

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.

- County
- City of Duanesburg
- Town
- Village

Local Law No. 2 of the year 20 08

A local law This local law may be cited as the "Town of DUANESBURG Wind Energy Facility Law."
(Insert Title)

Be it enacted by the _____ of the
(Name of Legislative Body)

- County
- City of Duanesburg as follows:
- Town
- Village

See Attached

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

(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 20 08 of the ~~(County)(City)~~(Town)(Village) of Duanesburg was duly passed by the Town of Duanesburg Town Board on June 12 20 08, 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 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 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.

Frank M. Keenan
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: June 16, 2008

(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 Schenectady

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.

Frank M. Keenan
Signature
Attorney for the Town
Title

~~County~~
~~City~~ of Duanesburg
Town
~~Village~~

Date: 6/19/08

**TOWN OF DUANESBURG
SCHENECTADY COUNTY, NEW YORK**

Be it hereby enacted by the Town Board of the Town of DUANESBURG, SCHENECTADY County, New York, as follows:

§ 1. Title

This local law may be cited as the “Town of DUANESBURG Wind Energy Facility Law.”

§ 2. Purpose

The purpose of the law is to guide the construction and operation of Wind Energy Facilities, Small Wind Energy Facilities and Wind Measurement Towers in the Town of DUANESBURG, Schenectady County, subject to reasonable conditions that will protect the public health, safety and welfare.

§ 3. Authority

The Town Board of the Town of DUANESBURG enacts this local law under the authority granted by Article 16 of the Town Law and section 10 of the Municipal Home Rule Law.

§ 4. Applicability

The requirements of this law shall apply to all Wind Energy Facilities, Small Wind Energy Facilities and Wind Measurement Towers proposed, operated, modified, or constructed within the municipal boundaries of the Town of Duanesburg, Schenectady County. Wind Energy Facilities, Small Wind Energy Facilities and Wind Measurement Towers shall be allowed in any Zoning District of the Town, subject to the requirements of this law.

§ 5. Permits

- A. Permit Requirement. No Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of DUANESBURG except by first obtaining, as applicable, a Wind Energy Facility Permit, Small Wind Energy Facility Permit or Wind Measurement Tower Permit as provided under this law.
- B. Permitting Authority. The Town of DUANESBURG Planning Board, as established pursuant to section 14.6 of the Town of Duanesburg Zoning Law, shall have sole discretion to review, consider and issue Wind Energy

Facility Permits, Small Wind Energy Facility Permits and Wind Measurement Tower Permits in accordance with this law.

- C. Exemptions. In the event that an applicant or permittee intends to undertake in-kind replacement of a Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower, the Town Code Enforcement Officer, Building Inspector or other Town designee shall be notified prior to any such replacement. The Town Code Enforcement Officer, Building Inspector or other Town designee may approve such in-kind replacement or refer the applicant or permittee to the Planning Board to determine whether a Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower Permit must first be obtained.

§ 6. Definitions

As used in this law, the following terms shall have the meanings indicated:

ACCESSORY FACILITIES OR EQUIPMENT: Any structure other than a Wind Turbine, related to the use and purpose of deriving, collecting or distributing energy from such Wind Turbines, located on or associated with a Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower.

PERMIT-A permit issued pursuant to this law granting the holder the right to construct, maintain and operate a Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower.

PUBLIC ROAD - Any federal, state, county, city, town or village road which is open to the public, or private road regularly used by multiple persons for access to separate off-Site parcels of land, access to which is unrestricted by the owner(s) of said private road.

RESIDENCE -Any dwelling located off-Site which is suitable for habitation on the date a Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower permit application is received by the Town and deemed complete by the Planning Board in accordance with section 9 of this Law, and for which a valid certificate of occupancy has been issued or should have been issued prior to such date. A residence may be part of a multi-family dwelling or multipurpose building, and shall include buildings such as hotels or motels, hospitals, day care centers, dormitories, sanitariums and nursing homes.

SETBACK AGREEMENT – Any agreement, contract, easement, covenant or right in land which burdens land for the benefit of an applicant or permittee, such that the burdened land is similar in character to land on which any Wind Energy Facility. A Setback Agreement must expressly release any right which the owner(s) of such burdened land may have in the enforcement of this Law, and acknowledge the applicable requirements of this Law. All Setback Agreements shall run with the land and be recorded to apprise any potential purchasers of such land of the same at least for as long

as any Permit issued under this Law shall remain in effect. In the event a Setback Agreement lapses prior to full decommissioning of the Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower, the previously burdened land shall be considered off-Site and the applicant, permittee or owner of the same shall be required to bring the project into conformance with the requirements of this Law.

