
- c. The Applicant shall, in writing, identify and disclose the number and locations of any additional sites that the Applicant has, is, or will be considering, reviewing or planning for Wireless Telecommunications Facilities in the Town, and all municipalities adjoining the Town, for a two year period following the date of the Application.
- d. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town Board may disapprove an Application for any of the following reasons:
1. Conflict with safety and safety-related codes and requirements;
  2. Conflict with traffic needs or traffic laws, or definitive plans for changes in traffic flow or traffic laws;
  3. Conflict with the historic nature of a neighborhood or historical district;

4. The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
5. The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers; or
6. Conflicts with the provisions of the Act or this Law.

**SECTION 1308. Shared use of Wireless Telecommunications Facilities:**

- a. Shared use of existing Wireless Telecommunications Facilities shall be preferred by the Town Board, as opposed to the proposed construction of new Wireless Telecommunications Facilities. Where such shared use is unavailable, location of Antennas on other pre-existing structures shall be considered and preferred. The Applicant shall submit a comprehensive report inventorying existing towers and other appropriate structures within four (4) miles of any proposed new Tower Site, unless the Applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other pre-existing structures as a preferred alternative to new construction. An Applicant intending to share use of an existing Wireless Telecommunications Facilities or other tall structure shall be required to document the intent of the existing owner to share use. In the event of an Application to share the use of existing Wireless Telecommunications Facilities that does not increase the height of the Wireless Telecommunications Facilities, the Town Board may waive such requirements of the Application required by this Law as may, for good cause, be shown.
- b. Such shared use shall consist only of the minimum Antenna array technologically required to provide service within the Town, to the extent practicable, unless good cause is shown.

**SECTION 1309. Height of Wireless Telecommunications Facilities:**

- a. The Applicant must submit documentation justifying to the Town Board the total height of any Wireless Telecommunications Facilities and/or Antenna and the basis therefor. Such justification shall be to provide appropriate service within the Town, to the extent practicable, unless good cause is shown.
- b. Wireless Telecommunications Facilities shall be no higher than the minimum height necessary. Unless waived by the Town Board upon good cause shown, the maximum height thereof shall be one hundred-ten ( 110) feet, based on three (3) collocated antenna arrays and ambient tree height of eighty (80) feet.
- c. The maximum height of any Wireless Telecommunications Facilities and attached Antennas constructed after the effective date of this Law shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, County, State, and/or any Federal statute, law, local law, Town ordinance, code, rule or regulation.

**SECTION 1310. Visibility of Wireless Telecommunications Facilities:**

- a. Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by applicable provisions of law.
- b. Wireless Telecommunications Facilities shall be of a galvanized finish, or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Town Board, and shall be maintained in accordance with the requirements of this Law.
- c. If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within fifteen-hundred (1,500) feet of all property lines of the lot on which the Wireless Telecommunications Facilities are located.

**SECTION 1311. Security of Wireless Telecommunications Facilities:**

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specifically:

1. All Antennas, Towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and
2. Transmitters and Telecommunications control points must be installed such that they are readily accessible only to persons authorized to operate or service them.

**Section 1312. Signage:**

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in area to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site. The sign shall not be lighted unless the Town Board shall have allowed such lighting or unless such lighting is required by applicable provisions of law. No other signage, including advertising, shall be permitted on any Antennas, Antenna supporting structures or Antenna Towers, unless required by law.

**SECTION 1313. Lot Size and Setbacks:**

- a. All proposed Wireless Telecommunications Facilities shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance equal to the height of the Tower plus 20% to substantially contain on-site all ice-fall, or debris from a Tower or Tower failure, and to preserve the privacy of any adjoining properties.
- b. Wireless Telecommunications Facilities shall be located with a minimum setback from any property line a distance equal to the height of the Wireless Telecommunications Facilities or the existing setback requirement of the underlying zoning district, whichever is greater. Further, any Accessory Structure shall be located so as to comply with the applicable

minimum land use management district setback requirements for the property on which it is situated.

**SECTION 1314. Retention of Expert Assistance and Reimbursement by Applicant :**

- a. The Town Board may hire any consultant and/or expert necessary to assist the Town Board in reviewing and evaluating the Application and any requests for recertification.
- b. An Applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town Board in connection with the review of any Application. The initial deposit shall be \$7,500.00. These funds shall accompany the filing of an Application and the Town shall maintain a separate escrow account for all such funds. The Town's consultants/experts shall, in accordance with an agreement between the Town and its consultants or experts, bill or invoice the Town no less frequently than monthly for its services in reviewing the Application and performing its duties. If at any time during the review process this escrow account has a balance less than \$2,500.00, Applicant shall immediately upon notification by the Town, replenish said escrow account so that it has a balance of at least \$2,500.00. Such additional escrow funds must be deposited with the Town before any further action or consideration is taken on the Application. If, at the conclusion of the review process, the cost of such consultant/expert services is more than the amount escrowed pursuant hereto, the Applicant shall pay the difference to the Town prior to the issuance of any Tower Special Use Permit. In the event that the amount held in escrow by the Town is more than the amount of the actual billing or invoicing by the Town's consultants or experts, the difference shall be promptly refunded to the Applicant.
- c. The total amount of the funds set forth in Subsection b. of this Section may vary with the scope and complexity of the project, the completeness of the Application and other information as may be needed by the Town Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the Town, shall be paid by the Applicant. The initial amount of the escrow deposit shall be established at a pre-Application meeting with the Town Board . Notice of the hiring of a consultant/expert shall be given to the Applicant at or before this meeting.

**SECTION 1315. Requirements for a Tower Special Use Permit:**

- a. No Person shall site, place, build, construct, modify, prepare, use or repair, any site for the placement or use of, Wireless Telecommunications Facilities in the Town on or after the effective date of this Law without having first obtained hereunder a Tower Special Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Tower Special Use Permit shall be required for those Towers used exclusively for fire, police or other dispatch Telecommunications, or exclusively for private radio or television reception or exclusively for private citizen's bands, amateur radio or other similar Telecommunications.
- b. New construction, including routine maintenance on an existing Wireless Telecommunications Facilities, shall comply with the requirements of this Law.
- c. All Wireless Telecommunications Facilities existing on or before the effective date of this Law shall be allowed to continue as they presently exist, provided however, that any



modification, enlargement or extension of existing Wireless Telecommunications Facilities must comply with this Law.

**SECTION 1316. Public Hearing Required:**

- a. Prior to the approval of any Application for a Tower Special Use Permit for Wireless Telecommunications Facilities, a public hearing shall be held by the Town Board, notice of which shall be published in the official newspaper of the Town no less than ten (10) days prior to the scheduled date of the public hearing. In order that the Town may notify nearby landowners, the Applicant, at least three (3) weeks prior to the date of said public hearing, shall provide to the Town Board the names and address of all landowners whose property is located within fifteen hundred (1500) feet of any property line of the lot on which the new Wireless Telecommunications Facilities are proposed to be located.
- b. The Town Board shall schedule the public hearing referred to in Subsection a. of this Section once it finds the Application is complete. The Town Board, at any stage prior to issuing a Tower Special Use Permit, may require such additional information as it deems necessary.

**SECTION 1317. Action on an Application for a Tower Special Use Permit for Wireless Telecommunications Facilities:**

- a. The Town Board shall, in accordance with the Act, undertake a review of an Application pursuant to this Law in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- b. The Town Board may refer any Application or part thereof to any Town advisory committee or other Town committee for a non-binding recommendation.
- c. Except for necessary building permits, and subsequent Certificates of Occupancy, once a Tower Special Use Permit has been granted hereunder, no additional permits or approvals from the Town, such as site plan, land use management or zoning approvals, shall be required by the Town for the Wireless Telecommunications Facilities covered by the Tower Special Use Permit.
- d. After the public hearing and after formally considering the Application, the Town Board may approve and issue, or deny a Tower Special Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the Applicant.
- e. If the Town Board approves the Tower Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the Town Board's action, and the Tower Special Use Permit shall be issued within thirty (30) days after such approval.
- f. If the Town Board denies the Tower Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the Town Board's action.

- g. The Town Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed Tower Special Use Permit. Upon its granting of such Tower Special Use Permit for Wireless Telecommunications Facilities, any such conditions and restrictions must be met in connection with the issuance of a building permit and any other required permits by applicable enforcement officials of the Town.

**SECTION 1318. Recertification of a Tower Special Use Permit for Wireless Telecommunications Facilities:**

- a. At any time between twelve (12) months and six (6) months prior to the five (5) year anniversary date after the effect date of the Tower Special Use Permit and all subsequent fifth anniversaries of the effective date of the original Tower Special Use Permit for Wireless Telecommunications Facilities, the holder of a Tower Special Use Permit for such Wireless Telecommunications Facilities shall submit a signed written request to the Town Board for recertification. In the written request for recertification, the holder of such Tower Special Use Permit shall include the following information:
1. the name of the holder of the Tower Special Use Permit for the Wireless Telecommunications Facilities;
  2. if applicable, the number or title of the Tower Special Use Permit;
  3. the date of the original granting of the Tower Special Use Permit;
  4. whether the Wireless Telecommunications Facilities has been moved, re-located, rebuilt, repaired, or otherwise modified since the issuance of the Tower Special Use Permit;
  5. if the Wireless Telecommunications Facilities has been moved, re-located, rebuilt, repaired, or otherwise modified, then whether the Town Board approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
  6. any requests for waivers or relief of any kind whatsoever from the requirements of this Law and any requirements for a Tower Special Use Permit; and
  7. a statement that the Wireless Telecommunications Facilities are in compliance with the Tower Special Use Permit and are in compliance with all applicable statutes, laws, local laws, ordinances, codes, rules and regulations.

Such recertification shall be by a qualified New York State licensed professional engineer acceptable to the Town, and the costs thereof shall be borne by the applicant.

- b. If, after such review, the Town Board determines that the permitted Wireless Telecommunications Facilities are in compliance with the Tower Special Use Permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Town Board shall issue a recertification Tower Special Use Permit for the Wireless Telecommunications Facilities, which may include any new provisions or conditions that are mutually agreed upon, or required by applicable statutes, laws, local laws, ordinances, codes, rules and regulations. If, after such review, the Town Board determines that the permitted Wireless Telecommunications Facilities are not in compliance with the Tower Special Use Permit and all applicable statutes, local laws, ordinances, codes, rules and regulations, then the Town Board may refuse to issue a recertification Tower Special Use Permit for the Wireless Telecommunications Facilities, and in such event, such Wireless Telecommunications Facilities shall not be used after the date that the Applicant receives

written notice of such decision by the Town Board. Any such decision shall be in writing and supported by substantial evidence contained in a written record.

