

TOWN OF CAPE VINCENT

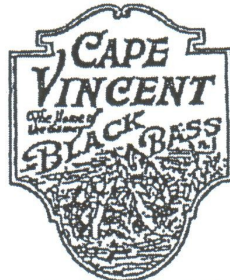
Jefferson County, New York 13618

Supervisor
Urban C. Hirschey

Town Clerk/Tax Collector
Michelle A. Bouchard

Council
Brooks J. Bragdon
Clifford P. Schneider
John Byrne III
Michelle Oswald

Superintendent of Highways
Danny P. Hubbard



FAX (315) 654-3366

Assessor
Robert V.R. Barnard

Historian
Peter Margrey

Planning Board Chair
Richard H. Macsherry

Board of Appeals Chair
R Dennis Faulknham

Zoning Enforcement Officer
James G. Millington

April 19, 2013

Mr. Richard Chandler
Director, Development
BP Wind Energy North America, Inc.
700 Louisiana Street, Floor 33
Houston, TX 77002

Re: Case 12-F-0410 Cape Vincent Wind Power, LLC

Dear Mr. Chandler:

Attached you will find comments from the Town of Cape Vincent pertaining to BP's Preliminary Scoping Statement [PSS]. You should note that we find many deficiencies in what BP proposes to submit in its application. We understand BP's position of keeping this project alive while it looks for a buyer for the Project, but there are a number of substantive issues that need attention, funding and special efforts.

Potentially adverse environmental impacts cannot and should not be addressed with stale, incomplete and out-of-date assessments. We viewed your PSS as re-packaging the work that was completed years ago under SEQRA. Regrettably, reviews and concerns by involved agencies at the time were never properly addressed and those same flaws are still visible in your PSS today.

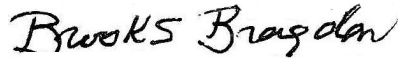
Although we tried to complete a comprehensive review of your two-hundred page PSS, we feel our review needs some additional work and attention. We expect to be putting forth a request for expert opinions to bolster some of our preliminary recommendations, and for additional support in making the case that our zoning law is responsible. We have focused our comprehensive plan and zoning law on ensuring the health, safety and general welfare of our citizens and we intend to forcefully make the case that our law should not be abrogated by either BP or the State.

Respectfully yours,

Urban Hirschey – Town Supervisor



Brooks Bradgon – Deputy Supervisor



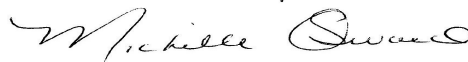
John Byrne – Town Council



Clifford Schneider – Town Council



Michelle Oswald – Town Council



We the undersigned appointed officials from the Town of Cape Vincent endorse and fully support this Town Board letter to the Public Service Commission regarding the Article 10 application for the Cape Vincent Wind Power project proposal.

Richard Macsherry – Planning Board Chairman



Robert Brown – Planning Board



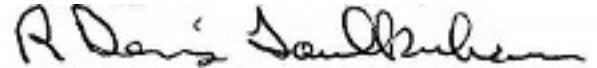
Cyril Cullen – Planning Board



Paul Docteur – Planning Board



R. Dennis Faulkham – Zoning Board of Appeals Chairman



Ed Hludzinski – Zoning Board of Appeals



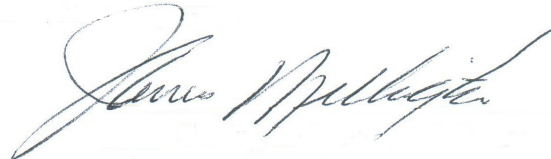
Keith Walker – Zoning Board of Appeals



Hester Chase – Zoning Board of Appeals



James Millington – Zoning Enforcement Officer



Case No: 12-F-0410

Town of Cape Vincent

REVIEW

of

BP's CAPE VINCENT WIND FARM

Preliminary Scoping Statement



Tibbett's Point Light House, Cape Vincent, NY

Cape Vincent's Traditional Values - 1992

"They (residents) would like to see improved job opportunities and services, but not at the expense or sacrifice of the very qualities that make Cape Vincent so appealing- its beauty, history, and small town atmosphere."

Cape Vincent Development Council. 1992. Shaping the Future: A Report on Development Strategies. 13pp.

Summary Review

Is Cape Vincent the right town for wind development?

Throughout its Preliminary Scoping Statement (PSS) BP has subtly mischaracterized the Town of Cape Vincent (Town), seeking to weave a picture of a rural farm community without any economic prospects other than its wind development that would allow "struggling farmers" to remain stewards of its land. This one-sided view of our town fits the purposes of BP and its development plans, but it is nothing close to the truth in describing Cape Vincent. For an honest, official view please read the Town and Village of Cape Vincent's Joint Comprehensive Plan.

What will be evident to whomever reads the Plan and the Town's PSS review in the following pages is that BP's Project, comprised of 124 five-hundred foot high wind turbines, is not a good fit for the Town of Cape Vincent. Early on, poor decisions made by wind developers following their first visit to Cape Vincent more than seven years ago, can only reflect a willful dismissal or misinformed understanding of the essential nature of the Town.

The Town's historical identity was long reflected in a guiding vision developed to take advantage of our cherished small town qualities and the special benefit we enjoy from having a long shoreline on one of the world's most scenic waterways. Unlike the type of host communities we assume were contemplated for wind development under Article 10, Cape Vincent is a destination town on both Lake Ontario and the St Lawrence River. People are drawn here frequently for the enjoyment of being here. Many have substantial investments in its homes, both year-round and seasonal, that allow them to enjoy the area and participate more fully in the special life that Cape Vincent offers. The degree to which that destination quality underpins the local economy is hard to overstate.

Environmental Compatibility and Public Need

BP with its Cape Vincent Wind Power Project is applying under Article 10 law for a Certificate of Environmental Compatibility and Public Need. The New York Department of Environmental Conservation defines environment as:

'Environment' means the physical conditions that will be affected by a proposed facility, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and public health.

Compatibility infers that the Project will seek a balance between a public need and the broad suite of attributes defined above that constitute our environment. What follows in the Town's review are concerns and issues related to a number of adverse impacts that the Town will incur from the Project.

The critical issues we have defined are based on our principal concern for health and safety. We have identified noise, shadow flicker, blinking red FAA lighting, rotor failure and ice throw, property devaluation, scenic degradation and avian wildlife collision mortality as issues with the greatest potential for adverse environmental effects. For all of these concerns more work needs to be done by BP to properly assess the risks to people, our environment and our economy. We

should emphasize one important point that others should never lose sight of. Cape Vincent is our home and we want our families, our dwellings, our public spaces, and our quality of life to be relatively unaffected by industrial development. We do not believe that is too much to ask when the factors that define our community are given proper weight.

Balancing environmental compatibility and public need does not exclude consideration of what the proposed project would do to Cape Vincent economically, culturally and socially. Article 10 was written with the belief that there are at least some rural areas in New York State where the presence of a large wind farm would be tolerable, or even desirable, to a large cross-section of the community -- unfortunately for BP, Cape Vincent is not one of those towns. Furthermore, Article 10 was not enacted so as to be able to literally kill a town in order to make way for a renewable energy project.

The Town's Recommendations

The summary in the table below captures the recommendations that came from the Town's extensive discussion of the issues that follow the summary. These recommendations grew out of our understanding of both the Article 10 rules, which we view as fair and impartial, and BP's scoping statement. The context for all of the Town's concerns and recommendations come back to a single guiding principle in our Comprehensive Plan and Zoning Law - to protect the health, safety and general welfare of our citizenry. Also, inherent in our concern for the general welfare is the need to protect the natural, scenic, historic and cultural assets that are so valuable, economically and otherwise, to our community and to the state.

Table 1. Summary of recommendations from the Town to BP from Exhibits 1-35.

Exhibit Number & Name	Town Recommendations
1- Introduction	BP must make a determination of the model/size of the turbines that they intend to use before they submit an application, otherwise both the Siting Board and the Town of Cape Vincent will be trying to address a moving target.
	The Siting Board must require BP to use accurate, up-to-date maps that show its project layout and the relationship and distances to property lines and residences from its turbines and facilities.
	The cost and impact on the environment of the required transmission system upgrade running through the Town of Lyme must be carefully evaluated by BP and the Siting Board.
3 - Location of Facilities	Wolfe Island and the Wolfe Island Wind Power Project must be included in the study area in order that the true effect of wind turbines on its citizens, wildlife and environment may be examined.
6 - Wind Power Facilities	BP should not put forward any project layout that does not reference every home within the Town at the current time.
	In spite of BP's claim, its placement of turbines in Cape Vincent is still far too

Exhibit Number & Name	Town Recommendations
	close for public health and safety.
	BP's setbacks were designed to make money, the Town's setbacks were designed to protect people - the Siting Board must support the Town's law.
8 - Electric Production Modeling	The facility cost and impact on the environment of the required transmission system upgrade must be carefully considered by the Siting Board.
9 - Alternatives	BP must follow the rules and provide a comparative assessment of its Project with a no-build alternative.
	If financial claims are the major benefit to the Project, then BP should divulge its financial data, the fixed costs versus the generating capacity, to determine if the project design and layout could be modified.
	The Town urges BP and the Siting Board to consider a solar project to demonstrate that solar is a better fit for not only Cape Vincent, but for all New York communities with natural and community resources similar to the Town of Cape Vincent.
	A solar renewable project alternative should be provided by BP to demonstrate that solar is environmentally friendly while wind is an environmental disaster.
	BP needs a balanced project alternative that is less oriented toward its corporate bottom line and more considerate of the environmental risks to the community.
	BP offered dialog but no alternatives. BP should comply with the rules in Exhibit 9.
	BP should provide some best-guess cost estimates for a buried line in order to compare the costs with conventional above ground infrastructure. This information will be invaluable for the Town of Lyme to consider compensation for allowing above ground transmission infrastructure.
	The Siting Board should insist that BP provide at least two alternative project designs: a no-build option and an option that considers and respects Cape Vincent's comprehensive plan and zoning law. Providing alternative project designs are a requirement of the Article 10 rules and it should be enforced.
	Providing alternatives is a requirement of SEQRA as well as the Article 10 rules. It remains a key feature of any environmental assessment and BP should be required to provide a comparative analysis alternative designs.
	BP does need to provide at least two project designs for its 200 and 290 MW project options. The two options cannot responsibly be located on exactly the same project layout.
14 - Cost of Facilities	The Town requests the detailed work sheets used for the "detailed estimate

Exhibit Number & Name	Town Recommendations
	of the total capital cost" for the Project as outlined in paragraph (c).
15 - Public Health & Safety	The Siting Board should require BP to produce a complete, definitive turbine layout, stating the turbine specific setback used to address rotor failure, ice and blade throw. This layout should be based on the worst case scenario, using the 499 ft. high wind turbines.
	The Town of Cape Vincent will be requesting intervenor funds to further study safety setbacks and recent turbine blade failures.
	The third-party engineering consultant used to assess turbine risks should be accredited and have experience assessing risks associated with industrial wind turbine failures.
18 - Safety & Security	The Siting Board should require a review of any emergency response plans related to BP's Project by the county EMO (Emergency Management Office).
	BP must be required to provide ongoing training to all of the emergency personnel in the towns of Cape Vincent, Lyme and Clayton.
19 - Noise & Vibration	The Town will strongly defend its laws that protect residents from noise, lights and flicker impacts, and that these laws should remain in place and not be waived by the Article 10 Siting Board.
	Any assessment of noise impacts shall "operate in compliance" with the Town's local law until such time as that law has been waived by the Siting Board, and since no waiver has been requested or granted, any noise predictions for its application should comply with the 35 dBA nighttime limit, which is the Town's current restriction.
	The Town requests a comparative assessment of several wind turbines using the Town's assumptions vs. BP's universal ground absorption coefficient.
	The Town requests predicted C-Weighted levels be included in predictive noise impacts in order to assess the potential for low frequency impacts.
	The Town believes that comprehensive modeling of sound generated by industrial wind turbines should provide predicted levels at property lines as well as residences for all Township properties to coincide with Town law.
	Contrary to BP's complaint regarding the number of modeling scenarios, the Town of Cape Vincent would not have made its recommendation for the evaluation of "three operational scenarios" if it didn't consider the information important.
	BP needs to update its project map to include all the buildings and residences that have been added in the last 60 years, which is the time base for BP's

Exhibit Number & Name	Town Recommendations
	current map. It is hard to imagine how turbines could be sited safely without knowing the location of all the residences within the Town.
	The Town recommends that as the discussion of the adverse impact of sound goes forward, that BP should refrain from suggesting people who complain about noise are imagining the problem.
	Regarding the design goal, and regardless of BP's biased view on infrasound, the Town requests that in addition to the normal noise impact predictions based on existing Town law, e.g., 35 dBA, that another scenario be included for the record based on 33.5 dBA to provide an interim measure of protection from infrasound until such time as further study resolves the issue to everyone's satisfaction.
	BP should provide a comprehensive analysis of the scientific literature, including the studies mentioned in the Exhibit 19 review, to describe the negative health impacts associated with sleep disturbance, regardless of the cause, and then to also assess the potential for sleep disruptions, and other direct and indirect health effects that could be associated with wind turbine noise.
	The Town requests that the issue of sleep interference be reinserted back in the list of issues linked to wind turbine noise impacts considered in Exhibit 19.
20 - Cultural Resources	The Town insists that BP conduct the analysis that OPRHP had called for: alternatives that considered eliminating turbines, reducing the size of trubines, moving the turbines to other locations, other changes to eliminate or mitigate the agreed upon adverse impacts.
	BP should make a concerted effort to remove turbines from the background along the major site lines between the frontage roads and the historic sites.
	BP should seek an alternate project layout that would remove turbines from the viewshed of the village historic district.
21 - Geology	BP should complete a detailed geological assessment of the project area, including issues related to karst geology, prior to the award of an Article 10 certificate.
	Professional engineers strongly recommend that comprehensive geological and hydrogeologic assessments be completed by BP prior to issuance of a certificate.
	The Service (USFWS) wants a karst survey prior to issuance of a certificate and prior to construction.
	The kind of karst survey recommended by the New York State Department of Environmental Conservation suggests far greater concerns than drainage

Exhibit Number & Name	Town Recommendations
	impacts and just issuing a SWPP permit, as BP has suggested.
	BP should follow guidelines suggested by NYSDEC in its review of a karst survey, i.e., what actions to take when karst features are encountered, including further testing and turbine relocation.
	NYSDEC recommends that an environmental monitoring position, someone who is qualified to work in karst environment, be on site for all pre-construction surveys and construction activities that involve excavation and blasting of bedrock.
	DEC recommends the studies be completed prior to construction in order to assess the adequacy of proposed mitigation measures
22 - Terrestrial Ecology	The point of many prior resource agency comments on this issue is that not enough study has been done by BP to understand the variability of the biological systems.
	More work and effort is needed by BP, especially nocturnal radar and raptor migration studies.
	Regardless of BP's attempt at misleading the discussion, more than a year of spring and fall migration data is required to understand the variability of avian migrant dynamics.
	There was a loud, clear call from State, Federal and non-profit environmental organizations for more than a single year of study.
	Two more years of marine radar study of nocturnal migrants are needed to address these deficiencies.
	Again, the data is inadequate and at least two more years of radar data are needed to better understand the dynamics of the migratory flight corridor.
	BP needs to consider alternative project layouts that provide a wide buffer for the special, significant wildlife habitats that are extant in the Town.
	BP needs to conduct additional, up-to-date surveys that address resource agency concerns.
	The point is the Article 10 rules themselves recognize the importance of protecting a migratory flight-path, such as exists in Cape Vincent.
	DEC recommended additional survey effort in order "to overcome this inconsistency in reporting." More effort is needed to correct deficiencies in BP's survey work, but drawing conclusions from inadequate data will only bias the Article10 record.
	It is important that BP acknowledges what the New York State Department of Environmental Conservation has determined that the Town of Cape Vincent is part of an important Eastern North American migratory flyway, and thereby the migratory corridor deserves protection.

Exhibit Number & Name	Town Recommendations
	Others have added their voices to the call by resource agencies to have a better approach, better data and a more detailed and comprehensive analysis.
	The radar survey of the Town's migratory corridor needs to be completely redone and over a course of years; not a single year.
	When BP begins its migratory radar studies they should use a protocol similar to that suggested by Old Bird, Inc. so that it would allow interpretation of the spatial dynamics of the corridor.
	The Town recommends that an operational plan be adopted by BP, as per the protocol outlined by USFWS, and that it be included as part of Exhibit 22.
	The latest information, e.g., Old Bird, Inc., suggests that the mortality estimates available from Wolfe Island have been compromised, e.g., under estimated losses by 40%, and that the data needs to be reconsidered and mortality rates recalculated. Risk assessments based on these reformulations should then be conducted to estimate expected losses for both BP's Project and the cumulative mortality impacts to the region.
	BP needs to complete a quantified risk assessment of potential loss to the Project's future operation.
	More needs to be done to satisfy resource expert's concerns.
24 - Visual Impacts	BP should provide epidemiological evidence that shadow flicker caused by wind turbines of the model chosen by BP does not and will not induce photosensitive seizures.
	For residences, the zone for predicting shadow coverage shall include the area within a 100-foot radius of the center of the residence and not the one meter square receptor used by the wind industry.
	An important new addition to forecasting impacts for Cape Vincent is the requirement by the Town for a larger sized receptor.
	The Town requests that BP provide epidemiological evidence that the navigation lights it intends to use on its wind turbines does not and will not result in photic-induced seizures in individuals who have physical disorders which respond adversely to bright, flashing lights.
	BP should provide a review of existing technologies that may be used to curtail the use of FAA lighting when no aircraft are in sight.
27 - Socioeconomic	BP should contact the Town assessor for details for the Town's business PILOT.
	The Town directed BP to NOT assume a PILOT based on the Galloo Island model. Galloo Island was an exceptional policy and the county warned

Exhibit Number & Name	Town Recommendations
	developers not to assume its use in any other project proposed for Jefferson County. Without an agreed upon financial agreement, any assumptions by BP would be premature and misleading.
	BP must recognize that property values and the work of the Town's Economic Committee, McCann Appraisal and others all point to substantial risk to devaluing property and they should recast its project with 2-mile setbacks from the river and lake waterfronts, as stipulated in the Town's current zoning law.
	BP needs to clarify the point of property devaluation, especially for communities that have a high influx of summer, seasonal residents.
29- Decommissioning	A Certificate should not be issued without a detailed decommissioning plan that has been accepted by the Siting Board.
	Financial Assurance decommissioning coverage must be in place and in force before ANY construction is allowed to begin.
	The financial obligation must be iron clad to ensure that the Town and citizens are made whole and are not placed under any financial obligation due to inadequate decommissioning by the project owner.
31 - Local Laws	A general preemption was NOT part of the treatment of local laws and ordinances under provisions of Article 10. A complete explanation is needed fo the Town to understand what BP is referring to and why they failed to provide any account or reason why they want each section of our law waived.
	Furthermore, during the formal application BP is required to provide a rational, substantive explanation as to why a local law should be waived by the board.
	In nearly all the examples of Town law that BP asserts is problematic to its project proposal, they have not provided the required explanation but have misrepresented what is required of them in the PSS under the Article 10 rules.
	The Town's consulting engineers are also prepared to describe the adverse health and safety impacts associated with the excessive WECS sound levels advocated by BP and the entire wind industry.
	This setback would not only represent a visual blight, but a safety hazard as well, since the setback would be 3X the height of the turbine, rather than the 6X required in the Town's law.
	Every residence within 1.5 miles of a turbine should have the projected noise impact. This estimate is essential for any compliance testing done after the start of operation and for any future complaints from residents.

