

## RESOLUTION 2009-9

### RESOLUTION DETERMINING AND DECLARING ENVIRONMENTAL IMPACTS OF PROPOSED LOCAL LAW #1 OF 2009 (WIND ENERGY FACILITIES LOCAL LAW) AND MAKING NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACTS

At a Regular Meeting of the Town Board of the Town of Enfield, held in and for the Town of Enfield at the Enfield Community Building on the 14th day of January, 2009, with the following members being present: Frank Podufalski, Supervisor; Roy Barriere, Councilperson; Herb Masser, Jr., Councilperson; Stephanie Gaynor, Councilperson; and the following member being absent: Robert Harvey, Councilperson; and the following motion for a Resolution was duly made by motion of Supervisor Frank Podufalski, and was duly seconded by Councilperson Stephanie Gaynor; and the vote was as follows: Frank Podufalski - aye; Robert Harvey - absent; Roy Barriere - aye, Herb Masser, Jr., - aye; and Stephanie Gaynor - aye; and the following Resolution therefore passed 4-0, and was duly adopted:

Whereas, the Enfield Town Board issued a Notice of Intent to be Lead Agency for the State Environmental Quality Review of the Town of Enfield proposed Local Law Number 1 of 2009 (as re-numbered) and determined that the action qualified as a Type I Action; and

Whereas, such Notice of Intent, together with all supporting documentation, including the Long Environmental Assessment Form ("LEAF") and a copy of the proposed Local Law, was delivered to all identified Involved and Interested Agencies and more than 30 days has passed since such Agencies received such Notice and no Agency objected to the Enfield Town board acting as Lead Agency and no Agency requested Lead Agency status; and

Whereas, the Town completed the LEAF and Part I thereof was duly delivered to all Involved and Interested Agencies with the Notice of Intent for input and/or comment; and

Whereas, the Town Board, as Lead Agency, reviewed the LEAF on the January 14, 2009 meeting and found and declared that Parts I and II of the LEAF was complete, accurate, and final; and

Whereas, the Town as the "Developer/Applicant" and the Town Board as the "Lead Agency" agreed to extend the time for a declaration of impact so as to

facilitate a close look at potential impacts, particularly in light of the complexity of the action and the need to obtain full public input; and

Whereas, a copy of the proposed Local Law and the LEAF and all Involved and Interested Agency comments have been available for public inspection and review at the Enfield Town Clerk's Office; and

Whereas, the Town Board has reviewed and has duly considered all comments and concerns delivered or expressed by the public and all Involved and Interested Agencies; and

Whereas, a Public Hearing was duly noticed and held at the Enfield Community Building upon the 7th day of January, 2009, whereat the environmental impacts and comments thereupon were duly considered and all persons interested in the subject thereof were duly heard; and

Whereas, the Town Board, as Lead Agency, has duly noted the potential impacts that may or could arise from the implementation of a local law that regulated land uses and facilities thereupon, but needs to be mindful that the action herein being reviewed is the potential passage of a local law to regulate wind facilities, not the placement or permitting of wind facilities; and

Whereas, Part II of the LEAF thus identified no impacts arising from the passage of a local law, but the Town Board none-the-less desires to address concerns about impacts raised at the public hearing or otherwise through the SEQRA process; and

Whereas, the environmental impacts discussed included: (i) the noise, dust, odor, and soil disturbances that could or would occur if a wind facility permit were granted; (ii) potential sight, noise, and fauna impacts if a wind tower were sited, including effects upon view sheds considered important or significant; (iii) the vehicular impacts upon traffic and roads should a permit be granted and construction be commenced; (iv) potential effects upon nearby state parklands; and (v) effects upon nearby residents, especially as to sight impacts, noise, flicker effects and other related issues; and

Whereas, and as to such potential impacts:

- (i) Noise, dust, odor, and soil disturbances, and other impacts from construction processes will be temporary in nature thus mitigating such impacts and making them non-significant. Further, on-site silt fencing, land restoration, soil reclamation and preservation requirements, as well as other impact controls within the proposed local law, as well as the site plan control features of such proposed

local law, will mitigate such impacts and make them non-significant. Further, the project will be subjected to wind permitting, construction permitting, and inspection processes such that such permitting and inspection processes will mitigate each of such potential impacts, such that all such identified construction impacts will be duly mitigated thus making them non-significant; and