- c. If the Town Board does not complete its review, as noted in Subsection b. of this Section, prior to the five (5) year anniversary date of the Tower Special Use Permit, or subsequent fifth anniversaries, then the Applicant for the permitted Wireless Telecommunications Facilities shall receive an extension of the Tower Special Use Permit for up to six (6) months, in order for the Town Board to complete its review.
- d. If the holder of a Tower Special Use Permit for Wireless Telecommunications Facilities does not submit a request for recertification of such Tower Special Use Permit within the time frame noted in Subsection a. of this section, then such Tower Special Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Tower Special Use Permit, or subsequent fifth anniversaries, unless the holder of the Tower Special Use Permit adequately demonstrates to the Town Board that extenuating circumstances prevented a timely recertification request. If the Town Board agrees that there were legitimately extenuating circumstances, then the holder of the Tower Special Use Permit may submit a late recertification request under terms agreeable to the Town Board..

### **SECTION 1319. Extent and Parameters of Tower Special Use Permit for Wireless Telecommunications Facilities:**

The extent and parameters of a Tower Special Use Permit for Wireless Telecommunications Facilities shall be as follows:

1. such Tower Special Use Permit shall be non-exclusive;
2. such Tower Special Use Permit shall not be assigned, transferred or conveyed without the express prior written consent of the Town Board, and such consent shall not be unreasonably withheld or delayed;
3. such Tower Special Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Tower Special Use Permit for Wireless Telecommunications Facilities, or for a material violation of this Law after prior written notice to the Applicant and the holder of the Tower Special Use Permit.

### **SECTION 1320. Application Fee:**

- a. At the time that a person submits an Application for a Tower Special Use Permit for new Wireless Telecommunications Facilities, such person shall pay to the Town an application fee in the amount of \$5,000.00. If the Application is for a Tower Special Use Permit for collocating on an existing Telecommunications Tower or high structure, the application fee payable to the Town shall be in the amount of \$2,000.00.
- b. No Application fee is required in order to recertify a Tower Special Use Permit for Wireless Telecommunications Facilities, unless there has been a modification of the Wireless Telecommunications Facilities since the date of the issuance of the existing Tower Special Use Permit. In the case of any modification, the fees provided in Subsection a. shall apply.

### **SECTION 1321. Performance Security:**

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in the amount of \$75,000.00 and with such sureties as are deemed sufficient by the Town Board to assure the faithful performance of the terms and conditions of this Law and conditions of any Tower Special Use Permit issued pursuant to this Law. The full amount of the bond or security shall remain in full force and effect throughout the term of the Tower Special Use Permit and/or until the removal of the Wireless Telecommunications Facilities, and any necessary site restoration is completed. The failure by Applicant to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the Tower Special Use Permit and shall entitle the Town Board to revoke the Tower Special Use Permit after prior written notice to the Applicant and holder of the Tower Special Use Permit, and after a hearing upon due prior notice to the Applicant and holder of the Tower Special Use Permit.

### **SECTION 1322. Reservation of Authority to Inspect Wireless Telecommunications Facilities:**

- a. In order to verify that the holder of a Tower Special Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities place, maintain, construct, modify and use such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town, and its consultants or experts may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification, maintenance and use of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site. If requested by the Town, the holder of the Tower Special Use Permit shall assist the Town and its consultants and experts in obtaining access to the site.
- b. The Town shall pay for costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including Towers, Antennas, and appurtenant or associated facilities, or refusal to otherwise cooperate with the Town with respect to an inspection, or if violations of this Law are found to exist, in which case the holder, lessee or licensee shall reimburse the Town for the cost of the inspection.
- c. Payment of such costs shall be made to the Town within thirty (30) days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is/are appealed in accordance with the procedures set forth in this Law, said reimbursement payment must still be paid to the Town and the reimbursement shall be placed in an escrow account established by the Town specifically for this purpose, pending the final decision on appeal.

### **SECTION 1323. Annual NIER Certification:**

The holder of the Tower Special Use Permit shall, annually, certify in writing to the Town that NIER levels at the site are within the threshold levels adopted by the FCC. ( The certifying engineer need not be approved by the Town.)

## **SECTION 1324. Liability Insurance:**

- a. A holder of a Tower Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death, and property damage, and umbrella insurance coverage, for the duration of the Tower Special Use Permit in the minimum amounts set forth below
  1. Commercial General Liability covering personal injuries, death and property damage: \$2,000,000 per occurrence/\$6,000,000 aggregate;
  2. Automobile Coverage: \$2,000,000 per occurrence/\$6,000,000 aggregate;
  3. Excess Liability: \$1,000,000;
  4. Workers Compensation and Disability Insurance in accordance with applicable statutory amounts.
- b. The Commercial General liability insurance policy and excess liability policy shall specifically include the Town and its officers, boards, employees, committee members, attorneys, agents, and consultants as additional named insureds.
- c. The insurance policies shall be issued by an insurance company licensed to do business in the State and with a Best's rating of at least A.
- d. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
- e. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.
- f. Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the grant of the Tower Special Use Permit, the holder of the Tower Special Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

## **SECTION 1325. Indemnification:**

- a. Any Tower Special Use Permit issued pursuant to this Law shall contain a provision with respect to indemnification. Such provision shall require the holder of the Tower Special Use Permit, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of a Wireless Telecommunications Facilities within the Town. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town. The holder of the Tower Special Use Permit shall not be obligated to provide such indemnification in the case of any claims, suits, demands, cause of action or award of damages which arise solely as a result of the

negligence or intentional acts or actions of the Town or its officials, boards, employees, committee members, attorneys, agents or consultants.

- b. Notwithstanding the requirements noted in Subsection a. of this section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a Tower Special Use Permit for Wireless Telecommunications Facilities.

### **SECTION 1326. Fines:**

- a. For a violation of this Law or any provision, term or condition of a Tower Special Use Permit issued pursuant to this Law, the provisions of Section 1001 of the Land Use Management Local Law shall be applicable.
- b. Notwithstanding anything in this Law, the holder of the Tower Special Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Law or any section of this Law. An attempt to do so shall subject the holder of the Tower Special Use Permit to termination and revocation of the Tower Special Use Permit, after prior written notice to the Applicant and holder of the Tower Special Use Permit and after a hearing upon due prior notice to the Applicant and holder. The Town may also seek injunctive relief to prevent the continued violation of this Law.

### **SECTION 1327. Default and/or Revocation:**

- a. If Wireless Telecommunications Facilities are used, operated, repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Law or of the Tower Special Use Permit, then the Town Board shall notify the holder of the Tower Special Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven (7) days of the date of the postmark of the Notice, or of the date of personal service of the Notice, whichever is earlier. Notwithstanding anything to the contrary in this Subsection or any other Section of this Law, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Town Board may, at its sole discretion, order the violation remedied within twenty-four (24) hours.
- b. If within the period set forth in a. above the Wireless Telecommunications Facilities are not brought into compliance with the provisions of this Law, or of the Tower Special Use Permit, or substantial steps are not taken in order to bring the affected Wireless Telecommunications Facilities into compliance, then the Town Board may revoke such Tower Special Use Permit for the Wireless Telecommunications Facilities, and shall notify the holder of the Tower Special Use Permit in writing within forty-eight (48) hours of such action, and the reasons for such action. The holder of the Tower Special Use Permit shall not thereafter use or operate the Wireless Telecommunications Facilities until such time as the Tower Special Use Permit has been restored.
- c. Nothing herein shall prevent the Town from pursuing remedies pursuant to Section 1001 of the Land Use Management Local Law, Section 805 of the Land Use Management Local Law, or other applicable provisions of law.

## **SECTION 1328. Removal of Wireless Telecommunications**

### **Facilities:**

- a. Under the following circumstances, the Town Board may determine that the health, safety, and welfare interests of the Town warrant and require the removal of Wireless Telecommunications Facilities:
  1. Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety (90) consecutive days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by a superior or irresistible force or acts of God, in which case, repair or removal shall commence within 90 days after notification from the Town;
  2. Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
  3. Wireless Telecommunications Facilities have been placed, located, constructed, or modified without the prior granting of the required Tower Special Use Permit, or any other necessary authorization.
- b. If the Town Board makes such a determination as noted in Subsection a. of this section, then the Town Board shall notify the holder of the Tower Special Use Permit for the Wireless Telecommunications Facilities in writing within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed at the cost and expense of the holder of said permit. The Town Board may approve an Interim Temporary Tower Special Use Permit, so as to enable the sale of the Wireless Telecommunications Facilities.
- c. The holder of the Tower Special use Permit, at its cost and expense, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the Town Board. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the Town Board.
- d. If the Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the permit holder has received such notice, then the Town Board may order officials or representatives of the Town to remove the Wireless Telecommunications Facilities at the sole cost and expense of the owner or permit holder.
- e. If, the Town removes, or cause to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove them from the site to a lawful location within ten (10) days following receipt of written notice from the Town Board, then the Town may take steps to declare the Wireless Telecommunications Facilities abandoned, and cause them to be removed at the expense of the owner or special permit holder, and sell them and their components.

- f. Notwithstanding anything in this Section to the contrary, the Town Board may approve a Temporary Special Use Permit for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the permit, subject to the approval of the Town Board, and an agreement to comply with such plan shall be executed by the holder of the permit and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in Subsection e. hereof.
- g. Nothing herein shall prevent the Town from pursuing remedies in accordance with Section 1001 of the Land Use Management Local Law, Section 805 of the Land Use Management Local Law, or other applicable provisions of law.

### **SECTION 1329. Relief:**

Any Applicant desiring relief or exemption from any aspect or requirement of this Law may request such from the Town Board at a pre-application meeting, provided that the relief or exemption is contained in the original Application for either a Tower Special Use Permit, or in the case of an existing or previously granted Tower Special Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Town Board. However, the burden of proving the need for the requested relief or exemption, is solely on the Applicant to prove to the satisfaction of the Town Board. The Applicant shall bear all costs of the Town Board or the Town in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the Tower or facilities without the express prior written permission of the Town Board, and such permission shall not be unreasonably withheld or delayed. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant adverse effect on the health, safety and welfare of the Town, its residents and other service providers.

### **SECTION 1330. Periodic Regulatory Review by the Town Board:**

- a. The Town Board may at any time conduct a review and examination of this entire Law.
- b. If, after such a periodic review and examination of this Law, the Town Board determines that one or more provisions of this Law should be amended, repealed, revised, clarified, or deleted, then the Town Board may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the Town, the Town Board may, consistent with applicable provisions of law, amend, revise, clarify or delete any part of this Law or repeal the entire Law.
- c. Notwithstanding the provisions of subsections a. and b. of this Section, the Town Board may at any time, and in any manner (to the extent permitted by Federal, State, or local law), amend, add, revise, repeal, and/or delete one or more provisions of this Law.



**SECTION 1331. Adherence to State and/or Federal Rules and Regulations:**

- a. To the extent that the holder of a Tower Special Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Tower Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- b. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Tower Special Use Permit for Wireless Telecommunications Facilities, then the holder of such a Tower Special Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

**SECTION 1332. Conflict with Other Laws:**

Where this Law differs or conflicts with other statutes, local laws, ordinances, codes, rules or regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, the more restrictive or protective of the Town and the public shall apply.