Exhibit Number & Name	Town Recommendations
	Finally, since the Town may be the first to receive complaints, its plan should be controlling.
	Regardless of this limitation, harmful impacts from turbines can best be mitigated by distance, i.e., the further away the lesser the impact.
	The idea of having all of the interconnecting electric lines above-ground on poles running from one end of the Town to the other is beyond comprehension, if not absurd. All the turbine-to-turbine interconnecting lines should be buried.
	For both the protection of valued waterfront property and the protection of invaluable natural resources, a 2-mile setback from the Town's shorelines represents a well-reasoned, rational necessity for the Town's restrictions in its zoning law.
	Article 10 rules require BP to acknowledge that a Town has a comprehensive plan, which BP has done, but the rules also require BP to provide an explanation why its Project is incompatible with the Town's vision, which BP has not done.
	Regarding BP's suggestion they provided input to the Town during the drafting of its zoning law, BP provided no suggestions, no indication of problematic sections, just a general comment of total displeasure. Furthermore, at the time of Cape Vincent's public hearing BP made no comment, either in writing or in person.
34 - Electrical Interconnection	The Town requests the Siting Board require all inter connections to be underground, similar to Wolfe Island's interconnection arrangement.
35 - Electric and Magnetic Fields	Because agriculture is an important economic resource to the area within the footprint of BP's Project, BP should be required to investigate the impact of stray voltage on livestock and other animals.

Introduction - Comments

1.2 Proposed Facility

Project Size – Page 5

“The Project would be 200-285 MW in size leveraging these 124 turbine sites. While a specific turbine model has not been selected due to uncertainty regarding availability of turbine models at the time of construction, the selected turbine model is expected to range in output from approximately 1.7 to 3.0”

Comment - BP must be forced to make a determination of the Model/Size of the turbines that they intend to use before they submit an application; otherwise both the Siting Board and the Town of Cape Vincent will be trying to address a moving target.

1.3.11 Demographic and Economic Attributes of the Community

“The estimated 2010 populations of the Towns of Cape Vincent and Lyme were 2,777 and 2,185, respectively. The population in Cape Vincent is declining down from 3,445 in 2000, while that of Lyme is stable. Approximately 68 percent of the housing units in Cape Vincent and 61 percent of the housing units in Lyme were vacant in 2010. Most of the vacant homes are likely used for seasonal, recreational, or occasional use.” [p.13]

“On the whole, the distribution of residential dwellings over the Project area is fairly sparse, but there are several areas of higher density, such as the Hamlets of Rosiere and Three Mile Bay.” (p. 9)

“... with the sparse population, and dominant agricultural and managed land use, make the Project area in Towns of Cape Vincent and Lyme suitable for development of a large-scale wind power project”. (p. 57)

Comment – BP must not be allowed to ignore or marginalize the seasonal residents of either town. These residents pay more than 50 percent of the school and property tax in Town of Cape Vincent. Many of these residents live here six months or more each year, consider these Towns home and contribute to the economy and culture of the Towns.

Comment – The population data for the Town of Cape Vincent is influenced by the population of the State Correctional Facility.

Comment - BP frequently refers to Cape Vincent as sparsely populated (below) and apparently selected this “outdated map” to illustrate their contention. The statements from their PSS shown below illustrate their attitude toward the density of the Town’s citizens.

Comment - The Village of Cape Vincent, the Hamlets of Millen’s Bay and St. Lawrence Corners are ignored by BP.

Comment – If BP is to properly address the siting of wind turbines, it is imperative that the Siting Board insist that they use current maps that show the true conditions within the Town.

BP Exhibit A - LOCATIONS OF FACILITIES

The Project Map included with the PSS is solely for the purpose to show the “approximate” locations of the proposed turbines and ancillary facilities.

Comment - The base layer of the map shown in Exhibit A is our sole source of information on the proposed project, but the map is very old and outdated. It does not show over a 100 homes, the Thousand Islands Regional Middle and High School, which was placed in service in 1972, the State Correctional Facility as well as businesses and buildings. The location of the wind turbines and ancillary buildings relative to local residences and buildings which are inhabited by children is impossible to determine with this map. Numerous road names and creek names are incorrect.

The attached map, Appendix A, Jefferson County, RT 4, C.V, illustrates an area (3300ft. X 2000ft.) of the Town that shows an example of homes not shown on BP’s Map. Within this same area, BP intends to have two wind turbines and batch plant/laydown yard. The batch plant/laydown yard appears to be within 800 ft. of one of those homes. This would create a very annoying, uncomfortable environment for the homeowner.

Comment -The Siting Board must require BP to use accurate, up-to-date maps that show their project layout and the relationship and distances to property lines and residences from their turbines and facilities.

Exhibit B Study Area for the Project

“The Study Area (“Study Area”) generally includes the area within a radius of at least five miles from all generating facility components, interconnections and related facilities and alternative location sites, although differs for the evaluation of some resources.”

Comment – BP’s map “Study Area Exhibit B” shows an outline of the study that extends five miles in all directions within the boundaries of the United States. The area is truncated at the US / Canadian Border. This removes all of Wolfe Island, Ontario, Canada from the study area. There is an 84 turbine wind farm in operation on Wolfe Island.

Comment – The PSC instructed BP to include both Wolfe Island and the Town of Clayton, NY, when studying the effect of the proposed wind farm on the area. Obviously, BP has chosen to ignore the wishes of the PSC. **BP must be made to include Wolfe Island in their study area and do a thorough impartial study of the effect of the operating wind farm on Wolfe Island’s citizens, wildlife, and environment.**

Exhibit D Production/Curtailment Impact Study

“The purpose of the Production/Curtailment Impact Study is to support the Article 10 filing for the Facility by projecting the Facility’s impacts on the transmission system, emissions and the production of certain types of existing generating resources. The Production/Curtailment Impact Study will be included in the Exhibit 8 portion of the Article 10 filing for the Facility.”

Comment – This study is the justification for the addition of additional generating capacity to the NY power grid. It is a complex study that must be correctly and completely carried out. Because of the complexity, the Town of Cape Vincent may be requesting intervenor funds for a consultant to monitor BP’s adherence to the requirements of Exhibit 8.

Comment - BP is requesting a Certificate that covers a project up to 289.5 MW. It our understanding that this far exceeds the available capacity of the current transmission system. **The cost and impact on the environment of the required transmission system upgrade must be carefully considered by BP and the Siting Board.** These costs will be significant as will the effect on the environment

Exhibit 3 Location of Facilities

Study Area for the Project

“The Study Area (“Study Area”) generally includes the area within a radius of at least five miles from all generating facility components, interconnections and related facilities and alternative location sites, although differs for the evaluation of some resources.”

Comment – BP’s map “Study Area Exhibit B” shows an outline of the study that extends five miles in all directions within the boundaries of the United States. The area is truncated at the US / Canadian Border. This removes all of Wolfe Island, Ontario, Canada from the study area. There is an 84 turbine wind farm in operation on Wolfe Island. **Wolfe Island and the Wolfe Island Wind Power Project must be included in the study area in order that the true effect of wind turbines on the citizens, wildlife, and environment may be examined.**

Comment – The PSC instructed BP to include both Wolfe Island and the Town of Clayton, NY, to be considered when studying the effect of the proposed wind farm on the area. Obviously, BP chose to ignore the recommendation of the PSC. **BP must include Wolfe Island in their study area and do a thorough, impartial study of the effect of the operating wind farm on Wolfe Island’s citizens, wildlife, and environment.**

Exhibit 6 Wind Power Facilities

Setbacks

"Setbacks used on BP Wind Energy projects are designed to reduce environmental, health, and safety risks. As currently contemplated, setbacks for the combined Project meet or exceed the setbacks held by the previously proposed SLWF and CVWEP; no setbacks have been decreased."

"CVWP will consult with the manufacturer of the selected wind turbine model to make sure the manufacturer is in agreement with setbacks and/or positioning for the proposed turbine layout."

"The setback requirements as stated in the CV Zoning Law have the effect of unjustifiably and unreasonably restricting the placement of turbines in agricultural districts and preclude CVWP from placing turbines in planned and/or optimal locations within the Town."

Comment - First, with a map more than 50 years old, how can setbacks be determined for any homes that were built since the map was printed? Therefore, how can BP make any claim, with certainty, that setbacks are designed to reduce safety risks? **BP should not put forward any Project layout that does not reference every home extant in the Town at the present time.**

Comment - The statement regarding setbacks that "meet or exceed" the previous two Cape Vincent wind projects is deceptive and untrue. This is obvious considering wind turbine placement was sited using outdated maps without denoting residences built within the last 50 years. How can BP be assured that turbines are not encroaching on some homeowners if the maps are outdated? Furthermore, the combined Project is for 124 turbines, whereas the two previous projects totaled 135. Aside from removing a number of turbines that were very close to river waterfront cottages, there are basically the same number of turbines in the interior footprint of the combined project as the two separate projects. **In spite of BP's claim, their placement of turbines in Cape Vincent is still far too close for public health and safety.**

Comment - BP indicates that they will be contacting the manufacturer of the specific model of turbine they select for the Project to ensure the manufacturer is in agreement with setbacks and positioning. Yet, when it comes to setbacks that are designed to protect people from rotor failure, blade, and ice throw, BP's attitude is that these setbacks are unjustifiably restrictive. **BP is saying that they will not compromise manufacturer's recommendations, even if it means putting people at greater risk.**

Comment - BP, in its obvious indifference to the people who live in Cape Vincent, go on to state that the Cape Vincent Zoning Law is unjustifiably restrictive to the optimal placing of their turbines. Of course, Cape Vincent's Zoning Law is restrictive so that BP cannot optimally place their turbines in the Town, because **THERE ARE PEOPLE HERE!**

The Town urges the Siting Board to support the Town's Zoning Law, particularly the setbacks from roads and property lines, because these setbacks were recommended by the Town's consulting engineers, without ANY modification from Town officials. These setbacks were designed to protect families who live within the footprint of BP's Project. **BP's setbacks were designed to make money; the Town's setbacks were designed to protect people - support our Town law!**

Exhibit 8 Electric System Production Modeling

Production/Curtailment Impact Study

BP states that, *“The purpose of the Production/Curtailment Impact Study is to support the Article 10 filing for the Facility by projecting the Facility’s impacts on the transmission system, emissions and the production of certain types of existing generating resources. The Production-Curtailment Impact Study will be included in the Exhibit 8 portion of the Article 10 filing for the Facility.”*

Comment – This study is the justification for the addition of additional generating capacity to the NY power grid. It is a complex study that must be correctly and completely carried out. Because of the complexity, the Town of Cape Vincent may be requesting intervenor funds for a consultant to monitor BP’s adherence to the requirements of Exhibit 8.

Comment - BP is requesting a Certificate that covers a project up to 289.5 MW. It is our understanding that this far exceeds the available capacity of the current transmission system. **The cost and impact on the environment of the required transmission system upgrade must be carefully considered by the Siting Board.** These costs will be significant as will the effect on the environment.

Exhibit 9 Alternatives

This statement is taken from Exhibit 9 rules regarding consideration of alternative options to the proposed project, *"A description and evaluation of reasonable alternatives to the proposed facility at the primary proposed location including alternatives regarding:...(f) a description and evaluation of the no action/no build alternative at the primary proposed location including a statement of the reasons why the proposed facility is better suited to promote public health and welfare including the recreational, cultural and other concurrent uses that the site may serve."*

However, this was BP's response to the requirement in the rules to assess a no-build alternative, *"Once the project location was selected, CVWP evaluated various project size alternatives and determined the Project's optimal generating capacity. Certain "fixed infrastructure" costs are incurred regardless of the size of the project. For example, the cost of the Project substation will not vary greatly as a direct result of the size of the facility. Consequently, the financial viability of a project depends on the ability to maximize electric generation to defray these fixed costs."*

Comment - BP's rationale that they "evaluated various project size alternatives and determined the Project's optimal generating capacity" misses a very important requirement in the rules - "...why the proposed facility is better suited to promote public health and welfare..." BP fails to understand that consideration of alternatives are not a part of the rules just to make sure the applicant is maximizing their bottom line - profits. The rules are there also to acknowledge that the Town and State have a responsibility to make sure any kind of development does not compromise the health and safety of its citizens. This, of course was the principal concern of the Town when it drafted its Zoning Law. **The Town requests that the Siting Board require BP to follow the rules and provide a comparative assessment of their Project with a no-build alternative. Furthermore, if financial claims are the major benefit to the Project alternative, then BP should be required to produce their financial data, the fixed costs versus the generating capacity, to determine if the project design and layout could be modified**

Feedback

This statement from BP's PSS indicates that their Project layout came about with substantive feedback from stakeholders, *"The proposed location of turbines and associated facilities accounts for feedback from stakeholders at the local and state levels and results in a Project that factors in environmental, health, and safety issues while attaining cost-effective wind power."*

Comment - This statement is remarkable. The overwhelming opinion of stakeholders, excepting BP's financially tethered leaseholders, is that their 124-turbine project was outrageous and was totally incompatible with the Town and Village's Comprehensive Plan. Proof that BP never listened to local government and never listened to the community is evident by BP's entering the Article 10 process on September 17, 2012, with a 124-turbine Project, and after 6 1/2 months of a Public Involvement Program continues with the same 124-turbine Project. For BP to suggest they have support for this project at the local level, implies they have never read any of the letters and comments posted on the PSC's website for their

Project, where the general consensus is not supportive of the Project.

Town Comment	PSS Response	Town Response to PSS
<p>Alternative project layouts and arrangements in the Acciona FEIS and BP's SDEIS were inadequate in relation to extensive comments made by involved agencies under SEQRA. Aside from BP's proposed project which is incompatible with the Town of Cape Vincent Comprehensive Plan and Zoning Law, BP should include for consideration a renewable energy development alternative that is compatible with the Town's plan and law. The analysis should also include alternative options (e.g. buried line) for the transmission line bisecting the Town of Lyme.</p>	<p>This PSS document offers extensive discussion regarding alternative facility sites, including other renewable energy development, and transmission line options.</p>	<p>BP dismisses solar out of hand because the company is no longer in the solar business. However, the point the Town wishes to make is wind development is incompatible with the Town's Comprehensive Plan because of noise, shadow flicker, blinking lights, ice throw, potential rotor failure, property devaluation, and major bird kills, whereas a solar project would have NONE of these adverse impacts on people and natural resources. The Town urges BP and the Siting Board to consider a solar project to demonstrate that solar is a better fit for not only Cape Vincent, but for all New York communities with natural and community resources similar to the Town's.</p>
<p>Based on USFWS 6/15/07 SLWF DEIS Review the developer should be required to also consider a range of alternative facility arrangements to enable the advancing of a project design that is responsive to the many significant resources of State interest in the project area.</p>	<p>This PSS document offers extensive discussion regarding alternative facility sites</p>	<p>In Exhibit 22 the Town has a very detailed discussion of the adverse impacts of industrial wind development on the natural resources of the Town. A solar renewable project alternative should be provided by BP to demonstrate that solar is environmentally friendly while wind is an environmental disaster.</p>
<p>Based on USFWS 3/19/08 CVWF DEIS Review, no explanation is provided for</p>	<p>CVWF does not evaluate projects in such a manner, but rather is looking to propose a</p>	<p>Not surprising that BP in their response does not mention considering the community, its</p>

Town Comment	PSS Response	Town Response to PSS
<p>feasibility of a smaller project. The DEIS should provide an explanation on the minimum number of turbines needed to make a viable project. How can alternatives be considered without knowledge of wind resources and avian concentrations within the project footprint.</p>	<p>project that is meaningful and can bring economic and environmental benefits to the community. Evaluation of potential impacts to avian species is addressed in Section 2.22.</p>	<p>mission statement, vision and future plans, nor did BP mention that health, safety, and general welfare of a community as part of their equation. BP needs a balanced project alternative that is less oriented toward their corporate bottom line and more considerate of a community.</p>
<p>Based on NYSDEC 2/29/08 CVWF DEIS review, the lack of detail in the project scope precludes meaningful discussion of alternatives if there is no project to compare alternatives to.... Details should include the factors that led to the specific turbine layout for each alternative such as wind resource evaluation, turbine spacing and/or orientation, wind turbine model selection, site constraints (setback requirements, avoidance of wetlands, landowner preference, etc.) access road and interconnect design, considerations and avoidance of identified adverse environmental impacts (e.g. archeological sites). The range of alternatives may also include as appropriate alternative sites technology scale or magnitude design timing use and types of action.</p>	<p>This PSS document offers extensive discussion regarding alternative facility sites.</p>	<p>Providing a lack of detail seems to be a BP corporate development trait. Back in 2008 the New York State Department of Environmental Conservation complains that BP provides a “lack of detail.” Details they need included turbine layout for different alternatives, spacing, orientation, model, setback constraints, etc. The Siting Board needs to step back and consider that BP has been involved with some form of project submittal for seven years, and in all that time, we still have no idea what turbine models will be used nor do we know the accurate placement of these turbines. There is no map that denotes current homeowners, the location of their homes and property lines, what property owners are BP co-operators, and who are non-participants. Seven years and we still do not know and we will not know until they are up and running.</p>
<p>Based on PSC 1/12/07 comment, BP should include</p>	<p>This PSS document offers extensive discussion regarding</p>	<p>BP offered dialog but no alternatives. BP should be</p>