SITE -The parcel(s) of land where a Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower is to be placed. The Site can be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower or has entered an agreement for said facility or a Setback Agreement shall not be considered "off-Site."

SMALL WIND ENERGY FACILITY -A wind energy conversion system consisting of a Wind Turbine, a tower, and associated control or conversion electronics and electrical collection and distribution equipment, and Accessory Facilities or Equipment, which has a nameplate capacity of not more than 100 kilowatts.

TOTAL HEIGHT -The highest point above ground level of any improvement related to a Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower. Total Height as applied to Wind Turbines shall include the highest point of any wind turbine blade above the tower.

WIND ENERGY FACILITY -Any Wind Turbine or array of Wind Turbines designed to deliver electricity to the power grid for sale with a combined production capacity of more than 100 kilowatts of energy, including all related infrastructure, electrical collection and distribution lines and substations, access roads and accessory structures, including Accessory Facilities or Equipment,.

WIND MEASUREMENT TOWER -A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

WIND TURBINE -A wind energy conversion system consisting of a tower, nacelle and associated control or conversion electronics and equipment contained within or atop the tower.

§ 7. Application Requirements

A complete application for a Wind Energy Facility Permit, Small Wind Energy Facility Permit or Wind Measurement Tower Permit shall include:

- A. A completed application for a Permit on a form provided by the Town Zoning Officer, Code Enforcement Officer or other Town designee.
- B. A site plan prepared by a licensed professional engineer, including:

1. Property lines and physical dimensions of the Site;
 2. Location, approximate dimensions and types of existing structures and uses on the Site, public roads, and adjoining properties within 500 feet of the boundaries of any proposed Wind Turbines, or 1½ times the total height of such Wind Turbines, whichever shall be greater;
 3. Location of each proposed Wind Turbine, Wind Measurement Tower and Accessory Facilities or Equipment;
 4. Location of all above and below ground utility lines on the Site as well as transformers, the interconnection point with transmission lines, and other ancillary facilities or structures, including, without limitation, Accessory Facilities or Equipment,;
 5. Locations of setback distances as required by this law;
 6. All other proposed facilities, including, without limitations, access roads, electrical substations, storage or maintenance units, and fencing;
 7. All site plan application materials required under section 14.6.2 of the Zoning Law of the Town of Duanesburg; and
 8. Such other information as may be required by the Planning Board.
- C. The proposed make, model, picture and manufacturer's specifications of the proposed Wind Turbine and tower model(s), including noise decibel data, and material safety data sheet documentation for all materials used in the operation of the equipment shall be provided for each proposed Wind Turbine. If a particular Wind Turbine has not been selected by the applicant at the time of application due to a constraint as to the availability of equipment or the inability of the applicant to obtain appropriate supplier commitments, such information shall nevertheless be provided to the Planning Board with an acknowledgement that the type of Wind Turbine may be modified during application review.
- D. A proposed lighting plan to be submitted to and reviewed by the Federal Aviation Administration for any structure equal to or more than 200 feet above ground, or as may otherwise be required by the Federal Aviation Administration or local, state or federal law or regulation.
- E. A construction schedule describing anticipated commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles.
- F. An operations and maintenance plan providing for regular periodic maintenance schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
- G. List of property owners, with their mailing address, within 500 feet of the outer boundaries of the proposed Site.

H. For Wind Energy Facilities only:

1. A decommissioning plan that provides for an estimation of decommissioning costs, the method of ensuring that funds shall be available for decommissioning and restoration of the Site and any off-site areas disturbed by or utilized during decommissioning, the method by which the decommissioning cost estimate shall be kept current, and the manner in which the Wind Energy Facility shall be decommissioned.
2. A complaint resolution process to address complaints from nearby residents.
3. A transportation plan (see § 13) describing routes to be used in delivery of project components, equipment and building materials and those to be used to provide access to the Site during and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, as well as measures which will be taken to restore damaged/disturbed access routes following construction.
4. A fire protection and emergency response plan to address emergency response and coordinate with local emergency response providers during any construction or operation phase emergency, hazard or other event.
5. Predicted Wind Turbine Only Sound Analysis:
 - (i) A sound level analysis shall be prepared to determine predicted sound at off-Site property lines and Residences from operation of Wind Turbines. Such analysis shall be referred to as "Wind Turbine Only Sound."
 - (ii) Wind Turbine Only Sound shall be predicted based upon appropriate ambient sound levels obtained from field or laboratory measurements of the Wind Turbine proposed to be installed, as well as appropriate background sound levels of the Site and nearby off-Site areas.
 - (iii) Except as otherwise provided herein, Wind Turbines shall be located so that predicted Wind Turbine Only Sound at off-Site property lines shall not exceed 50 dB(A), and Wind Turbine only noise at Residences shall not exceed 45 dB(A).