**Section 3.**

The Land Use Management Local Law is further amended by adding thereto and inserting therein the following new subsection to be designated "Section 304 Siting of Wireless Telecommunications Facilities in Land Use Management Districts" to read and provide as follows:

**SECTION 304. Siting of Wireless Telecommunications Facilities in Land Use Management Districts:**

Wireless Telecommunications Facilities may be sited in any Land Use Management District according to the regulations and siting priorities defined in Article XIII of the Land Use Management Local Law.

**Section 4. DEFINITIONS**

The Land Use Management Local Law is further amended by adding thereto and inserting therein, in proper alphabetical order, the following two (2) new definitions, to read and provide as follows and to be added to Article II thereof:

- 13A) BUILDING AND CODE INSPECTOR: The Town Building and Code Inspector who is sometimes referred to herein as the Code Enforcement Officer.
- 29A) CODE ENFORCEMENT OFFICER: The Town Building and Code Inspector.

**Section 5. VALIDITY.**

The invalidity of any provision of the Local Law shall not affect the validity of any other provision of this Local Law which can be given effect without such invalid provision.

**Section 6. EFFECTIVE DATE.**

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 1999 of the ~~(County)(City)(Town)(Village)~~ of SANFORD was duly passed by the Sanford Town Board on July 13 1999, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body)  
(Elective Chief Executive Officer\*)

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 19\_\_\_\_, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 19\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_, above.

Louise A. Proffitt, Town Clerk  
Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body  
LOUISE A. PROFFITT, Town Clerk of the Town of Sanford  
Date: July 14, 1999

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF BROOME

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Stuart M. Pearis  
Signature  
STUART M. PEARIS  
Town Attorney of the Town of Sanford  
Title

County \_\_\_\_\_  
City \_\_\_\_\_  
Town of Sanford  
Village \_\_\_\_\_

Date: JULY 15, 1999

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED

JAN 25 2013

County  City  Town  Village  
(Select one.)

of Sanford

MISCELLANEOUS  
& STATE RECORDS

Local Law No. 1 of the year 2013

A local law amending the Land Use Management Local Law of the Town of  
(Insert Title)  
Sanford, Broome County, New York

Be it enacted by the Town Board of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one.)

of Sanford as follows:

See attached sheets.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

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**A LOCAL LAW AMENDING THE LAND USE MANAGEMENT LOCAL LAW  
OF THE TOWN OF SANFORD, BROOME COUNTY, NEW YORK**

Be it enacted by the Town Board of the Town of Sanford as follows:

**Section 1.**

The Town of Sanford Land Use Management Local Law, Article XIII (Siting of Wireless Telecommunications Facilities), be and hereby is amended by this Local Law as follows:

1. **Section 1301. Purpose and Legislative Intent** is hereby amended to add the following paragraphs after the first paragraph of this section to provide as follows (with the other paragraph remaining the same):

The Middle Class Tax Relief and Job Creation Act of 2012 (hereinafter referred to as the "Tax Relief Act") in effect mandates that notwithstanding Section 704 of the Telecommunications Act of 1996 or any provision of law, a State or local government may not deny, and shall approve, any request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. A request relating to an eligible facility, in accordance with the Tax Relief Act, means any request for modification of an existing wireless tower or base station that involves:

1. collocation of new transmission equipment;
2. removal of transmission equipment; or
3. replacement of transmission equipment.

A request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall not require a special use permit, but rather shall only be the subject of an administrative review by the Board. Such administrative review shall not require a public hearing, but the applicant shall be subject to all other provisions and application fees of this chapter, except where otherwise indicated. All of the following sections of this article shall remain in full force and effect when the request is being handled by administrative review by the Board.

Additionally, the Federal Communications Commission's (FCC) Declaratory Ruling (FCC Ruling) issued on November 18, 2009 and upheld in City of Arlington v. Federal Communications Commission (Case No. 10-60039) by the Fifth Circuit Court of Appeals, established time frames for State and local governments to take action on wireless facility siting applications which would be applicable to administrative review by the Board.

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2. **Section 1306. Tower Special Use Permit Application and Other Requirements** is hereby amended to add at the end of paragraph a. the following language (with all other paragraphs remaining the same):

A request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall not require another special use permit, but rather shall only be the subject of an administrative review by the Board pursuant to City of Arlington v. Federal Communications Commission (Case No. 10-60039).

3. **Section 1314. Retention of Expert Assistance and Reimbursement by Applicant** is hereby amended to add a new paragraph d. to provide as follows (with paragraphs a. thru c. remaining the same):

d. During the Board's Administrative review, the Board may retain an expert to help determine questions that arise including but not limited to whether a facility is eligible or whether there is substantial change. No initial deposit for a consultant or expert is necessary, until and after such time that the Board determines that consultants and/or experts are necessary. At such time, the Board will set the initial deposit at an amount not to exceed \$7,500. The initial deposit will be maintained as a separate escrow amount. Bills and invoices shall be handled as indicated herein. Depleted Escrow accounts shall be replenished as indicated herein, when necessary. As indicated herein, applicant shall pay the difference to the Town of any cost of the consultant/expert services not covered by the escrow monies. Any additional monies in the escrow account shall be refunded to the applicant.

4. **Section 1315. Requirements for a Tower Special Use Permit** is hereby amended to add a new paragraph d. to provide as follows (with paragraphs a. thru c. remaining the same):

d. A request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall not require a special use permit, but rather shall only be the subject of an administrative review by the Board.

5. **Section 1316. Public Hearing Required** is hereby amended to add a new paragraph c. to provide as follows (with paragraphs a. thru b. remaining the same):

c. A request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall not require a special use permit, but rather shall only be the subject of an administrative review by the Board. Such administrative review shall not require a public hearing.

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6. **Section 1317. Action on an Application for a Tower Special Use Permit for Wireless Telecommunications Facilities** is hereby amended to provide as follows (with paragraphs c. thru g. remaining the same):

a. The Board shall, in accordance with the act, the Tax Relief Act, the FCC Ruling, and City of Arlington v. Federal Communications Commission (Case No. 10-60039), undertake review of an application pursuant to these laws and ruling in a timely fashion, consistent with its responsibilities, and shall act within 90 days to approve a complete application for a collocation facility and within 120 days for a new facility application.

b. The Board may refer any incomplete application for a collocation, or any application or part thereof for a new facility, to any Town advisory committee or other Town committee for a non-binding recommendation.

7. **Section 1320. Application Fee** is hereby amended to add a new paragraph c. to provide as follows (with paragraphs a. thru b. remaining the same):

c. The administrative review by the Board of a request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall require an application fee of \$ 500.00. Such a fee shall be submitted with an application for the administrative review.

8. **Section 1325. Indemnification** is hereby amended to add a new paragraph c. to provide as follows (with paragraphs a. thru b. remaining the same):

c. By applying for an administrative review by the Board of a request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station, the applicant agrees to the following:

Applicants agree, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, officials of the Town, its officers, agents, servants, and employees, from any and all penalties, damage, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a Telecommunications Tower within the Town of Sanford. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees and expert witness fees are included in those costs that are recoverable by the Town.



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**Section 2. Separability**

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

**Section 3. Repealer**

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

**Section 4. Effective Date**

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

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2013 of the (County)(City)(Town)(Village) of Sanford was duly passed by the Town Board on January 8, 2013, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted *(Elective Chief Executive Officer\*)* on \_\_\_\_\_ 20   , in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. *(Elective Chief Executive Officer\*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law. *(Elective Chief Executive Officer\*)*

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

  
ALISON LANG, Town Clerk

Date: January 8, 2013

(Seal)

## **Appendix F**

### Sound Level Monitoring Report

**Bluestone Wind, LLC Wind Energy Project  
Broome County, NY**

**Sound Level Measurement Protocol – Winter Season**

**February 17, 2017**

**Introduction**

Epsilon Associates, Inc. (“Epsilon”) is assisting Bluestone Wind, LLC (“Bluestone Wind”) with the items required for Exhibit 19: Noise and Vibration as part of Section 1001.19 in New York State’s Article 10 process. Bluestone Wind will be located within the Towns of Windsor and Sanford in Broome County. As part of this effort, Epsilon will conduct a sound level measurement program to document existing ambient sound levels in the winter season as required in Section 1001.19(b).

The purpose of this protocol is to describe the selection of baseline monitoring locations, measurement methodology, and acoustical and meteorological equipment proposed. This protocol is being submitted to the NYS Department of Public Service (DPS) for review prior to commencement of this sound level measurement program.

**Measurement Sites**

To understand current sound levels in the area, an ambient baseline study will be conducted by Epsilon. Background sound levels will be measured at up to seven (7) measurement sites within the project area. These measurement sites, described below, have been selected to establish an ambient sound pressure level using the “deterministic spatial sampling” approach in Section 5.1.1 of ANSI S12.9-1992/Part 2 (R2013). In other words, these locations are representative of the sound levels in the total area from which the sites are selected. Wherever possible, the microphone will be located 15 meters (~ 50 feet) from the centerline of the nearest traffic lane in accordance with Section 7.4.2 of ANSI S12.9-1992/Part 2 (R2013). If this is not possible or practical, the setback from the road will be consistent with the setback of the sensitive receptor which the measurement site is characterizing. Each site will be located away from direct farming activities.

Figure 1 shows the locations of the measurement sites proposed for the baseline survey overlaid on an aerial orthophoto along with the location of the project area.

**Location 1** – 1093 Old Route 17, Windsor, NY. The landowner is Shrive. It is expected that the sound meter will be located 15 meters from the centerline of the nearest lane of Old Route 17.



**Location 2** – 517 Ostrander Road, Windsor, NY. The landowner is Weaver. It is expected that the sound meter will be located 15 meters from the centerline of the nearest lane of Ostrander Road.



**Location 3** – 381 William Law Road, Windsor, NY. The landowner is the United Methodist Church. It is expected that the sound meter will be located in the field 15 meters from the centerline of the nearest lane of William Law Rd.





**Location 4** – 1034 Pazzelli Road, Sanford, NY. The landowner is Misciagna. It is expected that the sound meter will be located 15 meters from the centerline of the nearest lane of Pazzelli Road.



**Location 5** – 206-208 Farnham Road, Sanford, NY. The landowner is Hegyi. It is expected that the sound meter will be located 15 meters from the centerline of the nearest lane of Farnham Road.



**Location 6** –22 Parker Road, Sanford, NY. The landowner is Petrizzo. It is expected that the sound meter will be located 15 meters from the centerline of the nearest lane of Parker Road.



**Location 7** – 265 Loomis Hill Road, Sanford, NY. The landowner is Faicco. It is expected that the sound meter will be located 15 meters from the centerline of the nearest lane of Loomis Hill Road.



### Duration/Time of Testing

Continuous A-weighted measurements (24 hours/day) will be made concurrently at all seven locations over a 14-day period (minimum of 336 hours per location). The continuous monitors will generally be unattended and data will be logged at 10-minute intervals with a one second time history. Both broadband A-weighted and linear one-third octave band sound levels will be continuously collected and will include:  $L_{max}$ ,  $L_{eq}$ ,  $L_{10}$ ,  $L_{50}$ , and  $L_{90}$ . The monitoring will be conducted sometime between February 27, 2017 and March 20, 2017 ("winter season").