Town Comment	PSS Response	Town Response to PSS
<p>alternative scales and layouts to avoid significant impacts.</p>	<p>alternative facility sites.</p>	<p>forced to comply with the directives in Exhibit 9.</p>
<p>Based on PSC 06/13/07 comment on SLWF DEIS, the location of transmission line/facilities should be specified and alternatives, including consideration of the costs and benefits of underground location for all or part of the line should be addressed in the SDEIS. The alternatives analysis should address routing alternatives for 115kV transmission line including facility routes: within the abandoned railroad ROW adjacent to abandoned railroad ROW and other alternative locations. Consideration of underground placement should address at a minimum the crossing of the Chaumont River, any regulated wetlands or Wildlife Management Areas, important bird areas, locations visible from the Seaway Trail Scenic Byway, historic districts, and other locations as appropriate.</p>	<p>This PSS document offers extensive discussion regarding alternative facility sites, including transmission line options.</p>	<p>Discussion yes, but no transmission line alternative. Town of Lyme has a preference for a buried transmission in their wind law. BP should provide some best-guess cost estimates for a buried line in order to compare the costs with conventional above ground poles and lines. This information will be invaluable for the Town of Lyme to consider compensation for allowing above ground transmission infrastructure. If millions are saved, then Town of Lyme should receive just compensation.</p>
<p>Based on PSC 06/13/07 comment on SLWF the discussion of project alternatives should consider project alternative reduced alternative layout and project arrangement which would remove turbines from: the most prominent locations near the Coastal Zone and Local Waterfront Revitalization Areas, the</p>	<p>This PSS document offers extensive discussion regarding alternative facility sites, and specifically addresses the reduced Project layout from 135 to 124 turbines, with the large majority of eliminated turbines coming from the St. Lawrence River area.</p>	<p>The Siting Board should insist that BP provide at least two alternative project designs: a no-build option and an option that considers and respects Cape Vincent's comprehensive plan and zoning law. Providing alternative project designs are a requirement of the Article 10 rules and it should be enforced.</p>

Town Comment	PSS Response	Town Response to PSS
<p>Seaway Trail Scenic Byway, State Parks, Historic Properties listed or eligible for listing on the State or National Register of Historic Places, and other resources of recreational scenic and importance to the State from designated Coastal Habitat areas, Important Bird Areas ,Wildlife Management Areas, and NYS regulated wetlands.</p>		
<p>Based on Mentor Rubin & Trivelpiece 6/14/07 SLWF Review, the DEIS should contain a meaningful discussion of alternatives and not just the conclusory assertions that it presently contains. An EIS must contain a description and evaluation of the range of reasonable alternatives to the action that are feasible/considering the objectives and capabilities with a level of detail sufficient to permit a comparative assessment of the alternatives discussed NYCRR§617.9 (b)(5) (v). Significant further assessment of alternatives is warranted.</p>	<p>This PSS document offers extensive discussion regarding alternative facility sites.</p>	<p>Providing alternatives is a requirement of SEQRA as well as the Article 10 rules. It remains a key feature of any environmental assessment and BP should be required to provide a comparative analysis of at least three alternative designs.</p>
<p>We need large-scale maps that show all turbines and interconnecting lines that make up the total project, both the 200 MW and 289.5 MW project alternatives.</p>	<p>Project maps have been and remain available on the project website, in the local CVWF office, and have been on display at each of the public forums, including the Open House, and meetings with the Towns of Cape Vincent and Lyme. A Project map is also provided as part</p>	<p>How can BP seriously consider using the same layout for 1.6 MW and 3.0 MW, which vary from 400 – 499 ft. high turbines? The noise characteristics alone would require different placement, particularly when infrasound is considered. Furthermore, the Town’s turbine setback</p>

Town Comment	PSS Response	Town Response to PSS
	<p>of the PSS submittal. The project size ranges from 200 and 285 MW but leverages the same 124 turbine locations.</p>	<p>restrictions are keyed to the total height of an industrial wind turbine. Therefore, a 500 ft. turbine would need a 3,000 ft. setback and 2,400 ft. setback for a 400 ft. turbine. BP does need to provide at least two alternatives for their 200 and 290 MW project options. The two options cannot responsibly be located on exactly the same project layout.</p>
<p>We are not opposed to a commercial, renewable energy project. In both our Comprehensive Plan and Zoning Law commercial solar projects are deemed better fits and are encouraged as a renewable energy development project proposal. Since BP has completed other solar, renewable projects in New York, i.e., Brookhaven, L.I., we encourage BP to provide a solar energy development alternative as part of their Public Involvement Program.</p>	<p>BP is currently investing in three alternative energy technologies: 1) Wind, where BP has built up one of the leading wind businesses in the US; 2) Biofuels, that BP deems to be affordable, low carbon, sustainable, and scalable; and 3) Emerging business and ventures where BP is partnering with technology start-ups and venture capital firms with a goal of speeding up breakthrough innovations in areas of strategic importance to the company.</p>	<p>BP fails to mention they were in the solar business until two years ago. If they had read Cape Vincent's 2003 Comprehensive Plan, they would have understood that solar was a better fit for Cape Vincent and may have had a project up and running by now had they made the right choice then for our community.</p>

Exhibit 14 Cost of Facilities

Exhibit 14 states, "*(a) A detailed estimate of the total capital costs of the proposed facility, including a separately stated estimate for each interconnection, broken down in a rational manner by the Applicant into major cost components appropriate to the facility; (c) Upon the demand of any party or of DPS, the applicant shall supply the work papers from which the estimates required by subdivision (a) of this section were made.*"

Comment - Is the Town to assume this will be an actual cost of construction? Or, is it ground preparation, foundations, roads, etc.? According to NYS Sales Tax Department, BP will be liable for sales tax on cement, gravel, bolts, and similar materials. Only the power generating equipment would be exempt as production equipment, (e.g., towers, nacelles, blades). BP should provide details for each and every component of capital outlay. **The Town requests the detailed work sheets used for the "detailed estimate of the total capital cost" for the Project as outlined in paragraph (c).**

Exhibit 15 Public Health and Safety

Rotor Failure, Blade Throw and Ice Throw

"A modeling effort pertaining to ice shedding /throwing range and ice size will be generated based on a literature search of available information from wind farms operating in North America."

"Calculations in the California Energy Commission's Permitting Setback Requirements for Wind Turbines in California, prepared by the California Wind Energy Collaborative, November 2006, report number CEC-500-2005-184, (the "CEC report") will be used to help inform an understanding about blade throw."

"Therefore, an iterative process will be used to determine various cases for blade throw at this site using the actual topographic data for the Project."

"A third party engineering firm will review materials from the wind turbine manufacturer to help assess risk for wind turbine towers."

Comment – BP is proposing to use studies prepared by a "wind industry collaborative," not an independent engineering study, dated November 2006. Using data that was developed prior to November 2006, BP is ignoring recent events and the evaluation of blade failures that have occurred since that time. Cape Vincent's Zoning Law setback requirements were developed in 2012 and are based on a study prepared by the Town's engineering consulting firm, who modeled potential rotor and ice throw as well as reviewed any debris field analysis available from turbine accident reporting.

Comment - BP has not said what size/model turbines that they intend to use. They stated that they will not address rotor failure and blade throw until they site the individual turbines. This further suggests that they do not know where they will be placing turbines and may move them where ever they desire. **The Siting Board should require BP to produce a complete, definitive turbine layout, stating the turbine specific setback used to address rotor failure, ice and blade throw. This layout should be based on the worst case scenario, using the 499 ft. high wind turbines.**

Comment – The Town of Cape Vincent's independent study for a GE 426 ft. high (1.6MW) turbine shows a projectile throw of 2655.8 ft., which is the basis for the Safety Setback requirement of "six times the total turbine height," in the Town Zoning Law. See attached "Wind Turbine Projectile Calculator," dated March 9, 2012.

Comment- **The Town of Cape Vincent will be requesting intervenor funds to study further safety setbacks and recent turbine blade failures.**

Comment- **The third-party engineering consultant used to assess turbine risks should be accredited and have experience assessing risks of industrial wind turbine risks and failures.**

Table 2.15-1 and Town Responses

Town Comment	PSS Response	Town Response to PSS
<p>Turbines too close to residences</p>	<p>The Project maintains setbacks to residences at one-quarter of a mile, which meets or exceeds the previous setback for residences held for either of the predecessor projects and is believed to be adequate to address health and safety concerns.</p>	<p>Proposed ¼ mile (1,320 ft) setback from residences is unsafe. Previous setbacks were similar (1,250 ft) and also unsafe. Current law is based on engineering modeling by Town consultant, e.g., six times total turbine height or 3,000 feet. CV zoning law also includes the project boundary line and roads not just the residences. BP states 1/4 mile setback is "adequate to address health and safety concerns." If so, then why do BP contracts with leaseholders stipulate reduced setbacks, if they know these reduced setbacks will be less than adequate?</p>
<p>Provide a comprehensive assessment of rotor failure and debris scatter for modern industrial scale wind turbine failures as well as a well-reasoned explanation for setbacks they may use that are not compliant with the Cape Vincent Zoning Law.</p>	<p>Potentially significant adverse health and safety impacts associated with ice throw, blade throw, and tower collapse will be addressed in Exhibit 15 of the Application.</p>	<p>Exhibit 31 specifies that until such time that local laws are waived or supplanted that the local laws remain in force. Therefore, the Town's six times total height setback from roads and property lines is the default setback until BP succeeds in waiving this restriction in the Town's Law.</p>

Exhibit 18 Safety and Security

2.18.5 – Local Office of Emergency Management Review –

“A review of plans by the local office of emergency management is not required for towns less than one million people.”

Comment - No review for towns of less than 1,000,000 people is required in Exhibit 18 rules; however, Jefferson County, NY, has an Emergency Management Office, which has controlling authority, and **the Siting Board should require a review of any emergency response plans related to BP's Project by the County's EMO.**

2.18.6 Fire Response Plans

“The project will have a Fire Protection and Prevention Plan. The objective of the plan is to eliminate the causes of fire, prevent loss of life and property by fire, and to comply with Occupational Safety and Health Administration's (“OSHA”) standard on fire prevention, 29 CFR 1926.24.

“Project personnel are not trained firefighters and are not to fight fires beyond the incipient or initial stages, or as required to facilitate personal safety/egress. Personnel will be trained to summon professional help and evacuate to designated zones of safety. Personnel will not be equipped with or trained in the use of professional firefighting equipment.”

Comment - **BP must be required to provide on-going training to all of the emergency personnel in the Towns of Cape Vincent, Lyme, and Clayton.**

2.18.8 – Review by Local Emergency Responders

“The Emergency Response plans in Section 2.18.3 will be provided to the local emergency first responders.”

Comment - In addition to having local review prior to the issuance of a Certificate, BP must be required to have an on-going training program for local fire and emergency response personnel.

Exhibit 19 Noise and Vibration

In-Home Adverse Impacts

Of all the potential adverse impacts that are associated with BP's Project, there are some that transcend all others. Impacts that are annoying and unhealthy to people were an important factor in the adoption of the Town's revised Zoning Law. But, impacts such as wind turbine noise, blinking red FAA lighting, and shadow flicker are especially important because they may affect Town residents in their homes. In the extreme, experiences at some wind farms were so bad that people were driven from their homes; in some cases, they deserted homes that were impossible to sell. Because in-home impacts have such a great potential to do harm in the comfort, privacy, and otherwise security of our homes, the issues of wind turbine noise, blinking lights, and shadow flicker are at the top of the Town's list of concerns. **The Town will demand that our laws that protect residents from noise, lights, and flicker impacts will remain in place and not be waived by the Article 10 Siting Board.**

Issue Applying Local Standards: Subsection K, (1) Stipulates that "The preliminary scoping statement shall contain": item (2) (ii) "...potentially significant adverse environmental and health impacts...including any material impacts or effects identified in consultations by the public, affected agencies, and other stakeholders, and a responsive analysis by the Applicant as to those issues identified in consultations." The Town interprets this section as requiring BP to act on its concerns and not ignore and put them aside.

In its PSS submission BP states, "A noise impact assessment will be carried out to determine existing environmental sound level with the current project area, what the expected operational sound levels from the project are likely to be and how they compare to pre-construction levels." Further, under 2.19.1 "Sound emissions from the turbines once the project is operational could be audible at residences and other potentially sensitive receptors with the project area and a potential will exist for annoyance and complaints. Analysis will be carried out to tabulate the sound levels at each residence due to the project alone..." Lastly, in Section 2.19.3, 'Proposed or On-Going Studies During Pre-Construction Activities,' the PSS states as a requirement, "The development of a map showing all potentially sensitive noise receptors in proximity to proposed turbine locations – primarily consisting of residences and churches."

Comment: The Town of Cape Vincent has made clear, written representations of its position on the modeling and assessment of industrial wind turbine (IWT) generated noise. In January 2013, BP was furnished a lengthy document entitled, "Additional Potential Adverse Environmental Impacts & Other Recommended Studies and Issues." Under the heading 'Wind Turbine Noise' the following recommendations were made:

- a. In the memorandum accompanying the publication of the Article 10 rules, this was the discussion point at the end of Section 19 Noise, "*The disagreement described above (adopting a noise standard) lends support to the case by case approach in the proposed regulations.*" In addition, Section 31 Local Laws directs, "*Pursuant to PSL §168(3)(e), the Siting Board must find that the facility is designed to operate in compliance with all local substantive requirements, all of which shall be binding upon the applicant, unless the Siting Board elects to not apply them.*" **Therefore, any assessment of noise impacts**

shall “operate in compliance” with the Town’s local law until such time as that law has been waived by the Siting Board, and since no waiver has been requested or granted, any noise predictions shall comply with the 35 dBA limit, which is the Town’s current nighttime restriction.

- b. Relative to assumptions made in predictive noise modeling BP made the following comment regarding the Town’s request: *“Although we concur with Dr. Schomer’s logic of using source, middle ground and receiver ground absorption coefficients of 0,0,0.9, such an analysis can only be done for the simplest case of a single turbine radiating noise to a single receptor because only then can the three different zones can be properly defined. In a contour map involving hundreds of receptors and many turbines these zones cannot be defined in any practical way. However, comparative analyses indicate that very similar results are obtained by using a universal coefficient of 0.5, so that is the anticipated approach”*. **Town requests a comparative assessment of several single wind turbines using the Town’s assumptions vs. a universal ground absorption coefficient.**
- c. Although BP indicates it will provide C-Weighted predictive noise impacts in its assessment, indicating it is required in the rules. **However, the Town requests C-Weighted impacts be included in predictive noise impacts, since BP erred and it is not required in the rules.**
- d. “In the preparation of maps to describe potential noise impacts, property lines should be clearly defined so that landowners, those with leases and good neighbor agreements as well as non-participants can examine noise impacts on their property. In addition, the predictive analysis should include a tabled format of sound levels for all residences keyed to the sound level map.” In other words, **the Town believes that truly comprehensive modeling of sound generated by industrial wind turbines should provide predicted levels at property lines as well as residences for all Township properties.**
- e. “The noise impact analysis should include three operational scenarios: 1) noise levels at cut-in speeds, 2) noise levels at ½ power output and 3) noise levels at full output of the wind turbine.” BP addressed this recommendation in its PSS in Table 2.19.1, page 72 by saying “To be conservative, the use of only the maximum turbine sound power level at full output is anticipated.” **The Town of Cape Vincent would not have made its recommendation for the evaluation of “three operational scenarios” if it didn’t consider the information important.**
- f. “Potentially sensitive receptors” include more than residences and churches (see 2.19.3 above). Receptor locations may be property lines, schools, and any public gathering place. **BP needs to update their Project map to include all the buildings and residences that have been added in the last 60 years, which is the time base for BP’s current map.**

Issue “It’s in their heads”: Under section 2.19.5 Proposed Measures to Mitigate Unavoidable Impacts, BP states *“Although it is a possibility, it is unlikely that the sound emissions from a project of this type will go completely unnoticed at all times by everyone in the project area; consequently, an unavoidable impact of some degree is anticipated. The extent of any adverse reaction to project noise depends on more than just the sound level, including attitudinal factors that have no direct association with noise, and cannot be precisely known ahead of time.”* This description by BP that noise concerns may be psychological is disingenuous and dismissive of real health issues, yet in comparison, BP’s good neighbor agreements provide no mention of “attitudinal factors.”

There is no discussion of “attitudinal factors” in BP’s Wind Energy Lease Agreement. As cited in ‘Approved Form 07-26-10’, Section 8 ‘Owner’s Representations, Warranties and Covenants’, Subsection 8.10 ‘Noise’, “Owner grants Grantee an easement for the right and privilege to generate and maintain audible noise levels in excess of 50 dbA on and above the Noise Easement at any time of the day or night. The Noise Easement shall mean the Property except those portions within a two hundred foot radius circle... centered on the inside of each presently existing, occupied residence on the Property. If noise levels produced by the turbines exceed 50 dbA (L90) without the Owner’s consent...Grantee shall reduce the noise levels produced by the turbines to 50 dbA (L90)... Measures to be taken by Grantee may include installing insulation, or sound-deafening material in the offending turbine(s); installing landscaping, insulation and sound deafening material at the residence, or changing the operation of the turbine(s) to reduce noise output”.

Comment: The citation above is straight forward; there is no offsetting suggestion that attitudes, whether formed before or after turbine construction and initial operation, constitute a basis for reporting excessive noise annoying any more than the physiological reaction itself. A landowner who enters into a Lease or Good Neighbor Agreement is, in part, compensated for his/her tolerance of adverse impacts. The compensation-for-tolerance does not preclude the impact(s) to the human condition. Explicit in BP's Lease and Good Neighbor Agreements is the recognition that annoyance and/or physical/emotional discomfort experienced by persons living within or near to the boundaries of an industrial wind farm is most effectively dealt with by compensation. There is no attempt to deflect what a resident may feel by suggesting "it is all a matter of perception, any portion of which is due to preconceived ideas." **The Town recommends that as the discussion of the adverse impact of sound goes forward, that BP refrain from the human suggestibility argument.**

Issue Infrasound: Another potential IWT generated adverse impact to health is Infrasound and Low Frequency Noise (LFN). These effects are less related to audible noise, annoyance, and sleep deprivation and more related to symptoms associated with motion sickness. Again, the Town’s January 20, 2013, recommendations for Studies and Issues referenced a recent report submitted to the Wisconsin Public Service Commission in their review of the Highland Wind Farm proposal. The Commission sponsored a study of wind turbine generated infrasound at the Shirley Wind project, Brown County, Wisconsin. The work was carried out by four acoustic consulting firms, each experienced in assessing turbine noise impacts. In their summary

findings, the authors concluded, *“The four investigating firms are of the opinion that enough evidence and hypotheses have been given herein to classify LFN and infrasound as a serious issue, possibly affecting the future of the industry.”* Because infrasound levels were inaudible, but nevertheless caused ill health for some residents of the Shirley Wind project, the acoustical engineers recommended conducting a follow-up study to establish the threshold of perception for infrasound.