- (iv) In the event that the noise generated by any Wind Turbine contains a pure tone component, as set forth herein, Wind Turbines shall be located so that predicted Wind Turbine Only Sound at off-Site property lines shall not exceed 45dB(A), and Wind Turbine only noise at Residences shall not exceed 40 dB(A).

A pure tone is defined to exist when a one-third (1/3) octave band noise level exceeds the arithmetic average of the two adjacent one-third (1/3) octave band levels by the following:

<u>Band Range</u>	<u>Exceedence</u>
31.5 – 125 Hz	15 dB(A)
160 – 400 Hz	8 dB(A)
500 – 8,000 Hz	5 dB(A)

- 6. A post construction noise monitoring plan which shall, at a minimum, require annual certification by the permittee or applicant that the Wind Energy Facility remains in conformance with the requirements of this Law.

§ 8. Environmental Review

- A. Compliance with the State Environmental Quality Review Act (“SEQRA”) shall be required.
- B. Applicants shall submit the following materials to the Town of DUANESBURG Planning Board:
 - 1. Small Wind Energy Facilities and Wind Measurement Towers: Applicants shall be required to prepare and submit Part 1 of a full Environmental Assessment Form.
 - 2. Wind Energy Facilities: Applicants shall be required to prepare and submit a Draft Environmental Impact Statement which, unless a lead agency other than the Planning Board has already been established in accordance with the requirements of the State Environmental Quality Review Act, shall be distributed by the Planning Board to all involved agencies prior to any determination of significance by the lead agency. Such Draft Environmental Impact Statement shall contain, but not be limited to:
 - (i) Visual Impact Analysis, including:

- a. Mapping of scenic resources of statewide significance, as defined by the NYS Department of Environmental Conservation Visual Policy (Policy DEP-00-2.), and of local significance, as officially listed by the relevant municipality within the study area.
 - b. Viewshed mapping and/or cross section analysis to identify areas (including the significant resources identified above) with potential views of the project.
 - c. Description of the character and quality of the affected landscape.
 - d. Photographic simulations of what the proposed project will look like from a reasonable number of representative viewpoints within the 5 -mile radius study area to be selected in consultation with the Planning Board.
 - e. Evaluation of the project's visual impact based on the viewshed mapping and photographic simulations described above.
 - f. Recommended visual mitigation measures (in accordance with DEC Policy DEP -00-2), if warranted, based on the results of the impact evaluation described above.
- (ii) Avian Impact Study: Appropriate bird and bat migration, nesting and habitat studies shall be submitted. The Applicant shall solicit input from the New York State Department of Environmental Conservation on such studies and shall follow any required protocols established, adopted or promulgated by the Department.
 - (iii) Archaeological and Architectural Impact Analysis: The Applicant shall solicit input from the New York State Historic Preservation Office.
 - (iv) Fiscal and Economic Impact Analysis.
 - (v) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, 911 and other wireless communication.
 - (vi) An assessment of potentially impacted wetland, surface and groundwater resources, and the geology and land use of the Site, as well as an assessment of construction phase impacts,

traffic impacts and adverse sound impacts which may arise from project construction or operation.

- (vii) An assessment of potential shadow flicker at off-Site Residences.