During the continuous measurement program, personal observations will be made by a field technician four times at each site. Observations will be made at each site for approximately 10 – 15 minutes. These periods include:

- ◆ 1 weekday between 9 am and 5 pm
- ◆ 1 weekday between 6 pm and 10 pm
- ◆ 1 weekday between 11 pm and 3 am
- ◆ 1 weekday between 9 am and 5 pm

### Sound Level Measurement Instrumentation

All acoustical instrumentation will conform to ANSI National Standards Institute (ANSI) S1.4 or IEC 804 standard for Type 1 (precision) for acoustical measuring devices in accordance with Section 6.2.1 of ANSI S12.9-1992/Part 2 (R2013). Octave-Band and Fractional-Octave-Band Analog and Digital Filters will conform to ANSI S1.11-2004 (R2009). The instrumentation will be capable of measuring and logging in both A-weighted and linear 1/3 octave band sound levels (6.3 Hz to 20 kHz). One of the sites will be outfitted with a special infrasound microphone and sound level meter capable of measuring down to 0.5 Hz. The sound level meter response shall be set to ANSI "fast".

Each microphone will be fitted with an ACO Pacific 7-inch diameter windscreen and tripod-mounted approximately 1.2 +/- 0.1 meters above ground level in accordance with Section 7.4.1 of ANSI S12.9-1992/Part 2 (R2013). The instrumentation will be field-calibrated both before and after the measurement survey with Class 1 calibrators meeting IEC 942 and ANSI S1.40-1984 standards in accordance with Section 6.2.2 of ANSI S12.9-1992/Part 2 (R2013).

In addition, all instrumentation will have undergone an independent laboratory calibration traceable to NIST standards within the past 12 months. Certificates of calibration for all equipment used in this program will be included in the Article 10 Application. It is expected that this measurement program will utilize Larson Davis 831 and/or Norsonic Nor140 sound level meters.

## **Meteorological Data Collection**

The ground-level wind speed has a direct influence on the ambient sound levels. Ground-level wind speed and direction data will be continuously measured at two sound level measurement sites for the duration of the program. These wind monitors will be co-located with two of the seven sound monitors, and sited in the open away from trees. A HOBO H21-002 micro-weather station with a data logger will be used to measure these parameters. The wind sensors will be mounted at the same height as the microphones (2.0 +/- 0.2 meters) above ground level and data logged every 10 minutes. This wind instrument has a measurement range of 0 to 44 m/s (99 mph) and an accuracy of +/- 0.5 m/s (1.1 mph). The starting threshold is 0.5 m/s (1.1 mph). The wind direction measurement range is 0 to 358 degrees (2-degree dead band), with an accuracy of +/- 5 degrees.

In addition, wind speed and wind direction data from an on-site 60-meter meteorological tower will be collected by Bluestone Wind for the duration of the sound level measurement program. These data will be provided in the Article 10 Application. Surface weather conditions from the nearest New York State Mesonet weather station in Belden (Broome County) will also be archived for the duration of the sound level measurement program.

## **Ambient Sound Level Data Processing**

Sound level data from periods of precipitation and wind speeds above 5 m/s will be excluded from the analysis, as per the measurement protocol specified in ANSI S12.18-1994: "Procedures for Outdoor Measurement of Sound Pressure Level," (§4.4.1.2). Since this is a winter survey by design, sound data collected with snow-covered ground will be considered valid data.

Temporal accuracy will be calculated by following the procedures indicated in ANSI/ASA Standard S12.9/Part 2-1992 (R-2013) for a 95% confidence interval at each measurement location, and will be reported in the Application to include mean values as well as upper and lower limits for the 95% confidence interval. A detailed discussion of methodologies, conformance to the applicable portions of ANSI/ASA standards and Article 10 requirements, and results will be included in the Application.

Intermittent noise will be "filtered" by reporting the L90 metric which eliminates intermittent sound sources. Seasonal noise will be excluded by using the method in ANSI Standard S12.100-2014 to report the A-weighted, noise-compensated (ANS-weighted metric) which excludes sounds above the 1000 Hz octave band (or above the 1250 Hz one-third octave band). Periods of rain and excessive wind, as well as weather conditions recorded by on-site meteorological sensors out of the range of specifications for the equipment, will be noted and excluded from the calculation of ambient noise results.

A-weighted results will be presented for each measurement location graphically as a function of time for all noise descriptors collected. Timeline graphs will show the periods that were excluded along with the reason for exclusion. A conclusion on whether prominent discrete (pure) tones exist in the ambient pre-construction baseline at each measurement site will be determined after removal of seasonal and intermittent sounds. A prominent discrete tone will be defined in accordance with ANSI S12.9-Part 3, Annex B, section B.1 (informative).

### **Statement of Qualifications**

Epsilon staff has conducted sound level monitoring and modeling studies for over 125 wind energy projects throughout the United States, and is a recognized leader in the industry. We have performed sound level studies for 11 wind energy projects in NY State, including seven active Article 10 projects. Rob O'Neal will be the Principal in charge of this work. Mr. O'Neal has over 25 years of experience, is a Board Certified member of the Institute of Noise Control Engineers (INCE), and has testified as an expert witness on matters of wind energy noise impacts. He will be supported in the modeling and monitoring efforts by Mr. Richard Lampeter, INCE, Associate, and/or Mr. Clint Cyr, INCE, Project Engineer as well as our in-house meteorologists several of which are Certified Consulting Meteorologists, a national certification program administered by the American Meteorology Society.

## **Appendix G**

Avian and Bat Work Plans and Correspondence



**DRAFT Wind Energy Guidelines Implementation  
and Bird and Bat Conservation Strategy  
Bluestone Wind Project  
Broome County, New York**

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**Prepared for:  
Calpine Wind Holdings, LLC**

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**Prepared by:  
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Lemoyne, Pennsylvania 17043**

**June 2017**



**NATURAL RESOURCES ♦ SCIENTIFIC SOLUTIONS**

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## Background and Purpose

### Client's Corporate Environmental Policy/Commitment

### Site and Project Description and Regional Setting

1. State, County
2. BCR; EcoRegion
3. General landscape characteristics
  - a. Elevation
  - b. Topographic variability
  - c. Climate
  - d. Basic vegetative structure

#### *Project Characteristics*

Brief description of the project including infrastructure (turbine types, number of turbines, collection lines, transmission lines, O&M Building, access roads etc.) as well as project construction and operation. Typically includes a table of temporary and permanent disturbance calculations.

### Regulatory Requirements

#### *Federal Regulatory Framework*

Endangered Species Act

Bald and Golden Eagle Protection Act

Migratory Bird Treaty Act

Bureau of Land Management

#### *State Regulatory Framework*

State ESA

Wildlife Action Plans

## Tier 1 – Preliminary Site Evaluation

### Tier 1 – Questions (*data collected during Tier 1 will be used to answer the following questions*)

1. Are there species of concern present on the potential site(s), or is habitat (including designated critical habitat) present for these species?

Summarize what is sufficiently addressed by existing data:

Summarize what existing data did not sufficiently address:

2. Does the landscape contain areas where development is precluded by law or areas designated as sensitive according to scientifically credible information?

Summarize what is sufficiently addressed by existing data:

Summarize what existing data did not sufficiently address:

3. Are there known critical areas of wildlife congregation, including, but not limited to: maternity roosts, hibernacula, staging areas, winter ranges, nesting sites, migration stopovers or corridors, leks, or other areas of seasonal importance?

Summarize what is sufficiently addressed by existing data:

Summarize what existing data did not sufficiently address:

4. Are there large areas of intact habitat with the potential for fragmentation, with respect to species of habitat fragmentation concern needing large contiguous blocks of habitat?

Summarize what is sufficiently addressed by existing data:

Summarize what existing data did not sufficiently address:

### Tier 1 – Communications

Summary of the agency communications that occurred during the Tier 1 review.

To view full log, please select (control + click) hyperlink: [Appendix A: Log of Communications between WEST, Developer, and Agencies.](#)

## Decision-framework Upon Completion of Tier 1

### Mitigation Decisions after Tier 1

### Project Changes after Tier 1

## Tier 3 – Field Studies to Document Site Wildlife and Habitat and Predict Project Impacts

### Problem Formulation: *(Questions used to determine what Tier 3 studies needed to be completed)*

1. Which species are likely to be present and have potential to be adversely impacted by wind energy development?
2. For each species/group of interest, what aspects of their ecology are not well understood based on current data (e.g., migratory/stopover use, foraging, nesting/breeding)?
3. If the project is appropriate for Tier 5 research or studies that involve both pre- and post-construction, briefly describe these potential studies?

### Tier 3 – Questions *(data collected during Tier 3 will be used to answer the following questions)*

1. Are known species of concern present on the proposed site, or is habitat (including designated critical habitat) present for these species?

Summarize what is sufficiently addressed by existing data and data collected in the Tier 3 wildlife studies:

Summarize what existing data did not sufficiently address:

2. Do field studies indicate the potential for significant adverse impacts on affected population of species of habitat fragmentation concern?

Summarize what is sufficiently addressed by existing data and data collected in the Tier 3 wildlife studies:

Summarize what existing data did not sufficiently address:

3. What is the distribution, relative abundance, behavior, and site use of species of concern identified in Tiers 1 or 2, and to what extent do these factors expose these species to risk from the proposed wind energy project?

Summarize what is sufficiently addressed by existing data and data collected in the Tier 3 wildlife studies:

Summarize what existing data did not sufficiently address:

4. What are the potential risks of adverse impacts of the proposed wind energy project to individuals and local population of species of concern and their habitats? (In the case of rare or endangered species, what are the possible impacts to such species and their habitats?)

Summarize what is sufficiently addressed by existing data and data collected in the Tier 3 wildlife studies:

Summarize what existing data did not sufficiently address:

5. How can developers mitigate identified significant adverse impacts?

Summarize what is sufficiently addressed by existing data and data collected in the Tier 3 wildlife studies:

Summarize what existing data did not sufficiently address:

6. Are there studies that should be initiated at this stage that would be continued in post-construction?

Summarize what is sufficiently addressed by existing data and data collected in the Tier 3 wildlife studies:

Summarize what existing data did not sufficiently address:

### **Tier 3 – Communications**

#### **Decision-framework Upon Completion of Tier 3**

#### **Mitigation Decisions after Tier 3**

#### **Project Changes after Tier 3**

## Tier 4 – Post-construction Studies to Estimate Impacts

**Problem Formulation (*with NYSDEC and USFWS consultation; informal problem formulation meeting*):** The problem formulation for Tier 4 will be dependent upon the results from Tiers 1, 2, and 3. Tier 4 problem formulation serves to determine the appropriate study design to assess the accuracy of predicted fatality and direct/indirect impacts to species of concern and their habitats.

1. Which species are at risk for collision with turbines, and what was the estimated risk?
2. What habitats for species of concern were identified as at risk for indirect or direct effects due to development?
3. If the project has a pre-construction and post-construction component, please describe post-construction information needed for this comparison?