Section 1001.19 (k) of the Article 10 Rules outline issues that may have “potential community noise impacts.” Included in the list to evaluate are “industrial or medical activities that are sensitive to vibration or infrasound.” Citing this reference, BP was requested to provide an evaluation of low frequency noise and epidemiological evidence that low frequency sound generated by the turbine model(s) selected for the proposed project is not, and will not be associated with the advent of adverse health effects such as sleep and mood disorders, problems with concentration, tinnitus, vestibular disorders, and an onset of hypertension in residents living within or in close proximity to the wind farm.

BP included this response in their PSS to the Town's reference to the Wisconsin infrasound study, *“The actual finding of the Wisconsin PSC study was that the levels of infrasound from the project turbines were extremely low and most likely similar to or equivalent to the natural environmental sound level at those frequencies inside of each tested residence. In short, nothing was found that even suggested an explanation for the complaints about adverse health effects. The 33.5 dBA design goal was suggested by one of the team’s investigators as an extreme precaution but others recommended 45 dBA as an adequate regulatory limit for the specific reason that the measured levels of infrasonic sound appeared to be utterly negligible.”*

Comment: BP's response, which suggests infrasound is an 'attitudinal factor,' fails to consider that as a direct outcome of elevated noise levels, the Wisconsin PSC denied the application for the Highland Wind Farm, *“The PSC denied the application from Emerging Energies of Wisconsin, Highland’s developer, at its Feb. 14 meeting, citing inconclusive information about the wind farm’s ability to meet state standards related to noise from turbines (Pierce County Herald, March 14, 2013).”* **Regarding the design goal, and regardless of BP's biased view on infrasound, the Town requests that in addition to the normal noise impact predictions based on existing Town law, e.g., 35 dBA, that another scenario be included for the record based on 33.5 dBA to provide an interim measure of protection from infrasound until such time as further study resolves the issue to everyone's satisfaction.**

Issue Sleep Deprivation:

The Town repeats its January 20, 2012, concern for sleep deprivation associated with elevated noise levels. *“Sleep deprivation is now a well established health risk associated with the noise produced by industrial wind turbines (B. Berglund et.al. 1999, C. Hanning & Evans 2012, M. Nissenbaum et.al. 2012, E. Pedersen et.al. 2007, Pedersen & Waye 2004, N. Pierpont 2009, D. Shepherd et.a. 2011 and G. van den Berg et.al. 2008).* **BP should provide a comprehensive analysis of the scientific literature, including the aforementioned papers, to describe the negative health impacts associated with sleep disturbance regardless of the cause, and then**

to also assess the potential for sleep disruptions, and other direct and indirect health effects.

Assessing the potential for sleep disruption in Cape Vincent from industrial wind development should be keyed to BP's predicted sound levels. The restrictions imposed in Cape Vincent's zoning law were formulated with the expressed purpose of minimizing health impacts, such as sleep deprivation. Alignment with those restrictions should help ensure BP that potential adverse health effects from their proposed development will be minimized."

Comment: This was the extent of BP's response in its entirety to the Town's concerns for sleep deprivation associated with elevated wind turbine noise levels, "*Potentially significant adverse health and safety impacts associated with noise will be addressed in Exhibit 19 of the Application.*" Yet, early in the process of drafting the Article 10 rules sleep interference was under consideration, "*...an evaluation of the following potential noise impacts: hearing damage (as addressed by applicable OSHA Standards); **sleep interference...***" The wind industry and their consultants lobbied to remove any reference to sleep deprivation; however, **the Town requests that the issue of sleep interference be reinserted back in the list of issues considered in Exhibit 19.**

Exhibit 20 Cultural Resources

'OPRHP provided comments on both studies (Proposals for turbine layouts) during 2008 and determined that no further analysis was needed.'

Comment - This assertion by BP is patently false. In fact OPRHP in their letter dated May 28 2008 (SHPO Bonafide to PSC Andy Davis), after declaring an Adverse Impact on the 'communities' for the St Lawrence Wind project, called for an analysis of alternatives including eliminating turbines, changing the location of turbines, the size of turbines and other variables. Also OPRHP indicated that this study should be shared with all contributing agencies as part of an important attempt to remove or mitigate the adverse impacts.

What is at issue now is the layout of the Project, which BP is suggesting was accepted during local Town SEQRA review. According to the Article 10 rules, however, no decisions that transpired under SEQRA have any merit or validity under Article 10. But BP now wishes to recreate the previous nightmare and have it accepted under Article 10 without ever addressing the solution that SHPO had proposed.

The Town insists that BP conduct the analysis that OPRHP had called for: alternatives that considered eliminating turbines, reducing the size of trubines, moving the turbines to other locations, other changes to eliminate or mitigate the agreed upon adverse impacts.

Table 2.20-5 Comments and Responses on Potential Project Impacts to Cultural Resources

Town Comment Jan. 20	PSS Response	Town Response to PSS
In addition to the concerns for historic and cultural resources outlined in Section 12, past reviews associated with the Town's SEQR process stated that industrial wind turbine development had a very substantial visual impact on historic and cultural resources. More attention has to be directed to minimizing these impacts.	Visual impacts to the rural landscape will be reduced through the use of plain materials free of advertising and high-visibility commercial markings, other than standard manufacturer markings. Unavoidable adverse impacts, if any, would be addressed through potential mitigation measures.	The response by BP that plain materials and no advertising are on 500 ft. tall turbines is their approach to mitigating visual impacts on historic and cultural resources is ridiculous. BP should make a concerted effort to remove turbines from the background along the major site lines between the frontage roads and the historic sites.
Based on PSC 06/13/07 SLWF the DEIS indicates the location of the Project substation on four acres near Swamp Road. The location indicated on the project facilities layout map is within or directly adjacent to the Warren Wilson House Historic District which is listed on the Register of Historic Places. This location presents a	Potential effects of the revised Project on the Warren Wilson House will be addressed as part of the proposed Visual Resource Assessment.	BP chose to ignore the recommendation of the New York State Public Service Commission. The PSC's comment was made during a 2007 review of the St. Lawrence Wind Project, but in Exhibit B, the study area of the project, there is a designation for a substation on the same property of the Warren Wilson

<p>potential conflict with the Historic District, is likely to adversely affect that District. Alternative locations should be explored.</p>		<p>House. BP should find an alternate site for the Project substation as suggested by the PSC in 2007.</p>
<p>Based on PSC 06/13/07 SLWF adverse effects (turbines in view) on the Cape Vincent Village Broadway Historic District will conflict with Coastal Zone Management Policies. Supplemental Surveys should include all component resources and landscapes within listed eligible or potentially eligible historic properties or districts as appropriate to demonstrate the extent of impacts of the project on those resources. The discussion of Visual Resources and Community Character does not adequately address the scale and scope of the project impacts on the project area, the affected community, or several resources of regional and statewide significance.</p>	<p>Potential effects of the revised Project on the Broadway Historic District will be addressed as part of the proposed Visual Resource Assessment and will also be addressed in the assessment of potentially applicable coastal policies and consistency measures. In addition, revised discussions of visual resources and community character will be prepared following Article 10 § 1001.24 Exhibit 24: Visual Impacts requirements.</p>	<p>The current Project continues to site turbines in the same locations that will impact the Cape Vincent Village Broadway Historic District. What will be an even more adverse impact will be turbines that dominate the viewscape even more than those proposed in 2007, i.e., 100 ft. higher and with much larger diameter rotors. BP should seek an alternate project layout that would remove turbines from the view shed of the Village's Historic District.</p>
<p>Based on Mentor, Rudin & Trivelpiece 6/13/07 SLWF Review, determine how the presence of each turbine affects each building that meets criteria for inclusion in the National Historic Register.</p>	<p>A visual resource assessment will be undertaken to determine the extent and assess the significance of Project visibility.</p>	<p>BP should make a concerted effort to remove turbines from the background along the major site lines between the frontage roads and the historic sites.</p>

Exhibit 21 Geology, Seismology, and Soils

Summary

BP, in Exhibit 21 of their PSS does not identify the locations where karst conditions exist. They should be identified before the project is started. Any pre-construction plans should identify the specific procedures to be followed in order to keep turbine placement away from sensitive features and to prevent any form of pollution from entering the aquifers. These procedures need to be approved prior to the start of construction to ensure they are adequate to protect the environment and any homeowners that rely on wells for their water supply.

These studies should be conducted following the protocol outlined by DEC previously set forth in the SLWF review. The suggestions put forth by BP that they will seal off areas that might allow pollutants to enter the aquifer are unacceptable because as pollutants are prevented from entering the karst formation so will any natural water runoff. This has the potential for reducing the water supply to homeowner's wells.

The Extent of Karst Discussion in BP's PSS:

The following information covers the entire topic of karst geology provided by BP covered in Section 21 of the Article 10 rules:

- P. 93 Both the Rockland and the Kirkfield Limestones can contain up to 25 percent by volume of the mineral dolomite, which makes these bedrock formations less susceptible to karst formation than the relatively pure Chaumont Limestone (contains 0 to less than 5 percent dolomite).
- P. 96 Karst conditions exist in the Project area and their development may be accelerated by significant infiltration of water. Site specific preliminary karst condition assessments will be conducted to assess the potential of each site for karst formation. A SPDES permit will be obtained prior to construction initiation in which storm water best management practices will be developed specifically to protect the karst features at the site. Precautions will also be taken to seal potential pathways for water with concrete over exposed bedrock subgrades.
- P. 96 The Storm Water Pollution Protection Plan ("SWPPP") required as part of the SPDES permit will address these impacts. **The SWPPP will take into consideration karst features in relation to the drainage patterns to ensure that karst development is not accelerated.**
- P. 100 Surface drainage features that may be encountered during construction include watercourses that may be located within the Project area and solution-enlarged joints (karst conditions) in the far northeastern portion of the Project area.
- P. 100 If areas of potential subsurface drainage including drainage tile or solution-enlarged joints (karst conditions) are encountered during construction, they will be avoided, protected, or completely restored.

In summary of the comments on karst from BP's PSS, BP sees karst geology as a drainage problem that will be solved with a Storm Water Pollution Protection Permit (SWPP), and therefore, it is no big deal. But in the comments that follow the Town's engineering consultant, the New York State Department of Environmental Conservation, and the U.S. Fish and Wildlife Service have a very different view of the importance of karst features of the Cape Vincent landscape.

Responses to Table 2.21-2

In BP's description of the Town's comments provided to them in a document dated January 20, 2012, BP fails to fully represent the Town's concern by paraphrasing the issue in their PSS. In the Town's following response, the complete comment is noted as it was provided to BP as well as the Town's response to the PSS:

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>Conducting a comprehensive assessment of the karst geology in the Town of Cape Vincent was probably the most egregious lapse in oversight by the Lead Agency during the SEQRA review of the BP and Acciona project proposals. The Town's engineering consultant recommended at the time that the applicants include an evaluation of the bedrock geology, in particular the karst geology. They stated, "This work is critical to maintain suitable foundations for future turbines, as well as to protect and maintain any regional geological and hydrogeologic conditions of the karst geology." Regrettably, the karst assessment was never completed, but it nevertheless should be a part of BP's list of issues that require study during the application phase of Article 10.</p>	<p>See discussion above regarding karst geology.</p>	<p>The Town's consulting engineers Bernier Carr Associates had a major concern with the karst geology not because of a drainage problem, as suggested by BP. BCA required a pre-construction assessment of the karst geology in order to properly and safely place turbine foundations and to protect and maintain local aquifers. BP should complete a detailed geological assessment of the area, including issues related to karst geology, prior to the award of an Article 10 Certificate.</p>
<p>BERNIER CARR ASSOCIATES TOWN CONSULTANT6/28/07 SLWF Review - "We recommend that the applicant, St. Lawrence Wind, include an evaluation of the bedrock geology in their definition as well as the</p>	<p>The Project will take the comment under Advisement.</p>	<p>All assessment for karst geological conditions must be performed before the Siting Board issues a Certificate. BP continues to give shoddy, incomplete information and</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>Environmental Impact Analysis. This work is critical to maintain suitable foundations for future turbines, as well as to protect and maintain any regional geological and hydrogeologic conditions of the karst geology.” “Our challenge during the SEQRA review is to identify the potential impacts which will limit tower locations within sensitive areas of the karst geology.”</p>		<p>wants to push all work out until after they are granted a Certificate. This is an obvious attempt to minimize their costs in applying for the Certificate at the expense of the Town, its environment, and its citizens. Professional engineers are strongly recommending that comprehensive geological and hydrogeologic assessments be conducted by BP prior to issuance of a Certificate.</p>
<p>USFWS 6/15/07 SLWF Review – Karst landscapes are typified by underground drainages, caverns, and on the surface shallow, linear patterns of vegetation. The dissolution cracks, caves, and caverns provide heretofore unknown hibernacula for bats and that these areas should be avoided.</p>	<p>The Project will take the comment under advisement.</p>	<p>The U.S. Fish & Wildlife recommends that a karst survey be done beforehand so as to ensure that turbines will be placed away from areas that may be critical habitat for bats. Again, the Service wants a karst survey prior to issuance of a Certificate and prior to construction.</p>
<p>NYSDEC 2/29/08 CVWPP Review – DEC recommends that a more complete discussion of karst features be included in the SDEIS. The location of bedrock fractures and sinkholes should be shown relative to proposed project activities. Where carbonate rocks are exposed at land surface, solution features create karst topography, characterized by little surface drainage as well as by sinkholes, blind valleys, and sinking streams. Because water enters the carbonate rocks rapidly through sinkholes and other large openings, any contaminants in the water can rapidly enter and spread through the aquifers. In addition, a</p>	<p>See discussion above regarding karst geology.</p>	<p>The kind of karst survey recommended by the New York State Department of Environmental Conservation suggests far greater concerns than just issuing a SWPP permit, as BP has suggested. The DEC is recommending a very detailed field survey to identify surface drainage anomalies, sinkholes, blind valleys, and sinking streams. DEC, too, is concerned with contamination of local aquifers by construction activities. They recommend that BP provide a detailed construction plan that identifies areas where surface water should be contained or diverted.</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>detailed construction plan needs to be developed to incorporate stringent containment of construction materials, particularly concrete slurry. This would include such practices as the use of watertight forms, silt/storm-water fencing, controlled concrete truck washout areas, and covered storage of equipment and construction chemicals. Engineering specifications to describe these proposed practices need to be detailed in this plan.</p>		
<p>NYSDEC 6/15/07 SLWF Review: "DEC recommends that a plan be prepared that specifies procedures for conducting detailed subsurface investigations at turbine site locations and other project components that may interface with limestone/karst features. The plan should specify actions to be taken if karst features are identified or suspected, including further investigation (e.g., dye 6 Town of Cape Vincent Review January 20, 2013, testing), turbine relocation, determination of the effects of blasting, or engineering construction controls."</p>	<p>See discussion above regarding karst geology.</p>	<p>NYSDEC provides some details how BP must conduct its karst survey, i.e., what actions to take when karst features are encountered, including further testing and turbine relocation.</p>
<p>NYSDEC 5/29/09 SLWF Review - "In comments on the DEIS for this project dated June 15, 2007, DEC recommended that a comprehensive survey of karst features be conducted in the project development area, and a plan be prepared that specifies procedures for conducting a detailed subsurface investigations at turbine</p>	<p>See discussion above regarding karst geology.</p>	<p>The NYSDEC, in addition to calling for a comprehensive assessment of karst geology, also recommends that an environmental monitor position, who is qualified to work in karst environment, be on site for all pre-construction surveys and construction activities that involve excavation and blasting of bedrock.</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>locations and other project components that may interface with limestone/karst features. DEC further recommended that an environmental monitor qualified to work in karst environment be on site for all pre-construction surveys and any construction activities that involve excavation to bedrock or are located in proximity to a known karst feature. "The SDEIS included an outline of proposed karst investigations, but DEC recommends the studies be completed prior to construction in order to assess the adequacy of proposed mitigation measures.</p>		<p>Herein a quote from NYSDEC: "DEC recommends the studies be completed prior to construction in order to assess the adequacy of proposed mitigation measures."</p>
<p>MENTOR, Rudin & TRIVELPIECE 6/13/07 SLWF Review -"The DEIS provides to construction, a geotechnical investigation "would be performed" to identify subsurface conditions necessary for engineering the final design of the Project. – DEIS contains no technical investigation.</p>	<p>See discussion above regarding plan for geotechnical investigation.</p>	<p>Representatives for the non-profit Wind Power Ethics Group endorse the recommendation from state and federal resource agencies.</p>
<p>PRESSY & ASSOCIATES 5/29/07 SLWF Review – "The potential to impact receptors, e.g., domestic wells, springs etc., will be increased due to the presence of karst limestone bedrock across the project area and the need to construct large concrete foundations."</p>	<p>See discussion above regarding plan for geotechnical investigation.</p>	<p>More concern for special treatment of karst features of local geology.</p>

Exhibit 22 Terrestrial Ecology and Wetlands

Proposed or On-going Studies During Pre-Construction Activities: An important consideration for any reviewer of this PSS is this Project is not beginning from scratch. BP has gone through several iterations of preparing environmental assessments in conjunction with the New York SEQRA requirement for projects administered through local governments as lead agents. What the Town has provided to BP prior to this PSS are comments from involved agencies, principally the resource agencies with greatest responsibility in New York--the New York State Department of Environmental Conservation and the U.S. Fish & Wildlife Service.

What follows as "Town Comment/Response" are comments from these resource agencies when they provided reviews to wind project developers. The Town has focused on including those comments from these agencies that were principally ignored by developers in the past. What the Town finds remarkable in BP's PSS is that they do not propose anything new, and that they are repackaging studies and reports that were prepared for SEQRA assessments as far back as 2007.

BP makes this statement regarding additional pre-construction study: "Based on extensive avian and bat studies completed within the Project area to date, additional studies for this group are not proposed." What follows, in contrast, are pages of comments from resource agencies directing BP to conduct additional years of study, increase the frequency of each study effort, improve the study approach, and other suggested changes. What is obvious from this PSS is that BP is not serious about doing anything additional to satisfy environmental concerns. Rather, their intent is to repackage and window dress all the inadequacies and hope that no one notices.