- (ii) Potential sight, noise, and fauna impacts if a wind tower were sited, including effects upon view sheds considered important or significant are mitigated by the Local Law's requirements that sight and noise studies be conducted and the effects be duly mitigated. Such impacts are further mitigated by the required future SEQRA review of any project and the full site plan review requirements in the proposed local law, including placement of towers, the visual color and impacts of towers, and the duty of the developer or permit applicant to mitigate such impacts during the permitting process. Each and all of such matters further mitigate such impacts and make the non-significant; and
- (iii) Vehicular impacts upon traffic and roads should a permit be granted and construction be commenced is an effect of the construction permitting process, and most mitigation effects of paragraph (i) above duly apply. Further, the local law permits regulation of delivery routes and times, thus further mitigating such potential impacts. Further, the local law requires that roadways be repaired if damaged. In all, these mitigating factors make these potential environmental impacts non-significant; and
- (iv) The potential effects upon nearby state parklands are also mitigated by the site plan and permitting processes of such proposed Local Law, including the requirement for full environmental review of the proposed site(s) once and if a permit is applied for by a developer or applicant. These requirements mitigate the potential environmental effects upon the state lands and make the non-significant; and
- (v) The potential effects upon nearby residents, especially as to sight impacts, noise, flicker effects and other related issues, are directly regulated under the proposed Local Law such that the permitting process itself will mitigate these potential effects, as will future environmental reviews of any proposed project or site, such that these impacts are deemed mitigated and non-significant; and

Whereas, it is further duly noted that the proposed Local Law sets forth minimum requirements - such that if any future environmental impacts occur, mitigation requirements in the future SEQRA and permitting processes may require an increase of such minimum requirements, including, but not limited to, setbacks, tower height, tower or facility placement, tower appearance, facility operation, and other matters; and

Whereas, as to the nearby state land, the New York State Office of Parks, Recreation and Historic Preservation was duly identified as an Involved and/or Interested Agency and provided with notice of this proposed Local Law and its potential impacts and did not submit any reply suggesting that there was any special environmental impact concern regarding passage of a local law; and

Whereas, the New York State Department of Environmental was duly identified as an Involved and/or Interested Agency and provided with notice of this proposed Local Law and its potential impacts and did not submit any reply suggesting that there was any special environmental impact concern regarding passage of a local law; and

Whereas, the Tompkins County Department of Planning was duly identified as an Involved and/or Interested Agency and provided with notice of this proposed Local Law and its potential impacts, and further, a General Municipal Law Section 239 review was provided, and such agency made the following paraphrased comments that the proposed Local Law should include or address the following items: (i) consideration of a greater setback from residences, roads, and other structures was recommended; (ii) sound level thresholds could be lowered from 60dB to 55dB; (iii) recommended pre- and post-construction studies for impacts upon birds and bats; (iv) take into account the Tompkins County Scenic Resources Inventory when conducting site reviews under the proposed Local Law; and (v) clarification of applicant responsibility for the costs of studies and other expenses when permit review is undertaken. Of these comments, each has some impact in relationship to potential environmental impacts, but none of these comments is directly implicated as an environmental impact arising from the potential passage of a local law; and

Whereas, the General Municipal Law requires due consideration of the comments of the Tompkins County Department of Planning, therefore, the Enfield Town Board, as Lead Agency, finds:

- (i) The NYSERDA data cited by the Tompkins County Department of Planning in support of greater setbacks is, at best, equivocal. The Tompkins County Department of Planning failed to explain its rationale for suggesting a different setback, other than general supposition about needs for greater community support. Further,

the setbacks set forth in the proposed Local Law are within the range suggested by NYSERDA, and the Tompkins County Department of Planning seems to have ignored those portions and provisions of the proposed Local Law that signify that the requirements of such Local Law are minimum requirements such that the setback, among other requirements, may be increased to mitigate potential adverse impacts during the application, permitting, and future SEQRA review processes; and

- (ii) NYSERDA data and recommendations form the basis for sound threshold recommendations, but the Tompkins County Department of Planning incorrectly cites the NYSERDA data and articulates no basis to suggest that measurements as they recommend will produce any variance in standards from the measurements proposed by the Local Law. Further, and again, the Tompkins County Department of Planning seems to have ignored those portions and provisions of the proposed Local Law that signify that the requirements of such Local Law are minimum requirements such that the sound level requirements, among other requirements, may be adjusted to mitigate potential adverse impacts during the application, permitting, and future SEQRA review processes; and
- (iii) The bird and bat studies proposed are within the requirements of the Local Law, and the study cited by the Tompkins County Department of Planning does not explain or require such studies as part of a proposed local law. Further, any proposed permit will be the subject of further environmental review where such impacts can be further studied and identified; and
- (iv) The Tompkins County Scenic Inventory should be (and will be) duly considered when the sight impacts of an application are identified and required mitigation measures implemented in the permitting process. In addition to other matters, the proposed Local Law specifically provides for sight view inventories, specialized photographic study, specialized sight impact SEQRA review forms and processes, and other related forms of review and regulation of sight impacts. Even further, any proposed permit will be the subject of further environmental review where such impacts can be further studied and identified; and
- (v) The Tompkins County Department of Planning's reference to developer cost shifting is already covered by such proposed Local Law, and even further, the proposed Local Law requires such expenses to be paid or reimbursed during the wind permit *and*