## ADAPTIVE MANAGEMENT PLAN

**Appendix A: Log of Communications between WEST, Developer, and Agencies.**

**Appendix A. Complete log of communications between WEST, developer, and agencies from ### to ###, 2012.**

<b>Communication From</b>	<b>Communication To</b>	<b>Type</b>	<b>Date</b>	<b>Regarding</b>	<b>Response</b>

- Return to:
- [Tier 1 – Communications](#)
  - [Tier 2 – Communications](#)
  - [Tier 3 – Communications](#)
  - [Tier 4a – Communications](#)
  - [Tier 4b – Communications](#)
  - [Tier 5 – Communications](#)

**Breeding Bird Survey Protocol  
Bluestone Wind Project  
Broome County, New York**

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**Prepared for:  
Calpine Wind Holdings, LLC**

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**Prepared by:  
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**May 3, 2017**



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## **INTRODUCTION**

Calpine Wind Holdings, LLC (Calpine) is considering the development of a wind project in Broome County, New York known as Bluestone Wind Project (the Project). Calpine has asked Western EcoSystems Technology, Inc. (WEST) to develop a protocol to conduct breeding bird surveys (BBS) at the Project. The New York State Department of Environmental Conservation (NYSDEC) recommends that wind developers follow the NYSDEC Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Project (NYSDEC 2013). The following protocol was developed in accordance with the NYSDEC Guidelines for breeding bird surveys.

## **METHODS**

### **Breeding Bird Surveys**

The objectives of the breeding bird surveys (BBS) at the Project are to: 1) determine if state- or federally listed passerine species breed near areas where turbines will be erected, and 2) provide information for a Before-After-Control-Impact (BACI) assessment to compare bird use pre- and post-construction. The focus of the surveys will be on passerines (i.e., songbirds); however, any birds observed or heard will be recorded. The study approach involves a combination of a gradient analysis study design and control areas. Songbird density data and vegetation data will be collected along a continuum out to 300 meters (m; 984 feet [ft]) at proposed turbine locations as well as control transects in areas away from turbine development (Figure 1).

A sample of 12 (~30%) of the proposed turbine locations with land access were selected for the surveys. In addition, six control transects were selected in nearby areas away from proposed turbine locations (greater than 800 m [2,625 ft]) with similar vegetation and land access. Surveys will be a combination of transects and point-count surveys. Each transect will start at the base of the proposed turbine (or start of the control transect) and extend out 300 m with a point-count location at the base of the proposed turbine location and every 50 m (164 ft) along the transect. Survey point will be located at 25 m (82 ft), 75 m (246 ft), 125 m (410 ft), 175 m (574 ft), 225 m (738 ft), and 275 m (902 ft). As the biologist walks along each transect, all birds seen or heard will be recorded (i.e., incidental observations). At each point-count location the biologist will stop and complete a 5 minute survey to record all birds seen or heard. Each transect will be surveyed weekly from May 15 to July 20, 2017.

All surveys will be completed from one half hour before sunrise (i.e., first light) until 1000. Surveys will not be completed in inclement weather that may impair bird observations such as rain or strong winds (greater than 24 kilometers per hour [15 miles per hour]). Data recorded for each survey will include: start and end time of the observation period; and weather information such as temperature, wind speed, wind direction and cloud cover. Species identification, number of individuals of each species, method of observation (visual or auditory), and behavior (nesting, flying, perching, singing, other) will be recorded for each observation. The approximate

distance to each bird will be recorded. Observers will record all birds seen but will focus on birds within 50 m of both sides of each transect.

## **Statistical Analysis of Baseline Data**

### *Data Compilation and Storage*

A database will be established to store, retrieve, and organize field observations. Data from field forms will be keyed into electronic data files using a pre-defined format that should make subsequent data analysis straightforward. All field data forms and electronic data files will be retained for ready control.

### *Quality Assurance/Quality Control (QA/QC)*

QA/QC measures will be implemented at all stages of the study, including field data collection, data entry, data analysis, and report preparation. At the end of each survey day, the observer will be responsible for inspecting his or her data forms for completeness, accuracy, and legibility. Periodically, the study team leader will review data forms to insure completeness and legibility; any problems detected will be corrected. Any changes made to the data forms will be initialed and dated by the person making the change.

Data will be checked thoroughly for data entry errors. Any errors will be corrected by referencing the raw data forms and/or consulting with the observer who collected the data. Any irregular codes detected, or any data suspected as questionable, will be discussed with the observer and study team leader. Any changes made to the raw data will be documented for future control.

### *Statistical Analysis and Products*

A gradient analysis (Morrison et al. 2001) will be used to determine the relationship between density of avian species and distance from turbines. The gradient analysis will assess whether a significant relationship exists between distance from Project turbines and abundance or use of the area by species. The averages of these differences by distance category can be compared against the null hypothesis value of zero using *t*-tests and confidence intervals to test whether a change in density is statistically significant and to identify the distance from the turbines at which it occurred. Further analysis using linear regressions and/or line-distance sampling may be completed. Data will be pooled across transects within similar vegetation types (e.g., closed [forested and shrubland] and open [hayfields and pasture] habitats).

Statistics and data to be generated for the project will include the following:

- Maps of survey locations;
- A table of species observed; and
- Gradient analysis of birds observed.

## **REFERENCES**

Morrison, M. L., W. L. Kendall., M. D. Strickland, and W. M. Block. 2001. *Wildlife Study Design*. Springer-Verlag, New York. 210 pp.

Pennsylvania Game Commission (PGC). 2013. *Pennsylvania Game Commission Wind Energy Voluntary Cooperation Agreement Amendment 1*. July 26, 2013. 66 pp.



**Eagle Survey Protocol  
Bluestone Wind Project  
Broome County, New York**

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**Prepared for:  
Calpine Wind Holdings, LLC**

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**March 9, 2016**



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## **INTRODUCTION**

Calpine Wind Holdings, LLC (Calpine) is considering the development of a wind project in Broome County, New York known as Bluestone Wind Project (the Project). The final number, size, and location of turbines and associated infrastructure have not been determined. Calpine has asked Western EcoSystems Technology, Inc. (WEST) to develop a protocol to conduct eagle observation surveys (EOS) at the Project. The US Fish and Wildlife Service (USFWS) recommends that wind energy developers follow a tiered approach when assessing risk of development to wildlife (USFWS 2012). The following protocol was developed accordance with Stage 2 of the USFWS Eagle Conservation Guidance Plan (ECPG; USFWS 2013) and Tier 3 of the USFWS Land-Based Wind Energy Guidelines (USFWS 2012).

## **METHODS**

### **Task 1 - Eagle Observation Surveys**

The objective of the eagle observation surveys (EOS) are to provide information regarding levels of use by eagles (bald [*Haliaeetus leucocephalus*] and golden [*Aquila chrysaetos*] eagle) and other large bird species, particularly raptors (defined here as kites, accipiters, buteos, harriers, falcons, and osprey). The EOS will be conducted following methods described in the ECPG (USFWS 2013), while also collecting additional data to allow for comparisons with other projects throughout New York and the Northeastern U.S. The EOS will consist of counts of bird use within circular plots with an 800 meter (m; 2,625 feet [ft]) radius around fixed observation points.

The USFWS ECPG (USFWS 2013) recommends that enough survey plots be placed to cover at least 30% of a proposed project area, defined as the area within one kilometer (km; 3,281 ft) of proposed turbine locations. Up to 33 wind turbines have been proposed for construction for a total Project area of 80 square kilometers (km<sup>2</sup>) based on this criteria. To cover 30% of the proposed Project area, 12 survey plot locations will be established. Survey plot locations have initially been determined using a Geographic Information System (GIS; ArcGIS 10.3; Figure 1), and will be micro-sited during field set-up. The final locations will be selected to maximize visibility in the 800-m radius plot.

Surveys will be conducted for a full year starting March 15, 2016. Point count locations will be surveyed once per month (half of the points will be surveyed every two weeks) and each point location will be surveyed for one hour during each visit. Plot surveys will be conducted throughout daylight hours from 0800 to 1700 EST. All surveys will be completed in optimal weather conditions such as no precipitation and clear visibility over the entire survey plot. This meets recommendations in the ECPG of at least one survey hour per survey location per month (USFWS 2013).

All large birds seen during each survey will be recorded, regardless of distance from the observer. All eagle observations will be monitored until they leave the observers field of view. Estimated distance to each bird observed will be recorded to the nearest 5 m. Landmarks will be located to aid in estimating distances to each bird. The date, start, and end time of observation period, plot number, species or best possible identification, number of birds in a group, sex and age class (if possible), distance from plot center when first observed (m), closest distance (m), height above ground (m), behavior, and habitat will be recorded.

Flight or movement paths for eagles and other large birds will be mapped and given corresponding unique observation numbers. The map will indicate whether the bird was within or outside the survey plot based on reference points at known distances from the plot center. Recent aerial photographs will be used to aid in recording locations of observations as accurately as possible.

Bird behavior and habitat will be recorded for each observation. For eagle observations, additional behavior and habitat data will be recorded during each one-minute interval the bird is within view, per the ECPG (USFWS 2013). Behavior categories will include soaring flight, flapping-gliding, hunting, kiting-hovering, stooping/diving at prey, stooping or diving in an antagonistic context with other bird species, perched, being mobbed, undulating/territorial flight, auditory, and other. The initial flight patterns and habitat types (at first observation) will be uniquely identified on the data sheet and subsequent patterns and habitats will also be recorded. The flight direction of observed birds will also be recorded on the data sheet map. Approximate flight height at first observation will be recorded to the nearest 5 m; the approximate lowest and highest flight heights observed will also be recorded. Any comments or unusual observations will be noted in the comments section. Weather information recorded for each survey point will include temperature, wind speed, wind direction, precipitation, and cloud cover.

Eagles and state or federally listed species observed in the Project outside of scheduled surveys will be recorded on in-transit or incidental wildlife observation data sheets. The data recorded are similar to those described above, including observation number, date, time, species, number of individuals, distance from observer in meters, sex/age class, and habitat. Observations will be recorded in additional detail, mapped on a U.S. Geological Survey quadrangle maps or aerial photographs, and summarized.

## **Statistical Analysis of Baseline Data**

### *Data Compilation and Storage*

A database will be established to store, retrieve, and organize field observations. Data from field forms will be keyed into electronic data files using a pre-defined format to make subsequent data analysis straightforward. All field data forms, field notebooks, and electronic data files will be retained for ready reference.

### *Quality Assurance/Quality Control (QA/QC)*

QA/QC measures will be implemented at all stages of the study, including field data collection, data entry, data analysis, and report preparation. At the end of each survey day, the observer will be responsible for inspecting his or her data forms for completeness, accuracy, and legibility. Periodically, the study team leader will review data forms to insure completeness and legibility; any problems detected will be corrected. Any changes made to the data forms will be initialed and dated by the person making the change.

Data will be checked thoroughly for data entry errors. Any errors will be corrected by referencing the raw data forms and/or consulting with the observer who collected the data. Any irregular codes detected, or any data suspected as questionable, will be discussed with the observer and study team leader. Any changes made to the raw data will be documented for future reference.