The Importance of Adequate Environmental Studies: BP notes in their PSS (p.105), "Information collected during those surveys has been used to inform project design to avoid and minimize direct impacts resulting from construction or operation of the Project to the extent practicable." This statement, however, also suggests that if surveys have been inadequate, both in quality and quantity, then project design may NOT avoid or minimize direct impacts. What follows is an extensive, well documented litany of problems with BP's environmental studies identified by state and federal resource agencies. The Town has used those agency reviews to describe its concerns with BP's PSS.

Responses to Table 2.22-4

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>MULTIPLE YEARS OF ENVIRONMENTAL STUDY RECOMMENDED: Although past baseline studies of bird and bat populations associated with SEQRA efforts may appear extensive and complete, involved resource agencies considered the effort inadequate and recommended three years of study. Therefore, additional work is needed for nocturnal radar studies (1 yr. spring & fall), raptor migration (1 yr. fall), breeding birds (2 yrs.), and winter raptor & waterfowl (1 yr.).</p>	<p>The commenter provided this comment at a date (May 2009) earlier than publication of the final NYSDEC Guidelines (2009) and publication of the most recent USFWS Guidelines (2012). Extensive bird and bat studies have been conducted within the CVWP since 2006. The plans for these studies were developed in conjunction with the NYSDEC Division of Fish, Wildlife and Marine Resources staff and the USFWS Region 5 staff and followed the NYSDEC Draft (NYSDEC 2007) and Final Guidelines for wind power project studies (NYSDEC 2009) and guidance provided in the USFWS Indiana Bat recovery plan (USFWS 1999; USFWS 2007) and included the studies requested by the commenter. All field study reports were provided to the USFWS and NYSDEC and the need for additional field studies was discussed with these agencies during in person meetings conducted between 2009 and 2012. Additional field studies were carried out for Blanding’s turtle, grassland breeding birds and bald eagle nests based on agency comments. Studies for grassland birds and Blanding’s turtle were conducted using work plans based on NYSDEC Region 6 protocols. Bald eagle nest surveys were conducted using protocols outlined in Draft USFWS Eagle Guidance (USFWS 2011). Pre-construction studies completed at the Project followed the framework</p>	<p>BP’s beginning argument is that all the studies that the Town contends are deficient were all “developed in conjunction” with the agencies. No doubt there were conferences with involved resource agencies; nevertheless, the same agencies were critical of the resulting studies outlining various deficiencies, including the need for additional years of work and study. BP provides a lengthy list of studies but fails to consider they completed only a single year of radar study to assess the migratory corridor. As noted in the Town’s Jan. 20 submission, both USFWS and NYSDEC Guidelines call for multiple year studies “in order to establish a trend in site use and conditions that incorporates annual and seasonal variation in meteorological conditions, biological factors, and other variables.” The point of prior resource agency comments on this issue is that not enough study has been done by BP to understand the variability of the biological systems.</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
	<p>identified in the recent USFWS Land Based Turbine Guidelines for Tier 3 field studies (USFWS 2012). Studies completed included the following and a summary of the methods and data collected are presented in Exhibit E: • Spring and fall radar surveys for nocturnal avian and bat migrants; • Spring and fall surveys for migrant raptors; • Winter surveys for raptors and waterfowl; • Bald eagle nest surveys; • Breeding bird surveys; • Grassland bird surveys; • Spring and fall acoustic bat surveys for migrant bats; • Summer acoustic bat surveys for resident bats; • Bat mist net and Indiana bat telemetry studies; • Blanding’s turtle habitat and presence/absence surveys, and; • Habitat focused surveys for federal and state threatened or endangered species. CVWP recently met with the NYSDEC (November 2012) and the NYSDEC did not request any additional pre-construction studies be completed at the CVWP. Further information regarding over-wintering raptors, migration birds and bats will be provided in the Article 10 Application.,</p>	
<p>Based on USFWS Land Based Wind Energy Guidelines, pre-construction studies need to occur over multiple years to establish a trend in site use and conditions that incorporates annual and seasonal variation in meteorological conditions, biological factors, and other variables. Three years of pre-construction studies may be</p>	<p>The commenter provided this comment at a date (May 2009) earlier than publication of the Final USFWS Guidelines (2012). The CVWP is meeting the framework of the USFWS 2012 Guidelines and has conducted field surveys recommended within the 2012 USFWS Guidelines. The 2012 Guidelines are not prescriptive and do not</p>	<p>Page 25 of the USFWS Guidelines are clear about the need for multiple year studies, “To establish a trend in site use and conditions that incorporates annual and seasonal variation in meteorological conditions, biological factors, and other variables, pre-construction studies may need to occur over multiple years.” Although BP</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>appropriate in many circumstances. However, the level of risk and the question of data will be based on site sensitivity affected species and the availability of data from other sources</p>	<p>prescribe multiple years of field surveys. In certain cases such as for acoustic bat surveys, breeding bird surveys and raptor migration surveys, the CVWP conducted multiple years of study. The Article 10 Application will include evaluation of bird migration data for impact assessment.</p>	<p>notes that “in certain cases” they conducted multiple year studies (e.g., 2 years), more studies were of only a single year’s duration. Article 10 may not require multiple years of study, but the resource agencies and the Town deem it important. More work and effort is needed, especially nocturnal radar and raptor migration studies.</p>
<p>Based on NYSDEC Guidelines Conducting Bird Bat Studies 8/09 a proposal to site a wind energy project in proximity to an Indiana bat hibernaculum (40 miles), wildlife concentration area (2 miles), along a coastline (5 miles), or on a prominent ridgeline may result in a recommendation to conduct expanded pre-construction studies. If a developer proposes to construct a wind energy project in or near one of the features or resources of concern identified in Section 2(b), then two to three years of pre-construction study may be recommended incorporating one or more expanded preconstruction studies to provide in-depth information on the bird and bat resources of the site.</p>	<p>See first response in this Table. In addition, expanded pre-construction studies as defined in the final NYSDEC Guidelines (2009) were conducted, including: multiple years of raptor migration surveys, nocturnal radar surveys for nocturnal bird and bat migrants, bat mist net surveys and telemetry of Indiana bats, surveys for threatened and endangered species including bald eagle nest surveys, Blanding’s turtle habitat assessments and presence/absence surveys, and grassland breeding bird surveys. These surveys were conducted over multiple years –some of these efforts preceded drafting of either the Draft (2007) or Final (2009) NYSDEC Guidelines. The Project consulted the NYSDEC throughout the period in which pre-construction surveys were conducted (2006-2012) and provided work plans and reports for review by the agency. CVWP recently met with the NYSDEC (November 2012) and the NYSDEC did not request any additional pre-construction studies be completed at the CVWP.</p>	<p>The Town disagrees. For example, BP states they conducted multiple years of study with nocturnal radar surveys for birds and bats. Doing a fall survey in 2006 and a spring survey in 2007 may be BP’s idea of a multiple year survey, but that is not what USFWS and NYSDEC intended in their comments. To assess the variability of fall migrants requires a number of fall surveys and not a spring and fall survey in subsequent years. Regardless of BP’s attempt at misleading the discussion, more than a year of spring and fall migration data is required to understand the variability of avian migrant dynamics.</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>Based on NYSDEC R-6 4/17/07 SLWF Review only a one (1) year protocol is too short based on the USFWS guidelines and the local knowledge of the migratory birds and bats of the area. This plan should follow the USFWS guidelines of three (3) years as a minimum to establish pre-construction base line data. The single year of data on migrating raptors is also inadequate: “The number of points, amount of time (i.e., 60 minutes) per point, the number of days and duration of sampling period are all inadequate to capture the raptor (migration) data needed to fully address potential impacts.”</p>	<p>See first response in this Table. The commenter provided this comment earlier than publication of the NYSDEC 2009 comments or the Final USFWS Guidelines (2012). The CVWP is meeting the framework of the USFWS 2012 Guidelines and has conducted field surveys recommended within the 2012 USFWS Guidelines. The 2012 Guidelines are not prescriptive and do not prescribe multiple years of field surveys. In certain cases such as for acoustic bat surveys, breeding bird surveys and raptor migration surveys, the CVWP conducted multiple years of study. The Article 10 Application will include evaluation of bird migration data for impact assessment</p>	<p>Page 25 of the USFWS Guidelines are clear about the need for multiple-year studies, “To establish a trend in site use and conditions that incorporates annual and seasonal variation in meteorological conditions, biological factors, and other variables, pre-construction studies may need to occur over multiple years.” Although BP notes that “in certain cases” they conducted multiple-year studies (e.g., 2 years), more studies were of only a single year’s duration. Article 10 may not require multiple years of study, but the resource agencies and the Town deem it important. More work and effort is needed, especially nocturnal radar and raptor migration studies.</p>
<p>Based on SAVE THE RIVER 2/29/08 Letter, the DEIS must include studies of at least three years in duration to account for natural annual variability of bird and wildlife habitat. Currently the DEIS includes only one year of study and data collection.</p>	<p>See first response in this Table for comprehensive response.</p>	<p>The importance of the comment from Save The River is that a non-profit is echoing the concern of state and federal resource agencies in their collective call for multiple years of study.</p>
<p>Based on Rudin & Trivelpiece 6/13/07 SLWF Review in addition the proposed one year avian and bat study is not adequate to determine the value and usage of the area by wildlife. According to the United States Fish & Wildlife Service a three-year pre -construction study should be conducted to assess such impacts.</p>	<p>See first response in this Table for comprehensive response.</p>	<p>Yet another non-profit, Wind Power Ethics Group, endorsing the state and federal resource agencies in their collective call for multiple years of study.</p>
<p>Based on Smith Ecologist 6/8/01 SLWF Review, the studies to date must be considered pilot efforts requiring 3-5 years of intense further studies of many groups</p>	<p>See first response in this Table for comprehensive response.</p>	<p>Here an independent ecologist who has the most extensive first-hand knowledge of the Cape Vincent avian fauna supporting the call from state, federal, and</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
before any conclusions of value may be drawn.		non-profit environmental organizations for more than a single year of study.
<p>MIGRATION STUDIES: In the Joint Comprehensive Plan for the Town and Village of Cape Vincent, the avian migration corridor was recognized as one of the Town's most important natural resource assets. The spatial context and dynamics of the avian migratory corridor through the Town of Cape Vincent should be described in far greater detail (see below) than the one year of study conducted by BP in 2006-2007. More effort is required to document annual variation in numbers specie composition description of the spatial gradient within the corridor and the vertical distribution of migrants over the project footprint (500 ft. turbines are 100 ft. higher than those previously considered and therefore require a new assessment).</p>	<p>See first response in this Table for comprehensive response. In addition, avian reports and a summary of the methods and data collected are presented in Exhibit E and contain information characterizing patterns of use and flight paths of raptor migration observed at the Project. The Article 10 Application will include a discussion of raptor migration at the Project.</p>	<p>Exhibit E indicates only a single spring and fall of marine radar data, and there were problems with this information concerning location and data treatment. This information is totally inadequate to describe the flight path of migrant birds along the Cape Vincent migratory corridor. There is no data or analysis that describes a migratory density gradient from shorelines to points inland because there is no data to support it. Nothing collected to date by BP is useful in describing the migratory flight path through Cape Vincent. Two more years of marine radar study of nocturnal migrants are needed to address these deficiencies.</p>
<p>Based on USFWS 3/19/08 CVWF Review, starting the radar study in mid- April misses a substantial portion of the spring avian migration and likewise ending the radar study on October 15 in the fall will underestimate the migration during that season particularly some raptors and passerines and most waterfowl. Further, collecting data in only one year is inadequate.</p>	<p>See first response in this Table for comprehensive response. In addition, avian reports will be included in the Article 10 Application which contains information characterizing patterns of use and flight paths of raptor migration observed at the Project. The Article 10 Application will include a discussion of raptor migration at the Project. All wildlife study reports were provided previously to the USFWS and the NYSDEC for review.</p>	<p>The response to the U.S. Fish and Wildlife's comment is non-informative. The point was the time frame for the nocturnal radar studies was too short and thereby missed substantial numbers of migrants in both spring and fall surveys. These omissions underestimate the magnitude of the flyway and furthermore would underestimate collision mortality and negative impacts from the Project. Again, the data is inadequate and at least two more years of radar data are needed to better understand the</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>Based on USFWS 5/29/09 SLWF Review, the proximity of turbines to these (grasslands etc.) habitats as well as Lake Ontario and the St Lawrence River are cause for great concern/ because these habitats are known to attract waterfowl, water birds, and shorebirds to the area during the breeding and migratory periods</p>	<p>See first response in this Table for comprehensive response. In addition, avian reports and a summary of the methods and data collected are presented in Exhibit E and contain information characterizing patterns of use and flight paths of raptor migration observed at the Project. The Article 10 Application will include a discussion of raptor migration at the Project.</p>	<p>dynamics of the migratory flight corridor.</p> <p>The point of the comment is not one of how much data was collected, rather it is the placement of turbines close to critical habitats. BP needs to consider alternative project layouts that provide a wide buffer for the special, significant wildlife habitats that are extant in the Town.</p>
<p>Based on USFWS 5/29/09 CVWF Review “insufficient data were collected at the project site to determine the spatial and temporal use of the project air space by flying animals. We recommend for wildlife studies at wind projects generally specifies that the data should be collected over multiple seasons and years to determine average annual conditions. Because of the variability in migration and weather patterns/ collecting data for one year likely does not reflect typical wildlife use in the project area. Therefore we find insufficient data currently exists to adequately conduct a risk assessment and predict wildlife mortality for this project.”</p>	<p>See first response in this Table for comprehensive response. Multiple years of migration period studies for birds and bats were completed at the CVWP and a summary of the methods and data collected are presented in Exhibit E). Further information regarding overwintering raptors, migration birds and bats will be provided in the Article 10 Application. Those studies contain information characterizing patterns of use for birds observed during pre-construction studies. Data on flight heights for birds observed during pre-construction studies are included in the aforementioned reports. The Article 10 Application will include a discussion of raptor migration at the Project.</p>	<p>The U.S. Fish & Wildlife Service characterized Project data as “insufficient” in May 2009, long after the marine radar and migrating raptor surveys were completed. Therefore, the insufficiency still stands, and it results in the inability to conduct reasonable assessments of risk and the prediction of avian mortality. Regardless of how often BP refers to their list in Exhibit E, the data is lacking. The data may be listed, but an important federal resource agency has deemed the data inadequate. BP needs to conduct additional, up-to-date surveys that address resource agency concerns.</p>
<p>Based on Article 10 EXHIBIT 31 “Setbacks requirements would have to be considered on a case-by-case basis by looking at the purpose for their establishment and the circumstances of a specific site or case. A setback might be unreasonable for the</p>	<p>Please see Section 2.31 for discussion regarding this topic.</p>	<p>BP’s referral to Section 2.31 is non responsive. Nothing they mention in 2.31 relates to the rules in Exhibit 31 where they reference the protection of a migratory flight path. Furthermore, BP failed to provide quotes around the Town’s</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>purposes of preventing construction encroachments but reasonable to protect migratory flight paths.”</p>		<p>statement, which indicates the statement was taken verbatim from the rules. The point is the Article 10 rules themselves recognize the importance of protecting a migratory flight-path, such as exists in Cape Vincent.</p>
<p>Based on NYSDEC 5/29/09 SLWF Review, SDEIS suggests winter densities were low and that the relative risks to these species are very low. DEC staff on the other hand, have documented high numbers. To overcome this inconsistency in reporting between the DEC and the consultant, additional survey effort directed towards the short-eared owl is recommended both pre-construction and post construction to be sure this species' distribution and abundance is accurately documented as a basis for future project evaluation and planning efforts. It is also known that the project area lies within one of the most important raptor wintering grounds in New York State. A more thorough analysis of raptor migration within the project area is needed to support the conclusions made in the SDEIS. It is clear from Table 3.1.1 that the numbers of birds per hour for Cape Vincent are not similar to the other wind facilities but higher than all of the other sites.</p>	<p>See first response in this Table. In addition, avian reports will be included in the Article 10 Application which contains information characterizing patterns of use for birds observed during pre-construction studies. All wildlife study reports were provided previously to the USFWS and the NYSDEC for review. Overwinter use of the Project by short-eared owl and northern harrier will be addressed within the Article 11 Part 182 Application, while general avian patterns of use observed during overwinter pre-construction surveys will be summarized in the Article 10 Application. The Application will compare publicly available data from other wind projects in terms of how bird use compares to the level of use observed at the Project and will include a discussion of what current information suggests about the correlation of bird use observed during pre-construction studies and observed mortality during post-construction monitoring. Current publicly available post-construction monitoring data from New York and other regional studies will be used.</p>	<p>BP’s response is focusing on how they will analyze their data, whereas the comment by the New York State Department of Environmental Conservation relates to the content and poor quality of the data. DEC’s concern is poor data will lead to an inadequate analysis and conclusion regarding impacts. The last date of the winter raptor survey from BP’s Exhibit E is May 28, 2008, while the review by the DEC is dated a year later. Therefore, the issues raised in the DEC’s comment are still in force, if no new surveys and data acquisition have been completed. DEC recommended additional survey effort in order “to overcome this inconsistency in reporting.” More effort is needed to correct deficiencies in BP’s survey work, but drawing conclusions from inadequate data will only hurt the Article10 record.</p>
<p>Based on NYSDEC 12/31/04 Chautauqua Wind Farm Review (K Kispert) The eastern and</p>	<p>The comment is noted.</p>	<p>It is important that BP acknowledges what the New York State Department of</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
southern shore of Lake Ontario and the eastern shore of Lake Erie are documented and well recognized migratory bird pathways which are important within Eastern North America on a regional scale particularly during spring migration as birds move north.		Environmental Conservation has determined that the Town of Cape Vincent is part of an important Eastern North American migratory flyway, and thereby deserves protection.
Based on PSC 2/28/08 CVWF Review a more thorough explanation of the nature of migration through the project area and consideration of potential impacts of the project on migrating raptors is warranted.	See first response in this Table. In addition, the Article 10 Application will include a discussion of raptor migration at the Project.	If BP does not correct and remedy the deficiencies noted in the migratory raptor data by the DEC, then a “more thorough explanation of migration through the project area” that was requested by the New York Public Service Commission will be impossible to complete.
Based on Smith Ecologist 6/8/07 SLWF Review, the fact no other waterfowl than Canada Goose and mallard were identified is of particular concern as it suggests at best marginal competence of observers and inadequate sampling time. The comment is noted. All bird species identified in pre-construction studies are described in pre-construction study reports, which will be included in the Article 10 Application	The comment is noted. All bird species identified in pre-construction studies are described in pre-construction study reports, which will be included in the Article 10 Application	The overall general comments regarding data deficiencies do not provide confidence in any conclusions that may be drawn by BP in their Article 10 application.
Based on Audubon 6/71/07 SLWF Review, “We have concerns about development of wind power at sites that are known migratory corridors or provide habitat to at -risk species.”	The comment is noted.	The Town shares Audubon’s concerns as well and in its Zoning Law has provided a 2-mile buffer along its lake and river shoreline that will also provide some protection for the migratory corridor.
Based on Old Bird Inc. 6/74/07 SLWF Review bird/bat migration altitude information should be provided at 25 m resolution up to 200 m above ground level. The West radar report, however, does not provide information on	The comment is noted. Data from the nocturnal radar studies completed at the Project were reported using standardized methods and metrics. Reports were submitted to the NYSDEC and USFWS for review and will	Bill Evans the Director of Old Bird, Inc., has extensive experience and understanding of the radar survey technique. His suggestions add to the call by resource agencies to have a better approach, better data,