§ 9. Application Review Process

- A. Applicants must arrange a pre-application meeting with the Planning Board and consultants retained by the Town for application review.
- B. Following the pre-application meeting, ten copies of the application shall be submitted to the Town Planner or other Town designee. Payment of all application fees shall be made at the time of submission.
- C. The Planning Board shall, within 180 days of receipt of an application, or such longer time as may be accepted by the applicant, determine if all information required hereunder is included in the application, and if so, the Planning Board shall accept the application as complete and appropriate for further review. If the application is deemed incomplete, the applicant shall be provided with a written statement listing missing data. If the applicant fails to provide data within 180 days after receipt of such notice, the application shall expire. Upon submission of an application which the Planning Board deems to be complete, the Planning Board shall proceed with its review.
- D. The Planning Board shall hold at least one public hearing on the application. Notice shall be published in the Town's official newspaper, no less than 10 days before any hearing, but, where any hearing is adjourned by the Planning Board to hear additional comments, no further publication shall be required. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers. All adjoining property owners within 500 feet of the outer boundary of the Site shall be given written notice of a public hearing via certified mail at the expense of the applicant.
- E. Notice of the project shall also be given, if applicable, to the SCHENECTADY County Planning Commission, as required by General Municipal Law § 239-m, and to all neighboring municipalities.
- F. Following the holding of the public hearing and completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the Permit application, in accordance with the standards in this law. All approvals and denials shall be in writing setting forth competent reasons for such approval or denial.

§ 10. Wind Energy Facility Development Standards

The following standards shall apply to Wind Energy Facilities only.

- A. All power transmission lines from the tower to any building, substation, or Other structure shall be located underground in accordance with National Electrical Code Standards, unless an environmental constraint requires such transmission lines to be located above ground.
- B. Wind Turbines and towers must be white in color.
- C. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- D. No tower shall be lit except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan.
- E. Guy wires shall not be permitted except to address unique safety issues And thenonly with specific permission by the Planning Board in the form of a waiver.
- F. The Wind Energy Facility shall be designed to minimize the impacts of land clearing and the loss of important open spaces. Development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Windpower Projects published by the New York State Department of Agriculture and Markets.
- G. Storm water run-off and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations and such standards as shall be applied by the Planning Board on the advice of the Town consultants.
- H. Wind Turbines shall be located in a manner that minimizes shadow flicker on Residences.

§ 11. Setbacks, Noise and Height Limits

- A. Except as provided herein, each Wind Turbine associated with a Wind Energy Facility shall be set back as follows:
 - 1. A distance no less than 1,500 feet from Residences.
 - 2. A distance no less than the greater of one and a half (1.5) times the total height of the Wind Turbine or 500 feet from off-Site property boundaries.

3. A distance no less than the greater of one and a half (1.5) times the total height of the Wind Turbine or 500 feet from Public Roads.
- B. Small Wind Energy Facility Wind Turbines and Wind Measurement Towers shall be setback from off-Site property boundaries and Residences at least one and half (1.5) times the structure height
- C. Except as provided herein, the sound pressure level generated by a Wind Energy Facility or Small Wind Energy Facility shall not exceed 50 dB(A) at off-Site property boundaries. Compliance shall periodically be determined by the Town Code Enforcement Officer, or such other officer or employee which the Town Board may designate. This shall be the only project operation phase noise requirement applicable to a project under this Law, except that the Planning Board may impose appropriate additional requirements in accordance with section 14 of this Law.
- D. The setback and noise requirements set forth at subsections A, B and C of this section 11 shall not apply in the event that a proper Setback Agreement is obtained by the permittee or applicant, or if the property is on-Site.
- E. Wind Energy Facility Wind Turbines shall not exceed 500 feet in Total Height. Small Wind Energy Facility Wind Turbines and Wind Measurement Towers shall not exceed 200 feet in Total Height. Any Small Wind Energy Facility Wind Turbine or Wind Measurement Tower which exceeds 200 feet in Total Height shall be reviewed by the Planning Board and considered a Wind Energy Facility for purposes of this Law, except that the preparation of Draft Environmental Impact Statement shall be at the discretion of the Planning Board and in accordance with the State Environmental Quality Review Act.

§ 12. Required Site Safety Measures for Wind Energy Facilities, Small Wind Energy Facilities and Wind Measurement Towers

- A. All Wind Turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
- B. With the exception of electrical collection and distribution lines, Accessory Facilities or Equipment shall be gated or fenced to prevent unrestricted public access to the facilities.
- C. Warning signs shall be posted at the entrances to the Wind Energy Facility and at the base of each tower warning of electrical shock or high voltage and containing emergency contact information.

- D. The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet for any Wind Turbine associated with a Wind Energy Facility, and 15 feet for any Wind Turbine associated with a Small Wind Energy Facility.
- E. Wind Energy Facilities shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.
- F. Prior to issuance of a building permit for Wind Energy Facilities only, the applicant shall provide the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance, of a level to be determined by the Town Board in consultation with the Town's insurer, to cover damage or injury which might be caused by or result from the operation or maintenance of such Wind Energy Facility.