### *Statistical Analysis and Products*

Statistics and summaries to be generated for the project will include the following:

- Maps of survey locations;
- Eagle flight minutes;
- Hours of observation;
- Species list for the EOS and incidental observations;
- Maps of eagle and raptor flight paths; and
- Distributions of eagle and other large bird use within the project area.

## **Task 2 - Aerial Raptor/Eagle Nest Surveys**

The principal objectives of raptor/eagle nest surveys is to document the presence of bald eagle nests within and near the Project area as well areas of congregation within 16.1 kilometers (km; 10-miles [mi]) of the Project area per the ECPG (USFWS 2013). Aerial surveys will be conducted twice from March 1 to May 1, 2017, spaced approximately 30 days apart. Aerial surveys will be conducted using a biologist experienced with completing aerial nest surveys for eagles from a low flying (approximately 328 ft [100 m] above ground level or vegetation) helicopter (Robinson R44) during two annual survey rounds scheduled during the 2017 breeding seasons.

Surveys in the Project area will be completed by surveying transects placed approximately ¼ mile apart so the biologist can thoroughly survey the Project area for all stick nest structures. Surveys in the 16.1 km (10 mi) buffer will include surveys of waterbodies, forested riparian areas, and other areas that may congregate eagles.

The biologist will minimize the amount of time necessary to collect data on each nest to minimize disturbance. If the bird appears to become agitated or under stress, the helicopter will immediately vacate the area. Data collected will include:

- Occupied or unoccupied;
- Species (or best possible species);
- Nest Status (eggs, incubating, chicks, etc.);
- Global Positioning System (GPS) location of each nest;
- GPS tracks of the flight; and
- Photographs of nests (when possible to limit disturbance).

A memorandum of findings will be produced that will include methods, table of nest details, and keyed maps of documented nests.

## **REFERENCES**

Reynolds, R. T., J. M. Scott, and R. A. Nussbaum. 1980. A Variable Circular-Plot Method for Estimating Bird Numbers. *Condor* 82(3): 309-313.

US Fish and Wildlife Service (USFWS). 2012. Final Land-Based Wind Energy Guidelines. March 23, 2012. 82 pp. Available online at: [http://www.fws.gov/cno/pdf/Energy/2012\\_Wind\\_Energy\\_Guidelines\\_final.pdf](http://www.fws.gov/cno/pdf/Energy/2012_Wind_Energy_Guidelines_final.pdf)

US Fish and Wildlife Service (USFWS). 2013. Eagle Conservation Plan Guidance: Module 1 - Land-Based Wind Energy, Version 2. US Department of the Interior, Fish and Wildlife Service, Division of Migratory Bird Management. April 2013. Executive Summary and frontmatter + 103 pp. Available online at: [http://www.fws.gov/migratorybirds/Eagle\\_Conservation\\_Plan\\_Guidance-Module%201.pdf](http://www.fws.gov/migratorybirds/Eagle_Conservation_Plan_Guidance-Module%201.pdf)

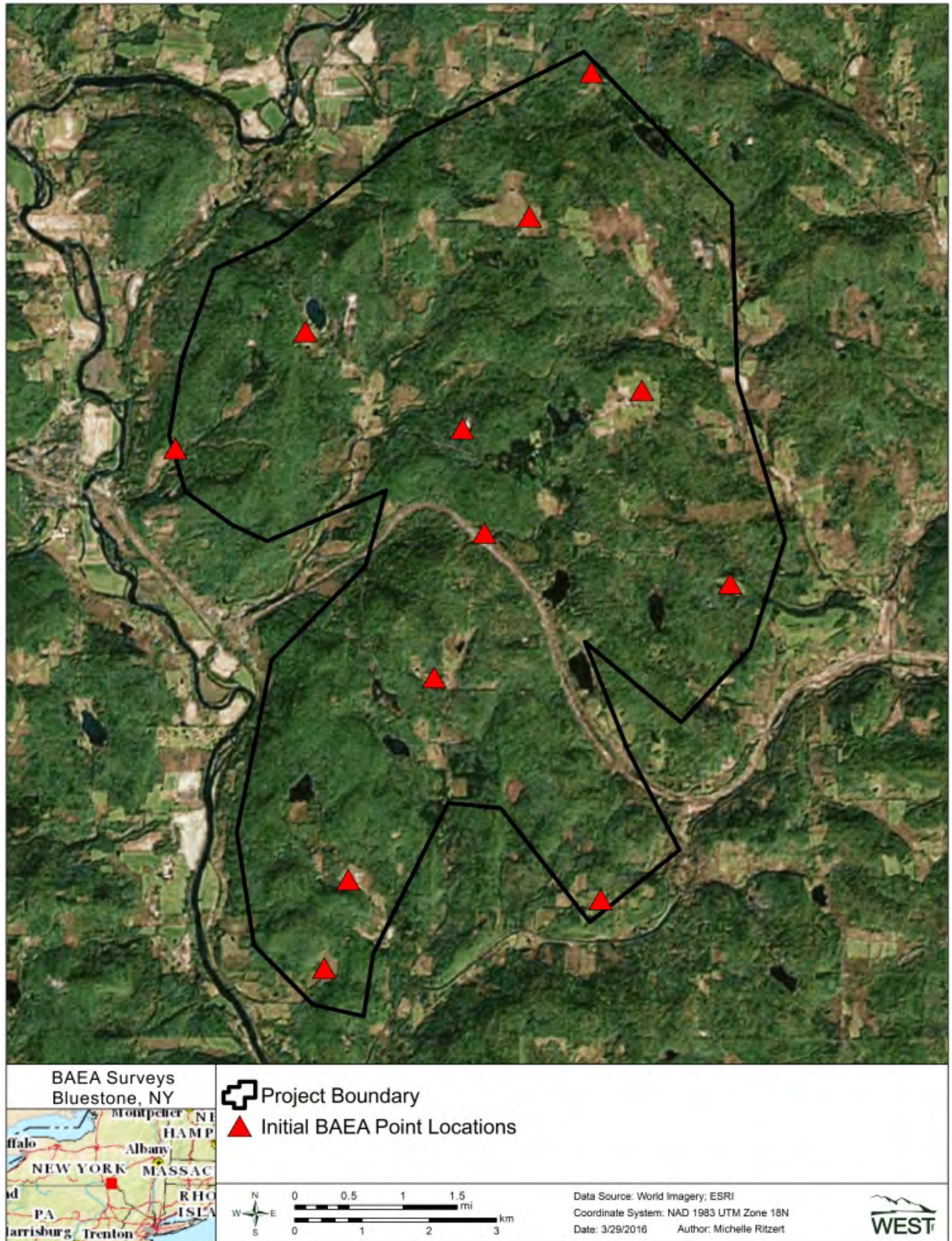


Figure 1. Bluestone Wind Project and location of initial fixed-point count locations.

**Raptor Migration Survey Protocol  
for the Bluestone Wind Project  
Broome County, New York**

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**Prepared for:  
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---

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**July 14, 2016**





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## **INTRODUCTION**

Calpine Wind Holdings, LLC (Calpine) is considering the development of a wind project in Broome County, New York known as the Bluestone Wind Project (the Project). The final number, size, and location of turbines and associated infrastructure have not been determined. Calpine has asked Western EcoSystems Technology, Inc. (WEST) to develop a protocol to conduct raptor migration surveys (RMS) at the Project following the New York State Department of Environmental Conservation (NYSDEC) Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects (NYSDEC 2016). The principle objectives of the RMS for the Project are to 1) estimate the overall rate of use of the Project during the fall and spring migration periods by diurnal raptors (defined here as kites, accipiters, buteos, harriers, eagles, falcons, and vultures); and 2) estimate potential impacts to migrating raptors that could result from the construction and operation of the proposed Project. Raptor migration surveys will be conducted at the Project in addition to the on-going eagle observation surveys.

## **METHODS**

### **Raptor Migration Surveys**

Raptor migration surveys will consist of counts of raptors at fixed-point locations in the Project. Surveys will be conducted once per week during the fall (August 15 to December 31, 2016) and spring (March 1 to May 31, 2017; NYSDEC 2016) migration periods. To maximize viewshed two survey locations will be placed in the proposed Project (Figure 1). Surveys will begin at 0800 hours (H) and continue until two H prior to sunset, with the survey day split equally between the two plots. Surveys will not be conducted on days with heavy rain, snow, fog or excessive cloud cover that would limit visibility. However, the survey schedule will require flexibility in response to adverse weather conditions and logistics, which may cause delays and rescheduling of some surveys.

All raptors seen during each survey will be recorded and the estimated distance to each bird observed will be recorded to the nearest meter (three ft). The date, start and end time of the survey, and weather information (i.e., temperature [°F], ceiling height, wind speed, wind direction, precipitation, cloud cover (%), and the timing of any cold or warm fronts passing through) will be recorded for hourly during each survey.

The following data will also be recorded for each observation:

- Species (or best possible identification);
- Time species was observed;
- Number of individuals;
- Sex and age class (if possible);

- Distance from plot center when first observed;
- Flight direction;
- Closest distance observed;
- Altitude above ground;

The behavior of each bird observed and the habitat in which or over which the bird occurred will be recorded. Behavior categories recognized include perched, soaring, flapping, foraging, gliding, hovering, auditory, and other (noted in comments). Vegetation types within which or over which observations are made will also be recorded. Flight paths and vegetation types (at first observation) will be uniquely identified on the data sheet. The flight direction of observed raptors will also be recorded on the data sheet map. Approximate flight height above ground level (AGL) at first observation will be recorded to the nearest 5 meters (16 feet); the approximate lowest and highest flight heights observed will also be recorded. Any comments or unusual observations will be noted in the comments section. Locations of raptors will be recorded on the field maps, by observation number. The field maps will be prepared as portions of recent aerial photographs, which include the survey plot.

If state or federally listed species are observed in the Project outside of scheduled surveys or large flocks (greater than 50 individuals) of other bird types (i.e., waterfowl, shorebirds, corvids, and passerines) are observed during the surveys, they will be recorded on incidental wildlife observation data sheets. The data recorded are similar to those described above, including observation number, date, time, species, number of individuals, distance from observer, sex/age class, and habitat.

### **Statistical Analysis of Baseline Data**

#### *Data Compilation and Storage*

A database will be established to store, retrieve, and organize field observations. Data from field forms will be keyed into electronic data files using a pre-defined format to make subsequent data analysis straightforward. All field data forms, field notebooks, and electronic data files will be retained for ready reference.

#### *Quality Assurance/Quality Control (QA/QC)*

QA/QC measures will be implemented at all stages of the study, including field data collection, data entry, data analysis, and report preparation. At the end of each survey day, the observer will be responsible for inspecting his or her data forms for completeness, accuracy, and legibility. Periodically, the study team leader will review data forms to insure completeness and legibility; any problems detected will be corrected. Any changes made to the data forms will be initialed and dated by the person making the change.