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>movements along the shoreline and inland areas of coverage are simply summed together to produce a single passage rate for the whole radar survey area.</p>	<p>be included in the Article 10 Application.</p>	<p>and a more detailed and comprehensive analysis.</p>
<p>Based on Old Bird Inc. 6/14/07 SLWF Review, "The most significant problems I find with the West Inc. radar study involve the location they chose to carry out their radar study and their lack of analysis of migration density dynamics within the radar study area. The St Lawrence Wind project area is currently proposed to be located within 800 m of the St. Lawrence River. The radar study site is apparently only about 500 m from the shoreline in fact outside the wind project area. My interpretation of the NYSDEC and USFWS comments is that the radar site would ideally be located 1500 m from the shoreline." West's placement of the radar unit approximately one kilometer closer to the shoreline than had apparently been recommended leads to the fact that about one third of the radar detection area was located over the St. Lawrence River and less than half of their radar coverage was actually over the proposed wind project site.</p>	<p>While not every portion of the current Project area was covered in the studies, the surveys are applicable to the whole Project area due to similarity of habitat and landform. Information published by the NYSDEC (http://www.dec.ny.gov/docs/wildlife_pdf/radarwind.pdf) indicate that at 23 sites studied in New York, only 2 included more than one radar sampling location. In addition, those data do not account for the fact that the radar sampling locations from both the SLWF and the previous CVWEP are now included in the impact assessment for the CVWF. As a result, two radar stations are now included in the evaluation of the CVWF. Only transmission facilities are proposed for the Wildlife Management Area and Coastal Zone Habitats.</p>	<p>The New York State Department of Environmental Conservation has deemed the area within the Town as part of a major migratory flyway (see above). Such an important migratory corridor requires an unbiased study. Having a substantial part of radar coverage out over water, where bird densities would be greatly reduced, will result in biased, low estimate of migratory density. Therefore, not only are the data scant, i.e., only one year, but the data are also unreliable, as identified by Old Bird, Inc. The radar survey of the Town's migratory corridor needs to be completely redone and over a course of years; not a single year.</p>
<p>Based on Old Bird Inc. 6/14/07 SLWF Review, "The question of migration corridor along the south shore of the St. Lawrence River is not addressed as was suggested it would be in the study plan. What would be useful to see in evaluating potential impact to night migrants is a 500 m resolution</p>	<p>Same as above.</p>	<p>Description of the spatial gradient to the migratory corridor within the Town should have been the focus of the marine radar studies. Had the data been collected in the manner described by Old Bird, Inc., then the results may have supported the Town's 2-mile setback from the lake and river</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>representation of flying target density as one moves away from the St. Lawrence River. In other words, what is the migration density within 500 m of the River? What is the migration density in the zone between 500 m and 1 km from the River? What is the migration density in the zone between 1 km and 1.5 km from the River? What is the migration density in the zone between 1.5 km and 20 km from the River? Such data can be obtained from a properly designed marine radar study or with other methodologies. “</p>		<p>waterfronts. Part of the justification for this restriction was to protect the migratory corridor. When BP begins their migratory radar studies, they should use a protocol similar to that suggested by Old Bird, Inc. so that it would allow interpretation of the spatial dynamics of the corridor.</p>
<p>WIND TURBINE OPERATIONAL PLAN: BP should provide an operational plan that includes the increase in cut-in speed and the provision for shut down during the migration season as outlined below.</p>	<p>The Project has consulted the USFWS and NYSDEC in regards to threatened and endangered species and will continue to do so in regards to the ESA and Article 11 Part 182.</p>	<p>This is a plan that is recognized nationally as a means to mitigate potentially major collision mortality associated with seasonal periods of high migratory passage rates. Turbine rotor cut-in speed has been shown to reduce mortality of bats during their foraging period. The management plan will be especially important for any wind project development within the Town and its migratory corridor.</p>
<p>Based on USFWS 6/15/07 SLWF Review, “If turbines will be located in blocks of grassland habitat, we recommend that information be gathered on the displacement of grassland nesting birds. To mitigate potential impacts to bats, turbines should not have a cut-in speed of less than 6 m/s and operation should be curtailed between July 15 and September 15 for five hours after sunset.”</p>	<p>Same as above.</p>	<p>Same as above.</p>
<p>Based on USFWS 5/29/09 SLWF Review previous recommendation to mitigate</p>	<p>Same as above.</p>	<p>This comment by the U.S. Fish & Wildlife Service is important not only for the specifics it provides</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>potential impacts to bats was not included in the SDEIS. The project sponsor should commit to adjusting turbine cut-in speeds during low wind nights to reduce bat fatalities. This is the period when most bats are killed as documented by recent research, e.g. Arnett 2005. Cut-in speed should be 6 m/ s or more and operation should be curtailed for five hours after sunset from July 15 to September 15.</p>		<p>for managing potential mortality from wind farm operation, but also because the comment suggests their concerns and recommendations were ignored in the past. The Town recommends that an operational plan be adopted by BP, as per the protocol outlined by USFWS, and that it be included as part of Exhibit 22.</p>
<p>Based on NYSDEC 5/29/09 CVWF Review, "The SDEIS should further state that based on the results of these studies, adjustments to the project's operational configuration and or timetable may be necessary to affect avoidance or minimization of the take of birds and bats with listed species receiving the highest consideration."</p>	<p>Same as above.</p>	<p>To reiterate the New York State Department of Environmental Conservation's recommendation on May 29, 2009: BP's application "should further state that based on the results of these studies adjustments to the project's operational configuration and or timetable may be necessary to affect avoidance or minimization of the take of birds and bats with listed species receiving the highest consideration."</p>
<p>RISK ASSESSMENT: As indicated in Cumulative Analysis section (below), projected avian mortality should use the mortality data coming from the Wolfe Island Wind Power project located two miles north of the Village of Cape Vincent. Risk assessments should also include avian avoidance or displacement i.e. those birds and bats driven away from traditional habitats by the proposed industrial development.</p>	<p>See first response in this Table for comprehensive response.</p>	<p>In BP's SDEIS for their Cape Vincent Wind Power Project submitted in 2011, they provide no quantitative risk assessment of mortality impacts. On the contrary, the cumulative assessment in the SDEIS provides no estimate of potential losses from collision mortality and the qualitative discussion is misleading when it suggests collision impacts will be minimal because migrating fauna will be passing over the top of turbines. The latest information, e.g., Old Bird, Inc., suggests that the mortality estimates available from Wolfe Island have been</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
		<p>compromised, e.g., under estimated losses by 40 percent, and that the data needs to be reconsidered and mortality rates recalculated. Risk assessments based on these reformulations should then estimate expected losses for both the Project and the region.</p>
<p>Based on USFWS 6/15/07 SLWF Review, environmental assessments of impacts on wildlife from wind projects should include a risk assessment. None was provided in the DEIS. These assessments should consider population abundance distribution in the project airspace over multiple years and seasons, avian avoidance weather, as well as information on breeding wintering and stopover habitat.</p>	<p>See above responses. The Article 10 Application will include further analysis of avian use and the potential for avian mortality at the Project. This analysis will utilize existing site-specific data collected during pre-construction studies which will be included in the Article 10 Application as well as publicly available information on direct and indirect effects of operating wind energy facilities on birds.</p>	<p>As noted above, the latest analysis of Project impacts was the 2011 SDEIS submission to the Town Planning Board. That report did not include any quantitative risk assessment nor did it quantify any cumulative losses to wind turbine operations within the region for a number of other projected wind development projects. BP needs to complete a quantified risk assessment of potential loss to the Project's future operation.</p>
<p>Based on USFWS 3/19/08 CVWF Review, "Further, it appears that the site has high avian use as well but these resources were not fully considered in the fatal flaw analysis. Based on the data collected so far the Cape Vincent area has high concentrations of waterfowl and water birds migrating passerines and year-round raptor use."</p>	<p>The Article 10 Application will include further analysis of avian use and the potential for avian mortality at the Project. This analysis will utilize existing site-specific data collected during pre-construction studies which will be included in the Article 10 Application, as well as publicly available information on bird mortality observed at regional operating wind energy facilities.</p>	<p>U.S. Fish & Wildlife Service continues to have concerns about the quality of the data collected for wind projects in the Town. Everyone acknowledges that the Town is a special location with important natural resource assets, and the resource agencies are concerned about the extent of data, the quality of data, and types of analyses. More needs to be done to satisfy resource experts' concerns.</p>
<p>LONG-TERM MANAGEMENT: Included in a long-term management plan should be an adaptive management component that would outline steps and actions that would be taken in response to potential adverse impacts that may arise from project operations.</p>	<p>The Project will take the comment under advisement.</p>	<p>Article 10 requires somewhat more than just take under advisement. The Town, New York State Department of Environmental Conservation, and U.S. Fish & Wildlife Service are all stakeholders in the process. What the agencies propose for long-term adaptive management is a common sense approach that</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
		<p><u>was overlooked in the Article 10 rules but will be critical in managing any unforeseen, untoward events that may arise in the future.</u></p>
<p>Based on NYSDEC 6/15/07 SLWF Review the SDEIS should include a long-term environmental management plan that incorporates plans for restoration of environmental impacts during and following project construction (including grading, slope stabilization, re-planting with appropriate indigenous plant species, control of invasives, and restoration of disturbed habitats), environmental considerations to be included in the on-going maintenance of the facility (including maintenance and repair of roads and corridors, a contingency plan to assess and minimize environmental impacts during major repairs, and assessment and mitigation of environmental impacts during the decommissioning process. An adaptive management component is a necessary feature of an environmental management plan to respond to environmental impacts that arise during project operation, such as potential impacts to birds and bats disturbance to Blanding's turtle nest sites.</p>	<p>CVWP expects to comply with local substantive restoration requirements for road subgrade, base and pavement; restoration provisions within agreements with landowners; New York Agriculture and Markets guidelines for Agricultural Mitigation for Windpower Projects; NYSDEC requirements for endangered and threatened species, and the USFWS and NYSDEC substantive requirements for impacts to freshwater wetlands.</p>	<p>The Town has very serious concerns about both BP and the State's commitment to restoring our land to its preconstruction condition once the service life of the Project is terminated.</p>
<p>INADEQUATE ENVIRONMENTAL STUDIES: The following excerpt from the Cape Vincent Zoning Law requires a developer shall take to properly evaluate wildlife and other environmental issues. The scope of such assessment shall be developed in</p>	<p>See first response in this Table for comprehensive response and other responses above. In addition, The CVWP has met the framework and intent of the USFWS 2012 Guidelines and has conducted field surveys recommended within the 2012</p>	<p>BP's beginning argument is that all the studies the Town contends are deficient were all "developed in conjunction" with the agencies. No doubt there were conferences with involved resource agencies; nevertheless, the same agencies were critical</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>consultation with the New York State Department of Environmental Conservation and the United States Fish & Wildlife Service and shall adhere to the USFWS Land Based Wind Energy Guidelines March 23, 2012, to assess suitability of the site; and if application is approved, outline post operational studies to assess impacts.</p>	<p>USFWS Guidelines. The 2012 Guidelines are not prescriptive and do not prescribe multiple years of field surveys. In certain cases such as for acoustic bat surveys, breeding bird surveys and raptor migration surveys, the CVWP conducted multiple years of study. The Article 10 Application will include evaluation of bird migration data for impact assessment.</p>	<p>of the resulting studies outlining various deficiencies, including the need for additional years of work and study, inappropriate siting of marine radar, and many other issues in addition.</p>
<p>Based on NYSDEC 2/29/08 CVWF Review In order to adequately assess the potential impacts to the Project Area's threatened and endangered species the Project needs to fully characterize seasonal use of the area by these species. As submitted the SDEIS is inadequate to allow a thorough evaluation of the potential impacts to these species. Regarding breeding bird surveys, they state "Surveying during only one year and two days the entire breeding season is far from adequate. Knowing that both endangered and threatened grassland bird species have the potential to nest in this area should have triggered a more thorough Breeding Bird Survey consisting of more than one year of study."</p>	<p>See first response in this Table for comprehensive response and other responses above. The Project has consulted the USFWS and NYSDEC in regards to threatened and endangered species and will continue to do so in regards to the ESA and Article 11 Part 182.</p>	<p>The point of this comment by the New York State Department of Environmental Conservation is that a survey alone is not sufficient, nor is a comprehensive listing of surveys if the surveys are not designed properly and survey effort is insufficient. BP needs additional surveys to complete multi-year requirements, and they need to increase the sampling effort in each survey.</p>
<p>Based on USFWS 3/19/08 CVWF Review, BP stated that the avian and bat study protocols were approved by the Service. We reviewed the study protocols and provided input to the sponsor (BP). We also provided recommendations to the Town of Cape Vincent. However, many of our recommendations have not</p>	<p>Same as above.</p>	<p>This comment by the U.S. Fish & Wildlife Service is the most remarkable of the entire suite of agency commentary. Their frustration shows. They state in 2008 that BP, and the Town, paid no attention to their recommendations. The Town in this Article 10 process, however, will endorse and actively support</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>been implemented such as conducting surveys over multiple years to account for annual variation in weather and migration.</p>		<p>all recommendations by all of the resource agencies. BP has to be responsive to all of the suggestions and recommendations provided by Article 10 stakeholders.</p>
<p>Based on NYSDEC 5/29/09 SLWF SDEIS Review - In order to adequately assess the potential impacts to the project areas threatened and endangered species, the project needs to fully characterize seasonal use of the area by these species. As submitted, the SDEIS is inadequate to allow a thorough evaluation of the potential impacts to these species.</p>	<p>Same as above.</p>	<p>BP notes in Exhibit 32 that the New York State Department of Environmental Conservation issues an "Article 11 (6 NYCRR Part 182) Endangered and Threatened Species of Fish and Wildlife; Species of Special Concern, Incidental Take Permit." At the same time, the NYSDEC states on May 29, 2009, that studies and data collected are inadequate for describing threatened and endangered species seasonal use of the area. BP should pay heed to NYSDEC's concerns over inadequate study of threatened and endangered species within the Project area.</p>
<p>Based on Mentor Rudin & Trivelpiece 6/13/07 SLWF Review Based on material omissions described below, we request that the Planning Board, as the Lead Agency under SEQRA, reject the DEIS, reconsider its previous determination that the DEIS is complete and adequate for public review, and return the document to the Applicant for significant addition and revision.</p>	<p>The comment is noted.</p>	<p>More concerns voiced for inadequate environmental study and reporting.</p>
<p>INADEQUATE MAPPING: The reviews below by involved agencies were very critical of past attempts at depicting industrial wind project layouts due to the lack of sufficient detail with the underlying maps. BP should use a map similar to that provided in the Town's Comprehensive Plan that</p>	<p>The Project will take the comment under advisement.</p>	<p>The Town's Planning Board has identified inadequate mapping as a major impediment to assessing any broad-based view of the Project. Current maps provided by BP to represent their Project are worse than inadequate. They use a map that is likely more than 50 years old that lacks proper road designations, homes,</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
describes state and federal wetlands, archeological and historical resources, natural heritage assets, and the migratory corridor to name a few. Moreover, project maps need better detail than what is currently available to allow landowners to locate their property to better understand wind turbine setbacks from their property lines and potential adverse environmental impacts.		buildings, and many natural features. The Article 10 rules in Exhibit 22 require only wetlands mapping, but to provide an adequate record to assess the Project in the context of the area, BP needs to use a baseline GIS map with all the features mentioned in the Town's Jan. 20 listing.
Based on PSC 02/28/08 BP Project maps should include sensitive environmental features e. g., wetlands, rare plants, coastal zone protections, cultural and historical features, as well as the project layout.	As required in the Article 10 regulations, CVWP submit maps contains the following information to the required agencies: sensitive environmental features, including wetlands, coastal protection areas, cultural and historical features.	The New York State Public Service Commission makes a similar request for more feature-laden mapping. More so than is required by Exhibit 22.
Based on PSC 02/28/08 DEIS does not have adequate mapping of TX line and resources.	See comment above.	The PSC adds concern that mapping of the site of the transmission line is inadequate as well.
Based on USFWS 3/18/08 CVWF Review lack of sufficient information to properly assess impacts on wetlands. In fact, no estimates are provided. Without an understanding of wetlands extent, it is not possible to evaluate or provide recommendations.	Sufficient detail will be provided in the Application to adequately assess impacts to wetlands.	Exhibit 22 should provide sufficient treatment of wetland concerns if BP adheres to the rules.
Based on PSC 2/28/08 CVWF Review the representation of the wetlands...obscures relevant cover type information by use of solid colors for Field Verified Wetland Area. The scale of the mapping included is too gross to enable discernment of details. More detailed mapping with project layout should be provided in a supplement.	Sufficient detail will be provided in the Application to adequately assess impacts to wetlands.	If the purpose of Article10 is to build a credible, informative record, then the request by the New York State Department of Public Service should be addressed, each and every item.