§ 13. Traffic Routes and Road Maintenance for Wind Energy Facilities

The provisions of this section shall apply to Wind Energy Facilities only.

- A. Designated traffic routes for construction and delivery vehicles to minimize traffic impacts, wear and tear on local roads and impacts on local business operations shall be proposed by the applicant and reviewed by the Planning Board.
- B. To the extent the designated traffic routes will include use of Town roads, the applicant is responsible for executing a Road Use Agreement with the Town of DUANESBURG Town Board which shall provide for the remediation of damaged roads upon completion of the installation or maintenance of a Wind Energy Facility, and for adequate maintenance of the roads during construction of the Wind Energy Facility such that the roads will remain open and passable. Prior to the issuance of any building permit, the cost of remediating road damage shall be secured in the form of a bond, letter of credit or other surety acceptable to the Town Board and sufficient to compensate the Town for any damage to Town roads.
- C. The applicant shall provide pre-development and post-development photographic evidence of the condition of Town roads to be traveled upon by construction and delivery vehicles.

§ 14. Issuance of Wind Energy Facility, Small Wind Energy Facility and Wind Measurement Tower Permits and Certificates of Conformity

- A. The Planning Board shall, within 180 days of either issuing SEQRA findings or a SEQRA negative declaration or conditioned negative declaration, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated. This time period may be extended with consent of the applicant. Should the applicant not consent to such an extension and the time period elapse without a decision, the application shall be considered approved without conditions.
- B. The Planning Board is hereby expressly empowered to impose conditions governing the issuance of the Permit as well as construction and operational phases of the project which it deems necessary and appropriate to ensure compliance with this Law, the State Environmental Quality Review Act, conformity of project construction and operation with representations made by the applicant during the application review process, as well as with any determinations or findings issued by the Planning Board or any other involved agency under the State Environmental Quality Review Act, compliance any other federal, state or local laws or regulations applicable to the project, and as may be necessary to promote the public health, safety and welfare.
- C. If approved, the Planning Board shall direct the Town Zoning Officer, Code Enforcement Officer, Building Inspector or other designee authorized by the Town Board to issue a permit upon satisfaction of any and all conditions precedent set forth under this Law, the terms of approval or conditions of the permit or any additional requirement of the Town Board imposed in connection with any other project approval or agreement deemed necessary to the issuance of the Permit.
- D. The decision of the Planning Board shall be filed within 5 days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- E. If any approved Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower is not substantially commenced within two years of issuance of the Permit, the Permit shall expire unless the Planning Board shall have granted an extension.
- F. Upon commissioning of the project, which for purposes of Wind Energy Facilities and Small Wind Energy Facilities shall mean the conversion of wind energy to electrical energy for on-Site use or distribution to the electrical grid, and for purposes of Wind Measurement Towers shall mean the collection of wind speed and/or other data by the Wind Measurement Tower equipment, the Town Zoning Officer, Code Enforcement Officer, Building Inspector or other designee authorized by the Town Board shall determine whether the project is in compliance with the Permit. If the Town Zoning Officer, Code Enforcement Officer, Building Inspector or

other designee determines the project is in compliance with the Permit, a certificate of conformity shall be promptly issued to the permittee.

§ 15. Abatement

If any Wind Turbine stops converting wind energy into electrical energy and/or distribution of that energy for on-Site use or transmission onto the electrical grid for a continuous period of twelve (12) months, the applicant / permittee shall remove said system at its own expense following, if applicable, the requirements of the decommissioning plan required under this Law or any Permit.

§ 16. Permit Revocation

All Wind Energy Facilities, Small Wind Energy Facilities and Wind Measurement Towers shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a Wind Turbine or Wind Measurement Tower become inoperable, or any part of a Wind Energy Facility or Small Wind Energy Facility be damaged, or should a violation of a permit condition occur, the permittee, owner or operator shall remedy the failure within 90 days. Upon a failure to perfect a timely remedy, project operation shall cease. Application of this section of the Law shall in no way extend or toll any time periods set forth under section 15 of this Law.