Data will be checked thoroughly for data entry errors. Any errors will be corrected by referencing the raw data forms and/or consulting with the observer who collected the data. Any irregular

codes detected, or any data suspected as questionable, will be discussed with the observer and study team leader. Any changes made to the raw data will be documented for future reference.

### *Statistical Analysis and Products*

Statistics and summaries to be generated for the project will include the following:

- The number, location and length of all observation points and routes surveyed;
- The overall survey period, and date, time, and duration of surveys conducted at each point and driving route;
- A general description of the viewshed from each observation point, including areas with limited or no visibility of the targeted habitat (minimally this will be covered in the 100, 500, and 800 m bands, farther as the viewshed allows);
- The number of species observed overall;
- The total number of individuals of each species observed overall;
- The number of individuals of each species observed on each survey, and at each point;
- A description of the behavior (feeding, perching, soaring, flocking, etc.) of the birds observed and the habitat they occupied;
- Which birds were identified visually or via vocalizations;
- The point(s)/route(s) with the highest and lowest: number of species, species diversity, frequency, and abundance;
- A description of the weather conditions during an immediately prior to survey days;
- Any disruptions and/or distractions that occurred during each survey that may have precluded an adequate collection of data;
- The number and identification of the observer(s) conducting each survey;
- A detailed discussion of all methods, results, and recommendations;
- One or more table or graph, as needed, depicting the above information, as well as all species and individuals with the dates and points where they were observed;
- One or more map, as needed, showing the locations of the sightings relative to proposed or existing turbine locations and from the survey point/driving route;
- Any other information as requested by NYSDEC; and
- Shapefiles depicting all survey locations, the viewshed from each, and the date, location, flight direction, and behavior of each individual of all state and federally listed species observed.

### *Reporting*

A draft fall report will be provided to the NYSDEC within 60 days of the end of each survey season. A draft report of the fall survey data will be provided by February 15, 2017 and a draft final report of the fall and spring survey data will be provided to the NYSDEC by July 31, 2017.

## **REFERENCES**

New York State Department of Environmental Conservation (NYSDEC). 2016. Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects. April 2016. Available online at: [http://www.dec.ny.gov/docs/wildlife\\_pdf/winguide16.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/winguide16.pdf).

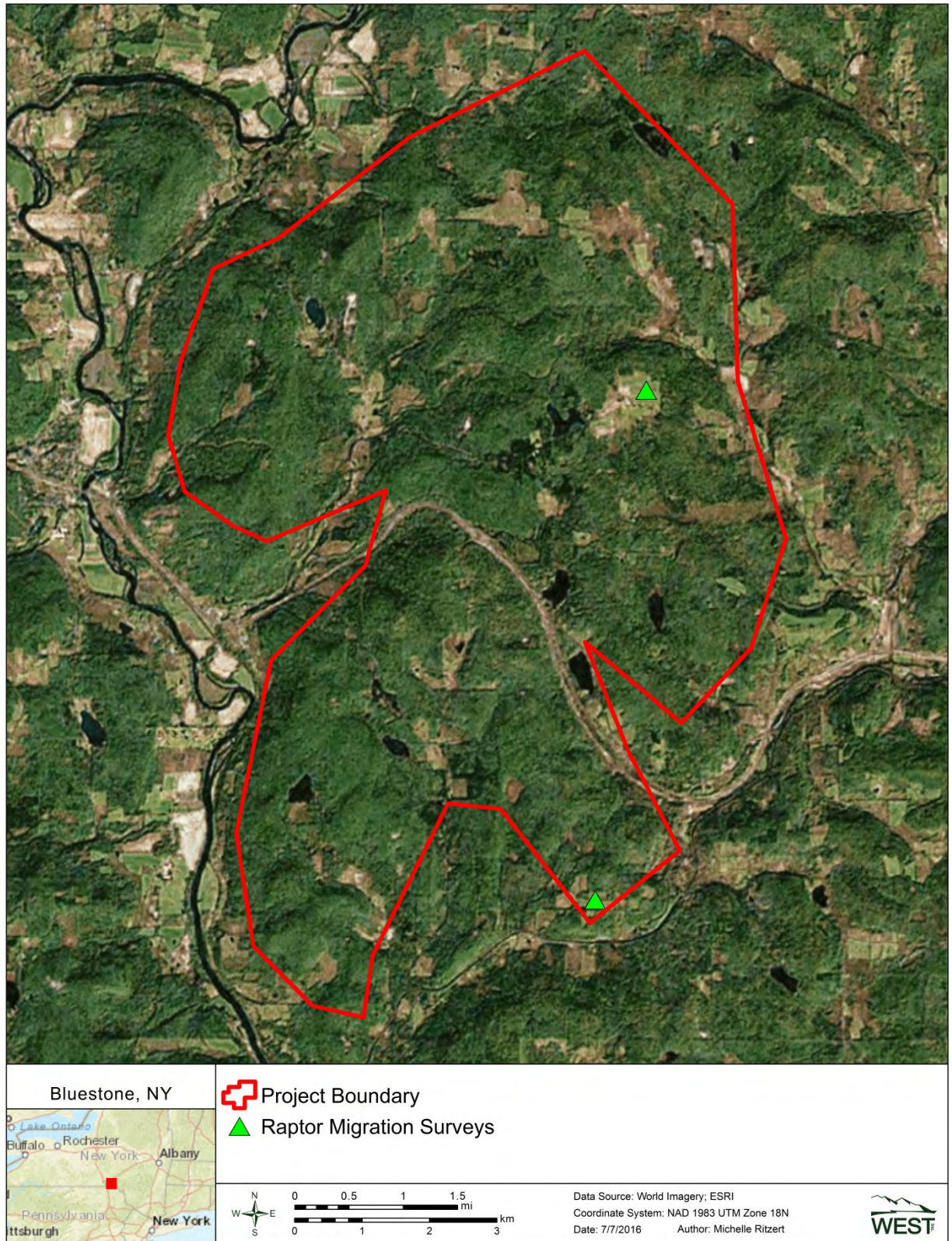


Figure 1. Bluestone Wind Project and location of raptor migration survey locations.

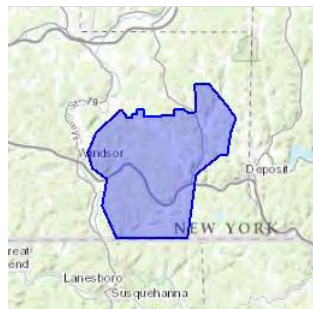
## **Appendix H**

NYNHP and USFWS Correspondence

# IPaC resource list

## Location

Broome County, New York



## Local office

New York Ecological Services Field Office

☎ (607) 753-9334

📠 (607) 753-9699

3817 Luker Road  
Cortland, NY 13045-9349

<http://www.fws.gov/northeast/nyfo/es/section7.htm>

## Endangered species

**This resource list is for informational purposes only and should not be used for planning or analyzing project level impacts.**

[Section 7](#) of the Endangered Species Act **requires** Federal agencies to “request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action” for any project that is conducted, permitted, funded, or licensed by any Federal agency.

**A letter from the local office and a species list which fulfills this requirement can only be obtained by requesting an official species list either from the Regulatory Review section in IPaC or from the local field office directly.**

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list by creating a project and making a request from the Regulatory Review section.

Listed species<sup>1</sup> are managed by the [Endangered Species Program](#) of the U.S. Fish and Wildlife Service.

1. Species listed under the [Endangered Species Act](#) are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the [listing status page](#) for more information.

The following species are potentially affected by activities in this location:

## Mammals

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. <a href="http://ecos.fws.gov/ecp/species/9045">http://ecos.fws.gov/ecp/species/9045</a>	Threatened

## Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.



THERE ARE NO CRITICAL HABITATS AT THIS LOCATION.

## Migratory birds

Birds are protected under the Migratory Bird Treaty Act<sup>1</sup> and the Bald and Golden Eagle Protection Act<sup>2</sup>.

Any activity that results in the take (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) of migratory birds or eagles is prohibited unless authorized by the U.S. Fish and Wildlife Service<sup>3</sup>. There are no provisions for allowing the take of migratory birds that are unintentionally killed or injured.

Any person or organization who plans or conducts activities that may result in the take of migratory birds is responsible for complying with the appropriate regulations and implementing appropriate conservation measures.

1. The [Migratory Birds Treaty Act](#) of 1918.
2. The [Bald and Golden Eagle Protection Act](#) of 1940.
3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

Additional information can be found using the following links:

- Birds of Conservation Concern <http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>
- Conservation measures for birds <http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>
- Year-round bird occurrence data <http://www.birdscanada.org/birdmon/default/datasummaries.jsp>

The migratory birds species listed below are species of particular conservation concern (e.g. [Birds of Conservation Concern](#)) that may be potentially affected by activities in this location, not a list of every bird species you may find in this location. Although it is important to try to avoid and minimize impacts to all birds, special attention should be made to avoid and minimize impacts to birds of priority concern. To view available data on other bird species that may occur in your project area, please visit the [AKN Histogram Tools](#) and [Other Bird Data Resources](#).

NAME	SEASON(S)
American Bittern <i>Botaurus lentiginosus</i> <a href="http://ecos.fws.gov/ecp/species/6582">http://ecos.fws.gov/ecp/species/6582</a>	Breeding
Bald Eagle <i>Haliaeetus leucocephalus</i> <a href="http://ecos.fws.gov/ecp/species/1626">http://ecos.fws.gov/ecp/species/1626</a>	Year-round
Black-billed Cuckoo <i>Coccyzus erythrophthalmus</i> <a href="http://ecos.fws.gov/ecp/species/9399">http://ecos.fws.gov/ecp/species/9399</a>	Breeding
Blue-winged Warbler <i>Vermivora pinus</i>	Breeding
Canada Warbler <i>Wilsonia canadensis</i>	Breeding
Golden-winged Warbler <i>Vermivora chrysoptera</i> <a href="http://ecos.fws.gov/ecp/species/8745">http://ecos.fws.gov/ecp/species/8745</a>	Breeding
Kentucky Warbler <i>Oporornis formosus</i>	Breeding
Least Bittern <i>Ixobrychus exilis</i> <a href="http://ecos.fws.gov/ecp/species/6175">http://ecos.fws.gov/ecp/species/6175</a>	Breeding
Louisiana Waterthrush <i>Parkesia motacilla</i>	Breeding
Olive-sided Flycatcher <i>Contopus cooperi</i> <a href="http://ecos.fws.gov/ecp/species/3914">http://ecos.fws.gov/ecp/species/3914</a>	Breeding
Peregrine Falcon <i>Falco peregrinus</i> <a href="http://ecos.fws.gov/ecp/species/8831">http://ecos.fws.gov/ecp/species/8831</a>	Breeding
Pied-billed Grebe <i>Podilymbus podiceps</i>	Breeding
Prairie Warbler <i>Dendroica discolor</i>	Breeding

Red-headed Woodpecker	<i>Melanerpes erythrocephalus</i>	Breeding
Short-eared Owl	<i>Asio flammeus</i> <a href="http://ecos.fws.gov/ecp/species/9295">http://ecos.fws.gov/ecp/species/9295</a>	Wintering
Willow Flycatcher	<i>Empidonax traillii</i> <a href="http://ecos.fws.gov/ecp/species/3482">http://ecos.fws.gov/ecp/species/3482</a>	Breeding
Wood Thrush	<i>Hylocichla mustelina</i>	Breeding
Worm Eating Warbler	<i>Helmitheros vermivorum</i>	Breeding

#### What does IPaC use to generate the list of migratory bird species potentially occurring in my specified location?

##### Landbirds:

Migratory birds that are displayed on the IPaC species list are based on ranges in the latest edition of the National Geographic Guide, Birds of North America (6th Edition, 2011 by Jon L. Dunn, and Jonathan Alderfer). Although these ranges are coarse in nature, a number of U.S. Fish and Wildlife Service migratory bird biologists agree that these maps are some of the best range maps to date. These ranges were clipped to a specific Bird Conservation Region (BCR) or USFWS Region/Regions, if it was indicated in the 2008 list of Birds of Conservation Concern (BCC) that a species was a BCC species only in a particular Region/Regions. Additional modifications have been made to some ranges based on more local or refined range information and/or information provided by U.S. Fish and Wildlife Service biologists with species expertise. All migratory birds that show in areas on land in IPaC are those that appear in the 2008 Birds of Conservation Concern report.