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>Based on Pressy & Associates 5/29/07 SLWF Review DEIS notes wetland impacts will be avoided if practicable ... and where impacts could occur, if practicable, Project components will be moved to avoid or minimize impacts to wetlands. The proposed project however has placed many turbines adjacent to wetlands and streams. Therefore, the listed turbines should be moved or eliminated.</p>	<p>The Project layout does seek to reduce impact by taking into account the location of turbines relative to wetlands.</p>	<p>The Project should adhere to appropriate regulations regarding any development nearby to identified state and federal wetland resources.</p>
<p>Based on USFWS 3/19/08 CVWF Review without field surveys the description of reptiles and amphibians may be underestimated. Due to the abundant aquatic habitat found in the area these animals may represent an important part of the ecosystem. Further the discussion of affected mammals is inadequate, as no survey data or existing information sources were provided.</p>	<p>In addition to the several seasons of surveys previously completed, CVWP will characterize the facility and any areas to be disturbed for amphibians, terrestrial invertebrates, and reptiles using reconnaissance level surveys, supplemented by available data from the New York Natural Heritage Program, and New York State Amphibian and Reptile Atlas Project.</p>	<p>BP again missed the point of the U.S. Fish & Wildlife Service Comment. The Service is saying the survey data for reptiles, amphibians, and mammals provided by BP were inadequate. Furthermore, the Service is not suggesting BP examine some mapping resources, but that more field work is required to assess these natural resources adequately.</p>
<p>NATURAL HERITAGE VEGETATIVE LANDSCAPES: Adequate mapping is needed to document and highlight those areas within the Town and the proposed project footprint that have important plant resources. These data are available from the DEC's mapping section and should be included as an overlay on any project layout mapping.</p>	<p>The Project will take the comment under advisement.</p>	<p>Unfortunately, BP's record to date taking concerns under advisement has been less than adequate (see all above and below).</p>
<p>Based on USFWS 6/15/07 SLWF Review Project area has many unique plant habitats that are protected and others that should be avoided SLWF. DEIS makes no mention of these areas and therefore when and where they should be avoided.</p>	<p>CVWP will initially assess the potential for rare plants based on available data from the New York Natural Heritage Program and coordination with the NYSDEC.</p>	<p>The U.S. Fish & Wildlife Service makes an excellent point about mapping to protect unique plant habitats. If you don't have adequate maps, then how will BP avoid these areas in the development plans.</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
Based on USFWS 3/19/08 CVWF Review assessment conducted in fall when most plants were unavailable and/or difficult to observe. Better assessment needed at an appropriate time.	The Project will take the comment under advisement.	USFWS also notes that surveys were conducted in fall when many plants were unavailable for identification. More evidence of BP's poor management of their environmental studies.
<p>BP FAILED TO LIST THE CUMULATIVE IMPACTS SECTION:</p> <p>All resources agencies recommended a comprehensive impact analysis on birds and bats from the potential development of nearly 700 wind turbines within our region. Furthermore, estimates of mortality (which were lacking in the BP SDEIS) should utilize the Wolfe Island Wind Farm experience and a time frame of at least 20 years. In addition to quantifying turbine-induced avian and bat mortality, there should also be some consideration for displacement impacts from a regional build-out of industrial wind facilities.</p>	An analysis of cumulative impacts to birds, bats, and wildlife (including endangered, threatened, and special concern species) will be addressed as part of Exhibit 22 for the Article 10 Application. CVWP will coordinate with NYSDEC and the USFWS to identify appropriate wind energy project within the region to include as part of this analysis.	<p>The following was the extent of BP's cumulative assessment for the Cape Vincent Wind Farm in their Supplemental DEIS: <i>"The concern is that as more projects are constructed, migrating birds lose the ability to migrate unimpeded from potential risk of collision. This does not seem likely, considering that migrating birds generally fly at altitudes well above the top of a wind turbine blade for the size turbines planned for these projects. In general, while each individual wind project may have some impacts on migratory birds, the total impact is spread over numerous species so the impact to individual species is small."</i></p> <p>This is a very poor example of the cumulative assessment that was requested by U.S. Fish & Wildlife Service, New York State Department of Environmental Conservation, and the New York State Public Service Commission. It lacks quantitative and analytical rigor and it is qualitatively wrong as well.</p> <p>Furthermore, there is no provision in Exhibit 22 to conduct a cumulative impact assessment, but this requirement is sorely needed.</p>
BP FAILED TO LIST: USFWS 6/15/07 SLWF Review – FWS recommends a cumulative impact analysis of other wind projects under consideration	Same as above.	BP understands that the Article 10 rules in Exhibit 22 provide no consideration for cumulative impacts for wildlife but do have a provision for cumulative visual

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>which includes both BP and Acciona projects as well as Horse Creek. The analysis should consider all potential projects and effects on avian and bat species over project life span of 20 years.</p>		<p>impacts. Because cumulative impacts were highlighted by the U.S. Fish & Wildlife Service, New York State Department of Environmental Conservation, and the New York State Public Service Commission, cumulative bird and bat mortality impacts for the potential build-out of industrial wind projects in our region should be a major additional focus of Exhibit 22 -Terrestrial Wildlife and Wetlands.</p>
<p>BP FAILED TO LIST: USFWS 3/19/08 CVWPP Review – Other wind farm proposals added to the mix besides SLWF and CVWPP: Wolfe Island, Galloo Is. Roaring Brook, Maple Ridge for a total of nearly 700 turbines in our region. A cumulative analysis should consider this magnitude of turbine development in the analysis.</p>	<p>Same as above.</p>	<p>The U.S. Fish & Wildlife Service in their March 19, 2008, review of BP’s Cape Vincent Wind Power Project states directly and clearly that a cumulative analysis should be completed using a total of nearly 700 turbines. The Town endorses USFWS recommendation that a cumulative assessment be completed for avian mortality impacts, and that this requirement should be added to Exhibit 22.</p>
<p>BP FAILED TO LIST NYSDEC R-6 4/17/07 SLWF Review - “An overall concern from regional staff is the potential cumulative impacts of the numerous proposed wind power projects to be located in the Lake Ontario/St. Lawrence River plains... The St. Lawrence Wind Energy Project is located in a major flyway, important raptor wintering ground, important grassland bird nesting area (not only in New York State, but in Northeast America) and in close proximity to a winter hibernaculum and dispersal area for both federal and state-listed</p>	<p>Same as above</p>	<p>The New York State Department of Environmental Conservation in their April 17, 2007, review of the St. Lawrence Wind Farm reminds the developer that the Cape Vincent, eastern Lake Ontario, and the St. Lawrence River valley are a major flyway and that a cumulative impact analysis is needed for all proposed wind projects in the area.</p>

Town Comment Jan. 20	BP PSS Response	Town Response to PSS
<p>bat species. Since natural resources know no boundaries, it is believed that the study area should be extended to include all of the lake and river coastal areas for a clearer assessment of the potential impacts. “</p>		
<p>BP FAILED TO LIST NYSDEC 9/14/07 CVWPP Review - “The cumulative impact analysis should include consideration of impacts from all wind projects known to be under development or review in the region, including St. Lawrence Wind Power Project in the Town of Cape Vincent, the Horse Creek Wind Project in the Town of Clayton, and the Wolfe Island Wind Power Project on Wolfe Island, Ontario. Specific resources of primary concern to DEC that warrant cumulative analysis are bird/bat/wildlife impacts (including impacts to endangered, threatened and special concern species), wetland/watershed impacts and visual/historic impacts.”</p>		<p>The New York State Department of Environmental Conservation in its September 14, 2007, review of BP’s Cape Vincent project reiterates the call for cumulative impacts for propose wind farms, but also includes the Wolfe Island project and also specifies bird and bat, wetland/watershed and visual/historic impacts. The message is even clearer, a broad-based, comprehensive assessment of cumulative impacts on the areas natural, visual, and historic resources are required to meet agency needs.</p>
<p>BP FAILED TO LIST: PSC – 02/28/08 BP - Project must be discussed in relation to neighboring project(s) and proposed projects.</p>	<p>Same as above</p>	<p>In their February 28, 2008, review of BP’s Cape Vincent Wind Power Project, the New York State Public Service Commission has added their voice to the call for a cumulative assessment of impacts.</p>

Exhibit 24 Visual Impacts

Issue Shadow Flicker

BP failed to include the shadow flicker discussion provided by the Town in its January 20, 2013, list of potential adverse impacts. The following is repeated from that list:

BP shall provide epidemiological evidence that shadow flicker caused by wind turbines of the model chosen by BP does not and will not induce photosensitive seizures in individuals with progressive neuro-degenerative disorders living within or in close proximity to the proposed project. Cape Vincent's Zoning Law provides guidance for evaluating the impacts of shadow flicker: **The applicant shall conduct a study on potential shadow flicker.** The study shall identify locations where shadow flicker may be caused by wind turbines and the expected durations of the flicker at these locations. **For residences, the zone for predicting shadow coverage shall include the area within a 100-foot radius of the center of the residence.** The study shall identify areas where shadow flicker may interfere with residences or highways and detail measures that will be taken to mitigate or eliminate such interference. The universal software used to predict shadow flicker impacts calculates shadow effects based on turbines within 1,000 meters of a receptor and a receptor of 1 square meter placed 1.5 meters above ground. The universal standard of shadow impact used by consultants is 30 hrs/yr/receptor. Given that most residents of Cape Vincent do not hover around a one-square meter window, but occupy a far greater living space that includes area outside the home itself, **the WindPro model should consider an alternative analysis that includes turbines within 2,000 meters of a receptor and assuming that each receptor is 5 m wide by 10 m long.**

Shadow flicker represents another potential adverse health impact to residents living near CWWP's project site. Certain individuals are unusually sensitive to flashing or sporadic bursts of light and shadow. This can occur within a dwelling or "in the open." The Town specifically calls for BP to conduct an analysis of phenomenon. The Town referenced its updated Zoning Law and detailed a recommended methodology for assessing when, where, and of what duration shadow flicker can be expected as a result of the project's operations. **An important new addition to forecasting impacts for Cape Vincent is the requirement by the Town for a larger sized receptor.**

BP's PSS under Section 2.24.1 "It is anticipated that shadow flicker will generally not be a major concern...There are comparatively few occupied dwellings, and turbines will be situated with substantial buffers separating them from houses and most other buildings minimizing the amount of shadow flicker a residential structure may experience. Nonetheless, it is anticipated that there will be some structures in the vicinity of the turbines that would experience shadow flicker. Exhibit 24 will present, in table format, a summary of potential hours that each identified receptor could experience."

No such table was included in Exhibit 24. Furthermore, and contrary to Section 1005, Subsection K, Rules of the Pre-application Procedures, BP did not address the Town's request for an epidemiological assessment of shadow flicker's impact on human health.

Issue Blinking Lights

Operational industrial wind turbines present another visual annoyance that BP does not mention, except to say that “The project will adhere to minimum FAA requirements for aviation obstruction lighting.” (PSS, page 155). The presence of shadow flicker is observed as a phenomenon of the sun’s movement and the juxtaposition of a turbine to a structure or place in the open where one is located. On the other hand, the stationary, bright and flashing perimeter lighting of a wind farm is normally visible for long distances and continuous from dusk until dawn. This presence is completely antithetical to a rural existence, especially a vacation destination where nighttime darkness is held as a desired premium.

Comment: In addition to an aesthetic annoyance, the presence of flashing lights can also be a trigger for light-induced seizures for individuals who are known to have conditions which have sharp, marked responses to photic stimulation. **The Town requests that BP provide epidemiological evidence that the navigation lights it intends to use on its wind turbines does not and will not result in photic-induced seizures in individuals who have physical disorders which respond adversely to bright, flashing lights.**

In a 2010 study of the visual and sound impacts on Tibbetts Point Road residents from the Wolfe Island Wind Project, the report noted, *“Far more respondents (88%) were annoyed by the change in landscape view than with noise. Ninety-two percent said these changes were for the worst and the blinking lights at night were especially disturbing; some comparing them with a commercial airport.”* It was this reference to the blinking FAA lighting that led to a provision in Town Zoning Law that any industrial wind project located in the Town must provide a radar-based switching device, or comparable technology, in order to keep wind farm lighting off until aircraft approach the facility. **BP should provide a review of existing technologies that may be used to curtail the use of FAA lighting when no aircraft are in sight.**

Exhibit 27 Socioeconomic Effects

Among the requirements for assessing socioeconomic effects in the Exhibit 27 rules are:

"For each jurisdiction, an estimate of the incremental amount of annual taxes (and payments in lieu of taxes, benefit charges and user charges) it is projected would be levied against the post-construction facility site, its improvements and appurtenances."

"For each jurisdiction, a comparison of the fiscal costs to the jurisdiction that are expected to result from the construction and operation of the facility to the expected tax revenues (and payments in lieu of taxes, benefit charge revenues and user charge revenues) generated by the facility."

These statements are from BP's PSS 2.27.2, *"The Project will provide revenues to the local communities through property taxes or through payment-in-lieu-of-taxes ("PILOT") arrangements. Increased municipal revenues will benefit the school districts, emergency services, and essential infrastructure."*

"An estimate of any real property taxes or PILOT payments, benefit assessments, and user fees, that will be paid by CVWP will be estimated or negotiated for inclusion in this Exhibit."

Comment - The rules require BP to estimate the projected revenue provided to each of the taxing jurisdictions. This estimation process should include discussion with the Town's assessor and inclusion of his recommended approach. Furthermore, if an income approach is used to assess value, then the Town suggests assuming a capacity factor of no more than 25 percent. During the PIP phase of the Article 10 process, the Town directed BP to NOT assume a PILOT based on the Galloo Island model. There is a current PILOT arrangement used by the Town for new or improved business development and that approach would be more appropriate. Again, **BP should contact the Town assessor for details for the Town's business PILOT.**

Table 2.29-1 Comments from Town

Town Comment	BP PSS Response	Town Response to PSS
<p>BP's presentation included Town Supervisor Joseph Kushner, who discussed economic impacts from the wind project in the Town of Eagle, NY. BP's poster stated that the Town of Cape Vincent would receive 15% of the PILOT payment; yet Kushner noted that his town gets 88% of the pie. On a benefit per MW basis Kushner and</p>	<p>The Open House event provided an example of a successful wind project. The Town of Eagle reaped benefits from the project and no representation was made that the Town of Cape Vincent would receive more or less than the Town of Eagle. A PILOT payment structure was estimated by applying a previously approved PILOT structure for another proposed wind</p>	<p>During the PIP phase of the Article 10 process, the Town directed BP to NOT assume a PILOT based on the Galloo Island model. Galloo Island was an exceptional policy and the county warned developers not to assume its use in any other project proposed for Jefferson County. Without an agreed upon financial agreement, any assumptions by BP would be premature and misleading.</p>

<p>the Town of Eagle are receiving nearly 6 times the money that BP plans for Cape Vincent. Kushner's experience was not a good example of what BP was offering Cape Vincent.</p>	<p>project in Jefferson County and showed that \$1.7 million (or more for a larger project size) would be paid by CVWP in year 1 to the local municipalities.</p>	
<p>Property devaluation</p>	<p>The Project will take the comment under advisement.</p>	<p>In 2010 the Town appointed a committee headed by the Town's assessor to examine the economic impacts from proposed industrial wind projects in Cape Vincent. The committee completed a report: "Cape Vincent Wind Turbine Development Economic Impact Final Report" 10/7/10. The committee concluded that <i>"Impacts on property values are likely to vary depending on the proximity of turbines to neighboring properties and site lines. Indications are there will be an overall decrease in property values with the potential for significant negative impact on assessments and related factors such as tax rates and the ability to market property at a fair price."</i> To validate their work and conclusions the committee contracted with McCann Appraisal, LLC. who concluded: <i>"After completing my review of the subject location, it is clear that numerous homes in the Cape Vincent area will be adversely impacted, and the best available evidence indicates that value loss of 25% to 40% or more will occur to homes within approximately 2 miles of the turbines. This impact is not expected to be uniform, and some losses may well be lower and others higher."</i> BP's comment to take the issue under advisement is inadequate. The Town instituted a 2-mile setback from waterfront properties largely to protect these property owners from devaluation. BP must recognize that Property Values and the work of the Town's Economic Committee, McCann Appraisal, and others all point to substantial risk to devaluing property and they should recast their project with 2-mile setbacks from the river and lake waterfronts, as stipulated in current Town Zoning Law.</p>

Other Comments -

In Table 2.28-1 “Vacant Units” Shows 1834 units in Cape Vincent, and 1420 in Lyme. The Census shows seasonal homes as vacant if unoccupied on April 1, 2010. Seasonal homes and vacation homes are occupied in season and represent a disproportionately higher population when they are occupied. They cannot be used to imply a “sparsely populated” or “rural” area. **BP needs to clarify the point especially for communities that have a high influx of summer, seasonal residents.**

Exhibit 29 Decommissioning

“CVWP will identify performance criteria proposed for site restoration in the event the Project cannot be completed and for decommissioning of the Project. CVWP will also discuss how the selected criteria are appropriately addressing.” (p. 183)

“Prior to construction, a decommissioning plan will be prepared that will include a quantification of the salvage value of the Project components as well as a plan for, and cost of decommissioning the Project. This plan will also set forth requirements for disposal of any hazardous materials. This plan will specify how decommissioning and restoration, if required, will be funded and will provide a schedule for conducting such activities.” (p. 184)

Comment – Decommissioning of a wind farm is one of the most critical aspects that the Siting Board has to address. A poorly formulated and implemented decommissioning plan exposes the municipality to significant financial and environmental risks. Prime examples of this exist in California and Hawaii today where turbines have been abandoned and left to decay.

Comment – Decommissioning is too important to be left until construction is imminent. The entire decommissioning plan must be in place and approved as part of the Article 10 application process. **A Certificate should not be issued without a detailed decommissioning plan that has been accepted by the Siting Board.**

Comment – The Article 10 application requirement (Exhibit 29) requires minimal information on decommissioning. BP has elected to follow this approach and proposed a decommissioning plan that is totally lacking in substance. An example of this is their plan to leave approximately 26 acres of access roads in place.

They have also stated that they intend to leave all underground cable in place. This is in conflict with the New York State Department of Agriculture and Markets request to remove the underground cable during the SEQR review of the proposed St. Lawrence Wind Farm in 2006/2007.

Comment – Cape Vincent’s Zoning Law contains a well considered decommissioning plan that will restore the Town to pre-project condition. **We request the Siting Board maintain the integrity of the Cape Vincent Zoning Law. Anything less is absolutely in opposition with the intent of the Town’s Comprehensive Plan**

2.29.3 Avoidance and Minimization Measures

“Financial assurance, such as a surety bond , corporate guaranty, cash, or letter of credit will be posted with the New York Department of Public Service starting 10 years after the project goes operational, which will cover the cost of decommissioning less the salvage value of the Project components. This will provide funding for decommissioning of the Project either if the Project cannot be completed or if it is at the end of its useful life.” (p. 184)

“The decommissioning plan will be updated every five years beginning in year 10 to take into account current commodity and component pricing, as well as decommissioning costs. The

financial assurance will be updated to provide sufficient funding for decommissioning as per the decommissioning plan". (p. 185)

Comment - Financial assurance decommissioning coverage must be in place and in force before ANY construction is allowed to begin. This coverage should be based on each component of the project (turbine, building, road, distribution lines, etc.).