§ 17. Fees

- A. Upon application for a Wind Energy Facility Permit, the applicant shall pay a permit fee equal to \$500.00 per megawatt of proposed nameplate capacity of a project. Upon application for a Small Wind Energy Facility Permit or Wind Measurement Tower Permit, the applicant shall pay a permit fee of \$100.00. This permit fee shall be used to off-set any internal costs the Town may occur in administering a Permit and shall be in addition to any application fee or other fees or Host Community Payments required of the applicant.
- B. In addition to any fees collected in accordance with subsection "A" of this section 17, the Town Planning Board, Zoning Officer, Building Inspector, Code Enforcement Officer and Town Board may hire any consultant and/or experts necessary to assist the Town in reviewing and evaluating Permit applications, including but not limited to, Site inspections, the construction and modification of the Site once permitted, and any requests for certification or recertification that the project is in conformity with the Permit or the Law. 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 in connection with the review of the application.

§ 18. Waivers and Immaterial Modifications

- A. Waivers. The Planning Board may, after a public hearing held upon at least 10 days advanced published notice and written mailed notice to owners of property located within 500 feet of the Site, grant a waiver from the strict application of the provisions of this Law to improve the quality of any Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower and to better protect the health, safety and welfare of the Town. Area requirements including setbacks, noise requirements and height limits shall not be waived by the Planning Board except as described in § 11 of this law.

The Planning Board shall consider the impact of the waiver on the neighborhood, including the potential benefits or detriment to nearby properties, the benefits or detriments to the applicant, feasible alternatives and the magnitude of the request. The Planning Board may attach such conditions as it deems appropriate to waiver approvals to ensure that such waiver adequately protects the public health, safety and welfare.

- B. Immaterial Modifications. Unless expressly limited by a condition imposed in the Permit, the Town Zoning Officer, Code Enforcement Officer, Building Inspector or other Town designee may, during project construction, allow immaterial modifications to the design of the project as represented in the final set of site plans reviewed and considered by the Planning Board. Such immaterial modifications shall only be allowed, if at all, in response to a written request by the applicant or permittee. All such requests shall be submitted in writing, addressed to the authorized Town designee, with copies to the Chairman of the Planning Board, the Town Planner or other Town designee, and the Town's designated consultants.

Immaterial alterations shall only include a change in the location, type of material or method of construction of a Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower that will not: result in any material increase in any environmental impact of the project as compared to the impacts reviewed and accepted for the project by the Town Planning Board; cause the project to violate any applicable setbacks or other requirements of this Law; or cause the project to not conform to the SEQRA determination or findings issued by the Planning Board. The applicant or permittee shall be required to acknowledge to the Town in written form that the requested modification is immaterial in accordance with the requirements of this section 18 of the Law. At the request of the Town designee, Planning Board, Town's designated consultants or the Town Board, the Town may commission appropriate analyses to verify this acknowledgement, and the cost of any such analysis shall be paid in accordance with section 17 of this Law.

§ 19. Enforcement and Penalties

- A. Enforcement Officer. The Town of DUANESBURG Town Board shall designate an officer of the Town to enforce the provisions of this law.

Such designated officer may, with the consent of the Town Board, contract with professional consultants to assist in the enforcement and administration of this law. Such professional fees shall be the responsibility of the applicant to pay (see § 17). In the absence of a designated Enforcement Officer, the Town Code Enforcement Officer shall be considered the Enforcement Officer for purposes of this Law.

- B. Penalties. Any person owning, controlling, operating or managing a Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower in violation of this law or in noncompliance with the terms and conditions of any permit issued pursuant to this law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of a violation of this law and subject to a fine of not more than \$1,000.00 per day per violation.
- C. Special Proceeding. The designated enforcement officer may, with the consent of the Town Board, institute an action or proceeding available at law to prevent, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower in the Town. This shall be in addition to other remedies and penalties herein provided or available at law.

§ 20. Severability

Should any provision of this law be declared to be unconstitutional or invalid, the remainder of this law shall remain in effect.

§ 21. Supersession

This law shall supersede all prior inconsistent laws or resolutions of the Town of DUANESBURG.

§ 22. Effective Date

This law shall be effective as provided by law.

FOR DISCUSSION; Supervisor Merrihew; the 1 ½ times seems perfect, is 1500' excessive or is it standard?

Todd Mathes; 1500' shows up in a lot of communities, there is more and there is less. I had experienced 1500' with respect to another town, the town hired engineers with the Research that is out there came up with the 1500'. There was a pretty elaborate process which that was reached. So that was my suggestion. It could be less it could be more.