building permit processes, and can even require a developer or applicant to sign a developer's agreement to further bind any applicant or developer to pay for or reimburse the Town or other agency for costs and expenses arising from the review of applications, permitting, site planning, the issuance of building permits, etc.; and

Whereas, the concerns of the Tompkins County Department of Planning were duly considered, but it is noted that the Tompkins County Department of Planning failed to explain its rationale for its recommendations, and it is further noted that the Tompkins County Department of Planning failed to identify how or in what manner the issues raised raise concerns about potential negative county-wide or inter-municipal impacts. Thus, the Town Board, as Lead Agency, declines to accept the recommendations of the Tompkins County Department of Planning as the comments provided relate to the proposed Local Law as the listed items of concern are already adequately addressed within the said Local Law and the permitting processes and the proposed Local Law envision mitigation measures for the issues raised. Further, many items will be reviewed at the time of application and under future SEQRA reviews as to project approvals and permit issuance. Finally, it is again noted that the action under review is a proposed local law, not the issuance of a wind permit or any related building or facility permit; and

Whereas, the New York State Department of Transportation also issued comments as an Involved and/or Interested Agency consisting of a request that greater setbacks from State Highways be considered and that ice build-up upon blades be addressed, and the Town Board, as Lead Agency, notes that such matters have already been reviewed and addressed in and by the proposed Local Law and that the source of data cited by the New York State Department of Transportation is a General Electric study that pertains to equipment and facilities designed by General Electric, which study specifically notes that actual setback distances vary based upon many factors. It is also noted that the design, safety, and capacity recommendations of a given manufacturer vary, and further, the proposed Local Law allows the review and implementation of individual manufacturers recommendations, as does the Building Code of the State of New York, such that the minimum standards of the proposed Local Law may be increased or made more stringent when a manufacturer recommendation so requires, or when other cause exists. It is again further duly noted that the proposed Local Law sets forth minimum requirements - such that if safety mitigation issues arise based upon such factors, the future SEQRA and permitting processes may require an increase of such minimum requirements, including, but not limited to, setbacks; and

Whereas, after due deliberation upon this matter and a review and analysis of each and all potential environmental impacts, and the Lead Agency having made a negative declaration of environmental impact,

Accordingly, it is hereby

RESOLVED, that the Town Board of the Town of Enfield be and hereby is re-declared to be the Lead Agency; and it is further

RESOLVED AND DETERMINED, that this declaration is made in accord with Article 8 of the Environmental Conservation Law of the State of New York and the New York SEQRA Act, and the Regulations promulgated there under, and accordingly, the Town Board of the Town of Enfield, based upon (i) its thorough review of the LEAF, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, and the hearing held hereupon, and all testimony and evidence presented thereat, if any, and the comments of Involved and Interested Agencies, if any, (ii) its thorough review of the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including, but not limited to, the criteria identified in 6 NYCRR §617.7(c), and (iii) its completion of the LEAF, Part II, including the findings noted thereon (which findings are incorporated herein as if set forth at length), hereby makes a negative determination of environmental significance ("Negative Declaration") in accordance with SEQRA for the above referenced proposed action, and determines that no Environmental Impact Statement will be required; and it is further

RESOLVED, that the Responsible Officer of the Town Board of the Town of Enfield is hereby authorized and directed to complete and sign, as required, the determination of significance confirming the foregoing Negative Declaration, which fully completed and signed LEAF and the contained and declared determination of significance shall be incorporated by reference in this Resolution; and it is further

RESOLVED that the Town Clerk deliver and/or file a copy of this Resolution with the following persons and agencies:

1. The Town Clerk of the Town of Enfield.
2. The Town Supervisor of the Town of Enfield.
3. All Involved and Interested Agencies.
4. Any person requesting a copy;

and further, that this Resolution be posted and published in accord with law, including delivery of a copy of this Resolution to the Environmental Notice Bulletin, 625 Broadway, Room 538, Albany, New York 12233-1750 in accord with 6 NYCRR 617.12.