##### Atlantic Seabirds:

Ranges in IPaC for birds off the Atlantic coast are derived from species distribution models developed by the National Oceanic and Atmospheric Association (NOAA) National Centers for Coastal Ocean Science (NCCOS) using the best available seabird survey data for the offshore Atlantic Coastal region to date. NOAA/NCCOS assisted USFWS in developing seasonal species ranges from their models for specific use in IPaC. Some of these birds are not BCC species but were of interest for inclusion because they may occur in high abundance off the coast at different times throughout the year, which potentially makes them more susceptible to certain types of development and activities taking place in that area. For more refined details about the abundance and richness of bird species within your project area off the Atlantic Coast, see the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other types of taxa that may be helpful in your project review.

About the NOAA/NCCOS models: the models were developed as part of the NOAA/NCCOS project: [Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#). The models resulting from this project are being used in a number of decision-support/mapping products in order to help guide decision-making on activities off the Atlantic Coast with the goal of reducing impacts to migratory birds. One such product is the [Northeast Ocean Data Portal](#), which can be used to explore details about the relative occurrence and abundance of bird species in a particular area off the Atlantic Coast.

All migratory bird range maps within IPaC are continuously being updated as new and better information becomes available.

#### Can I get additional information about the levels of occurrence in my project area of specific birds or groups of birds listed in IPaC?

##### Landbirds:

The [Avian Knowledge Network \(AKN\)](#) provides a tool currently called the "Histogram Tool", which draws from the data within the AKN (latest, survey, point count, citizen science datasets) to create a view of relative abundance of species within a particular location over the course of the year. The results of the tool depict the frequency of detection of a species in survey events, averaged between multiple datasets within AKN in a particular week of the year. You may access the histogram tools through the [Migratory Bird Programs AKN Histogram Tools](#) webpage.

The tool is currently available for 4 regions (California, Northeast U.S., Southeast U.S. and Midwest), which encompasses the following 32 states: Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

In the near future, there are plans to expand this tool nationwide within the AKN, and allow the graphs produced to appear with the list of trust resources generated by IPaC, providing you with an additional level of detail about the level of occurrence of the species of particular concern potentially occurring in your project area throughout the course of the year.

##### Atlantic Seabirds:

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the NOAA/NCCOS [Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf project](#) webpage.

## Facilities

### Wildlife refuges

Any activity proposed on [National Wildlife Refuge](#) lands must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGES AT THIS LOCATION.

### Fish hatcheries

THERE ARE NO FISH HATCHERIES AT THIS LOCATION.

## Wetlands in the National Wetlands Inventory

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

WETLAND INFORMATION IS NOT AVAILABLE AT THIS TIME

This can happen when the National Wetlands Inventory (NWI) map service is unavailable, or for very large projects that intersect many wetland areas. Try again, or visit the [NWI map](#) to view wetlands at this location.

#### Data limitations

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

#### Data exclusions

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

#### Data precautions

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife, New York Natural Heritage Program  
625 Broadway, Fifth Floor, Albany, NY 12233-4757  
P: (518) 402-8935 | F: (518) 402-8925  
[www.dec.ny.gov](http://www.dec.ny.gov)

March 23, 2017

Jason P. Ritzert  
Western Ecosystems Technology, Inc.  
1017 Mumma Road, Suite 103  
Lemoyne, PA 17043

Dear Mr. Ritzert:

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to the proposed Bluestone Wind Project, located in the Towns of Sanford and Windsor, Broome County, New York.

Enclosed is a report of rare or state-listed animals and plants, and significant natural communities that our database indicates occur within the project area or in its immediate vicinity. For further guidance regarding the state-listed animals listed in the report, please contact the NYS DEC Region 7 Office, Division of Environmental Permits, as listed at [www.dec.ny.gov/about/39381.html](http://www.dec.ny.gov/about/39381.html).

Also enclosed is a report of rare birds documented within 10 miles of the project site, for use in assessing potential impacts of bird collisions. (No rare bats have been documented within 40 miles of the project site.) For information on NYSDEC's environmental review of proposed wind energy projects, and for the document *Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects*, please go to [www.dec.ny.gov/energy/66494.html](http://www.dec.ny.gov/energy/66494.html).

For most sites, comprehensive field surveys have not been conducted; the enclosed report only includes records from our databases. We cannot provide a definitive statement as to the presence or absence of all rare or state-listed species or significant natural communities. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other resources may be required to fully assess impacts on biological resources.

Sincerely,



Nicholas Conrad  
Information Resources Coordinator  
NY Natural Heritage Program



**The following state-listed animals have been documented in the vicinity of the project site.**

The following list includes animals that are listed by NYS as Endangered, Threatened, or Special Concern; and/or that are federally listed or are candidates for federal listing. The list also includes other rare animals found with the listed species.

**For information about any permit considerations for the project, contact the Permits staff at the NYSDEC Region 7 Office. For information about potential impacts of the project on these species, and how to avoid, minimize, or mitigate any impacts, contact the Wildlife Manager.**

**A listing of Regional Offices is at <http://www.dec.ny.gov/about/558.html>.**

<i>COMMON NAME</i>	<i>SCIENTIFIC NAME</i>	<i>NY STATE LISTING</i>	<i>FEDERAL LISTING</i>
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**The following species has been documented within the southwestern portion of the project area. Individual animals may travel 1.5 miles from documented locations.**

<b>Timber Rattlesnake</b>	<i>Crotalus horridus</i>	Threatened	3745
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**The following species have been documented in the Susquehanna River adjacent to the project area.**

**Freshwater Mussels**

<b>Green Floater</b>	<i>Lasmigona subviridis</i>	Threatened	125
<b>Brook Floater</b>	<i>Alasmidonta varicosa</i>	Threatened	13948
<b>Yellow Lampmussle</b>	<i>Lampsilis cariosa</i>	Unlisted	8671

**Dragonflies**

<b>Rapids Clubtail</b>	<i>Gomphus quadricolor</i>	Unlisted	12084
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This report only includes records from the NY Natural Heritage database. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

Information about many of the listed animals in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage's Conservation Guides at [www.guides.nynhp.org](http://www.guides.nynhp.org), and from NYSDEC at [www.dec.ny.gov/animals/7494.html](http://www.dec.ny.gov/animals/7494.html).



**The following rare animals have been documented in the  
general vicinity of the proposed Bluestone Wind Project.**

The impacts of wind turbines on animals include both impacts due to disturbance at the site of the turbines, and impacts due to flying birds and bats colliding with turbine blades. Therefore, when screening proposed wind energy projects for potential impacts on rare species, in addition to reporting rare plants and animals documented at the project site itself, NY Natural Heritage reports species of rare birds documented within 10 miles of the project site, and rare bats documented within 40 miles of the project site. These distances were determined in consultation with the NYSDEC Division of Fish, Wildlife and Marine Resources.

For information on NYSDEC’s environmental review of proposed wind energy projects, and for the document Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects, please go to [www.dec.ny.gov/energy/66494.html](http://www.dec.ny.gov/energy/66494.html).

**Birds within 10 miles**

<i>COMMON NAME</i>	<i>SCIENTIFIC NAME</i>	<i>NY STATE LISTING</i>	<i>HERITAGE CONSERVATION STATUS*</i>
<b>Bald Eagle</b> <i>Nesting and Wintering</i>	<i>Haliaeetus leucocephalus</i>	Threatened	S2S3B,S2N
<b>Henslow's Sparrow</b> <i>Breeding</i>	<i>Ammodramus henslowii</i>	Threatened	S3B

\* Conservation status in NYS as ranked by NY Natural Heritage Program on a 1 to 5 scale:

- S1 = Critically imperiled
- S2 = Imperiled
- S3 = Rare or uncommon
- S4 = Abundant and apparently secure
- S5 = Demonstrably abundant and secure

B after one of the above ranks indicates the status rank is for breeding populations only.

N after one of the above ranks indicates the status rank is for nonbreeding wintering populations only.

## **Appendix I**

### Visual Impact Rating Form

# Visual Impact Rating Form

Project Name [EDR Project #]



Viewpoint #:	Viewpoint Location:
Your Name:	Date:
Landscape Similarity Zone (LSZ):	Viewer Type <i>check as many as apply</i> <input type="checkbox"/> Resident <input type="checkbox"/> Traveler <input type="checkbox"/> Recreational <input type="checkbox"/> Other _____
Inventoried Aesthetic Resources: <input type="checkbox"/> Yes <input type="checkbox"/> No	Describe:

VIEWPOINT DESCRIPTION: *Please describe this view in your own words.*

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VIEWPOINT SENSITIVITY: <i>Rate the scenic quality and viewer exposure for this view.</i>	
SCENIC QUALITY: <i>please rate existing scenic quality</i> <input type="checkbox"/> Low <input type="checkbox"/> Moderate <input type="checkbox"/> High	VIEWER EXPOSURE: <i>frequency and duration of view</i> <input type="checkbox"/> Continuous <input type="checkbox"/> Repeated/Regular <input type="checkbox"/> Occasional/Brief <input type="checkbox"/> Rare

CONTRAST RATING: <i>Rate the level of contrast between the proposed structures and the existing view.</i>		
COMPONENT	SCORE	DESCRIPTION OF CONTRAST
Landform		
Vegetation		
Land Use		
Water *		
Sky		
Viewer Activity		
TOTAL		<i>Total all scores above.</i>
AVERAGE		<i>Average all scores above.</i>
<i>* If no water is visible in the view, please enter "N/A" in the "Score".</i>		

Variable factors that may have influenced rating (atmospheric conditions, season, etc.):

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Perceived effect on scenic quality / viewer enjoyment:

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Contrast Rating Score Chart	
0	Insignificant
0.5	
1	Minimal
1.5	
2	Moderate
2.5	
3	Appreciable
3.5	
4	Strong