Comment – Financial obligation must be insured. The vehicle of the insurance must be determined by an independent agency. The financial obligation must be iron clad to ensure that the Town and citizens are made whole and are not placed under any financial obligation due to inadequate decommissioning by the project owner.

Exhibit 31 Local Laws and Regulations

Article 10 law regarding the PSS statement also requires BP to note those portions of local zoning laws they will request the Siting Board waive if a provision of local law is unduly burdensome to the Project. The following Sections of the rules outline BP's responsibilities:

Section 1000.5 Pre-application Procedures requires the applicant's PSS to include:

*"...a list and description of all local laws, and regulations issued thereunder, applicable to the construction, operation, or maintenance of the proposed facility and a statement either providing a preliminary assessment of an ability to comply or indicating specific provisions that the applicant will be requesting the Board to elect not to apply, in whole or in part, and **a preliminary explanation as to why the Board should elect not to apply the specific provisions as unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality...**"*

However, the preliminary explanation commonly used throughout BP's PSS review of our local laws was: *"...the Public Service Law general preemption of local laws should relieve CVWF of the obligation to comply with this section."*

A general preemption was NOT part of the treatment of local laws and ordinances under the provisions of Article 10:

"Pursuant to PSL §168(3)(e), the Board must find that the facility is designed to operate in compliance with these local substantive requirements, all of which shall be binding upon the applicant, unless the Board elects to not apply them by finding that, as applied to the proposed facility such are unreasonably burdensome in view of the existing technology or the needs of or costs to ratepayers whether located inside or outside of such municipality." [Section 1001.31]

Furthermore, during the formal application, BP is required to provide a rational, substantive explanation as to why a local law should be waived by the Board:

"For each local procedural or substantive requirement identified, a statement justifying the request shall be provided. The statement of justification shall show with facts and analysis the degree of burden caused by the requirement, why the burden should not reasonably be borne by the Applicant, that the request cannot reasonably be obviated by design changes to the proposed facility, the request is the minimum necessary, and the adverse impacts of granting the request are mitigated to the maximum extent practicable."

Although this level of detail was not a requirement in the PSS, it demonstrates that the preliminary explanation as to why the Board should elect to waive specific provisions of our local law indicates BP provide at least some show of preliminary facts and analysis, rather than the misleading refrain that a Public Service Law general preemption of local laws should apply.

In nearly all the examples of Town law that BP asserts is problematic to their project

proposal, they have not provided the required explanation but have misrepresented what is required of them in the PSS under the Article 10 rules.

Table 1. Town Responses to BP's selection of local law to supplant.

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
3.4 Lot requirements.	Height requirement less than 35 feet.	This section of the law was not intended to apply to Wind Energy Conversion Systems (WECS, e.g., wind turbines). Para. 7.16.1 applies.
4.1 Lot uses	Only one principal use per lot.	This section of the law was not intended to apply to WECS. Para. 7.16.4 applies.
5.3.3 ZBA & 5.4.6 Site Plan Review	Special use permit and site plan review criteria required	Special Use Permits and Site Plan Review are used throughout the country for the establishment and regulation of wind farms
6.7 Noise	dB requirements, predicting noise impacts, enforcement and complaint resolution.	Section 1001.19 Exhibit 19 Noise does not establish any noise standards and specifically sets aside the issue to be determined in a case-by-case basis for each individual project proposal. In addition to the requirements of Exhibit 19, the Town also requests that all the provisions of its noise section of the law be given the fullest consideration in BP's application and that the Town's standards remain in force. The Town's noise law was adapted from a version provided by Dr. Paul Schomer, current Chairman of the Standards Committee of the Acoustic Society of America. To date, Dr. Schomer; Greg Tocci, Cavanaugh Tocci Associates; Dr. Dan Driscoll, past acoustic engineer for the PSC, Rick James, E-Coustic Solutions; Rob Rand, Rand Acoustics, and Charles Ebbing, Ebbing Associates, are all prepared to support the noise standards outlined in the Town's law, and that the Town's noise restrictions are backed by national and international acoustic standards. In addition to supporting the Town's noise standards these experts are also prepared to support those provisions in the noise section of the law that guide predicting noise, enforcing standards and resolving complaints. These engineering experts are also prepared to describe the adverse health and safety impacts associated with the excessive WECS sound levels advocated by BP and the entire wind industry.
6.9 Outdoor Lighting	Intends to comply with FAA rules	This section of the law was intended to ensure the safety of the public and operating personnel, not to regulate or supersede FAA requirements.
6.10 Outdoor Storage	Unknown concern	This is to prevent uncontrolled storage of construction and maintenance supplies. Supplies that will be stored for longer

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
		than three months must be screened from public view.
6.11 Parking Requirements	Cannot comply with parking requirement	This is to ensure that adequate parking for emergency vehicles and employee/company vehicles is available at each turbine and accessory building.
6.14 Restoration of Land	Concerned the Planning Board may require additional restrictions	Land restoration is one of the most important sections of Cape Vincent's Zoning Law, Para. 5.4.6.8. Without this, there is no control over what happens to the land when the turbines or ancillary facilities are decommissioned.
6.15 Screening	Requires a 6' screen	This section of the law was not intended to apply to WECS.
6.17 Traffic	Planning Board may require a traffic survey	A traffic survey/study/program is critical to the safety of the community. This would include local "road use agreements," NYDOT permits, as well as other permits shown on section 2.23-1 of BP's PSS.
7.16.4.d Paint Finishes	Wants the Siting Board to pick a color	This is the requirement in Town law that BP is asking the Siting Board to preempt, <i>"Unless specifically required by other regulators, a tower shall have a finish (either painted or unpainted) that minimizes visual impact."</i> The Town finds this assertion remarkable. BP has conducted visual impact assessments with their prior project applications with the Town through New York's SEQRA law and concluded WECS are a visual intrusion of the grandest scale. Perhaps the visual alteration of our Town by BP's project proposal may be the most severe, long-lasting impact in the array of potential adverse impacts. While proposing this vast visual intrusion into the Town's rural setting, BP is suggesting that the Town's interest in finding a paint or finish that would "minimizes visual impact" is somehow too restrictive to their development plan and that the law deserves to be preempted. The Town fails to understand how any applicant would not want to support the Town's request that a finish be applied so that WECS do not stand out any more than they already will.
7.16.4.e Ancillary building color	Use of "maximize" too vague	Section 7.16.4.e requires that "ancillary structures shall maximize the use of building materials, colors, and textures that blend with the natural surroundings." BP contends that use of the term "maximize" is vague. Again, asking for preemptions on paint color and finishes indicates BP is trying to object to anything provided by the Town.
7.16.4.f Night Lighting & Glare	Only FAA standards should apply	This section of the law was not intended to apply to WECS.

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
7.16.4.g Tower Siting	Minimizing visual impacts a problem	NYS Rte. 12 E has been designated a National Scenic Byway and the Seaway Trail. BP's project proposal is to place 19,500 ft. tall turbines within 1500 ft. of either side of the Scenic Byway entering into Cape Vincent. This setback would not only represent a visual blight, but a safety hazard as well, since the setback would be 3X the height of the turbine, rather than the 6X required in the Town's law.
7.16.4.h Avoid Avian Impacts	Avian species will be addressed in Article 10	Avian impacts are addressed in the Town's Comprehensive Plan and are considered to be of critical importance to maintaining the ecology of the Town. Avian species impacts are also addressed in Section 7.16.10.f.5.g WECS of the Town's Zoning Law
7.16.4.i Preserve Existing Veg.	This section not applicable to project	This is to prevent practices like clear cutting.
7.16.4.j Access Road Approvals	Road inspections and approvals may be too restrictive.	Certain minimum requirements are needed in order to ensure emergency vehicles can safely access these turbine sites if needed by local emergency responders. The Town would argue if we are required to respond, then we should ensure access roads are safe for responders.
7.16.4.k Parking	Parking restrictions	This is to ensure that adequate parking for emergency vehicles and employee/company vehicles is available at each turbine and accessory building.
7.16.4.l Fencing	No fences needed for WECS	Agreed.
7.16.4.o&p Decommissioning Plan	Decommissioning plan too burdensome	The proper decommissioning of a wind farm is extremely important to the restoration of a site. Otherwise Exhibit 1001.29 would not allow for a decommissioning plan. Therefore the Town expects provisions of Section 5.4.8 and 5.4.9 will remain in force.
7.16.9 Meteorological Towers	Met towers needed for permanent operation of facility	Until applicant makes the case that wind velocity and directional data is needed that cannot be otherwise provided by the instrumentation on each WECS, the Town will require meteorological towers to be permitted as temporary structures in compliance with the intent of the Town's Comprehensive Plan and the Zoning Law. Fees will be assessed in accordance with the appropriate Town Ordinance.
7.16.10.b WECS Site Plan Approval	Site plan approval and special use permit not required with	The Article 10 process and the Certificate of Environmental Compatibility and Public Need represent the equivalent of the Town's local requirement for site plan approval and the

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
	Article10	issuance of a special use permit.
7.16.10.c Application Requirements	6X Radius on maps to represent setbacks and noise impacts to 1.5 miles	This information is absolutely essential in presenting this application to our community. The 6 times the radius of the total height of a WECS denotes the setback distance for safe operation. Any roads, houses, or other infrastructure located within each turbine setback zone would be at risk. Every residence within 1.5 miles of a turbine should have the projected noise impact. This estimate is essential for any compliance testing done after the start of operation and for any future complaints from residents.
7.16.10.e Complaint Resolution Plan	Referring to 6.7.7 Noise complaint plan should comply with Siting Board. Town plan should be waived because no time or frequency limits could lead to continued delays of wind farm operations	This is the only reference in the Article10 rules related to complaint resolution 1001.19 (m) Exhibit 19 Noise: <i>“An identification of practicable post-construction operational controls and other mitigation measures that will be available to address reasonable complaints, including a description of a complaint-handling procedure that shall be provided during periods of operation.”</i> Without a specific plan denoted in the rules, then the Town’s Complaint Plan remains in force and represents the default plan. The Town’s plan provides for a response within five days of a complaint, involvement of the Town engineer if complaints cannot be resolved quickly, use of best engineering practices to evaluate source of complaint, and provision to shut down the WECS if needed to evaluate the source of problem. Finally, since the Town may be the first to receive complaints, their plan should be controlling.
7.16.10.f.5 Information related to WECS construction	Issues related to shadow flicker, noise and electromagnetic interference	Section 1001.24: Exhibit 24 Visual Impacts requires an analysis of <i>“shadow flicker, or related visible effects of facility operation, including an assessment of the predicted extent, frequency, and duration of any such visible effects created by the facility.”</i> This is the extent of treatment of the issue of shadow flicker in the rules. The Town’s law says much the same as Exhibit 24 but with one important added detail. Shadow flicker analyses commonly use a square meter window as the target of shadow flicker assessment and quantification of impacts. The Town determined that its citizens do not sit in front of a single window in their homes. We stipulate in the law that <i>“the zone for predicting shadow coverage shall include the area within a 100-foot radius of the center of the residence.”</i> This is an important modification that will better serve to assess the impact of annoying wind turbine shadow flicker on the enjoyment of an individual’s home and immediate surroundings.

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
		<p>Exhibit 19 in the rules requires a comprehensive assessment of potential impacts from noise on the community. However, the rules fail to define how far from a WECS these assessments should extend. The Town stipulates in Section 7.16.10.f of its law that any assessment of adverse wind turbine noise impacts should include properties and homes within a 1.5 mile radius of a WECS. The wind industry employs consultants that have sophisticated software to provide these kinds of analyses and the Town's request to expand the area of potential impacts will be inconsequential to BP's cost of analysis but will provide far better information to judge adverse impacts on our community. Moreover, these extended estimated noise impacts will be invaluable when used as a base for compliance and complaint surveys.</p> <p>The Town's law requires electromagnetic interference to be assessed and corrected up to one mile from the project boundary, which is less restrictive than Exhibit 26 Effect on Communication requirements, "<i>An identification of all existing broadcast communication sources within a two-mile radius of the facility and the electric interconnection between the facility and the point of interconnection.</i>" The Town, therefore, would not object to more restrictive requirements being implemented.</p>
7.16.10.g Application Certification	Provisions of this section of the law are procedural and should be preempted	The issue of liability was never addressed in the rules. The Town asserts that liability should be addressed in the application to ensure that the Town has no responsibility for any problems that may arise from the design, construction, and operation of BP's project. The assertion by BP that Article 10 should preempt the Town when Article 10 provides no guidance on the liability issue is a frivolous argument on the part of BP.
7.16.10.h Noise requirements	Limit of WECS rated output to ≤ 1.6 MW	The intent of limiting WECS output to less than 1.6 MW was to minimize the effect of infrasound on residents, since recent science ¹ demonstrated that larger turbines have greater potential for annoyance and harmful health impacts on nearby residents. Regardless of this limitation, harmful impacts from turbines can best be mitigated by distance, i.e., the farther away the lesser the impact.
7.16.10.i	Procedural	Special Use Permits and Site Plan Review are used throughout

¹ Moller, H. and C.S. Pedersen. 2011. Low frequency noise from large turbines. J. Acoust. Soc. Am.129(6), June 2011

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
Application Review Process	impositions	the country for the establishment and regulation of wind farms.
7.16.10.j WECS standards	BP identified the following standards as problematic: underground transmission lines, radar switched FAA lighting, uniform WECS sizes, matte finish, no advertising, no communication interference, 1.25 mile setback from (Seaway Trail, hamlets, village, and schools), 2.0 mile setback from waterfronts, 6 times total height from: (nearest residence, nearest property line, roads).	<p>For the interior areas of Cape Vincent, the Joint Comprehensive Plan discourages <i>"any industrial, commercial or utility development whose influence would have a negative impact on health, safety, scenic and natural resources, property values, recreational opportunities and tourism assets."</i> The project proposed for Cape Vincent, e.g., 124 turbines up to 500 feet high, in itself is incompatible with the Town's Comprehensive Plan. The idea of having all of the interconnecting electric lines above ground on poles running from one end of the Town to the other is beyond comprehension, if not absurd. For nearly every other wind farm facility in New York, the interconnecting lines are buried.</p> <p>The Wolfe Island Wind Project provided residents of Cape Vincent with a unique opportunity to assess visual impacts of an 86-turbine facility at a 2+ mile distance. The most common negative impact mentioned by Cape residents was the blinking, red FAA lighting at night. The nighttime impact was described as similar to a major international airport, and there were reports of residents installing curtains on bedroom windows facing Wolfe Island because it disturbed their ability to sleep. The Town included 3D radar switching technology² in its law to mitigate the impact of blinking, red FAA lighting. The OCAS system is currently in place on an operating wind farm in Canada and the technology has been licensed to Vestas, the Danish WECS equipment manufacturer. This represents an approach in the Town's law to provide a level of protection for its citizens from an in-home annoyance from industrial wind development.</p> <p>The Town finds it difficult to comprehend why BP would consider restrictions on advertising and a matte finish on WECS as a critical imposition on their development plans and that they would seek preemption by State authority.</p> <p>BP is seeking relief from this provision in the Town's law: <i>"No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems will produce electromagnetic interference with signal transmission or reception."</i> Yet, Town law only underscores that noted in the rules Section 1001.12 Exhibit 12 Construction and Section</p>

² <http://www.ocas-as.no/us/>

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
		<p>1001.26 Exhibit 26 Effect on Communications, “...avoid interference with existing utility transmission and distribution systems...” BP’s request for preemption on the Town’s communication provision seems to be designed to find any cause to supplant Town law.</p> <p>The 1.25 mile setback from NYS Rte. 12E was designed to be responsive to concerns identified in the Town’s Comprehensive Plan: <i>“It is important that Town and Village leaders keep in mind that the designation as a National Scenic Byway requires local municipalities to strive to improve and maintain a clean, attractive appearance and protect views of those areas surrounding the highway, where practical.”</i></p> <p>Additional discussion regarding turbine placement close to the National Scenic Byway is discussed above in Section 7.16.4.g.</p> <p>The two-mile setback from the Town’s waterfronts is essential to protecting the highest valued properties that dot the Town’s lake and river shorelines. These properties represent the most valued land assets within the Town and they represent nearly three-fourths of the tax base. The Town appointed a committee of local government, business, and retired professionals to examine the impact of WECS on property values. The committee concluded that WECS in the view shed of these properties will diminish the value of the homes and property. The committee then had Michael McCann, McCann Associates, a professional appraiser who was familiar with WECS impacts on property, examine their report. McCann concluded that property devaluation could be substantial to distances of two miles or more. Clarkson researchers Dr. Heinzleman and Dr. Carrie Tuttle recently published a peer review study and also concluded that in some cases property values could be reduced. The Town is one of those locations where devalued property would be expected. This has been demonstrated on neighboring Wolfe Island, where there has been a significant negative impact on the residential property values as a result of the TransAlta Wind Farm.</p> <p>The two-mile setback from the Town’s waterfronts is also crucial to affording protection for the Avian Migratory Corridor that extends along the lake and river shoreline. The corridor is depicted in Figure 3 of the Town’s Comprehensive Plan. The New York Department of Environmental Conservation touted the importance of this migratory corridor in their review of the Chautauqua Wind Project, <i>“The eastern and southern shore of Lake Ontario and eastern shore of Lake</i></p>

SECTION OF LAW	BP's ISSUE	TOWN RESPONSE TO PSS
		<p><i>Erie are documented and well recognized migratory pathways, which are important within Eastern North America on a regional scale, particularly during spring migration as birds move north.”</i> For both the protection of valued waterfront property and the protection of invaluable natural resources, a two-mile setback from the Town’s shorelines represents a well-reasoned, rational necessity for the Town’s restrictions in its Zoning Law.</p> <p>During the development of the Town’s Zoning Law the Town’s consulting engineer, Bernier Carr Associates (BCA), was asked to develop a setback for WECS that was based on sound engineering practices that would protect residents of the Town from any potential WECS rotor failure or ice throw. Based on the normal operating specifications of current models of WECS, BCA engineers recommended setbacks that would coincide with six times the total height of any WECS, and indicated that this restriction would provide a reasonable margin of safety for Town residents. The Town asserts that the margin of safety provided by this restriction is absolutely essential to protect the safety of Town residents and that this standard should not be preempted or supplanted by any less restrictive guideline.</p> <p>These setbacks were developed based on turbine design operating speeds. They do not take into consideration “overspeed” operation which would result in greater debris throw if a failure were to occur.</p>

Table 2.32-1 Comments and Responses Regarding Local Laws and Regulations

Town Comment	BP PSS Response	Town Response to PSS
<p>9-25-12 The ...Comprehensive ... Plan pointedly states that a large wind project, similar to that proposed by BP under Article 10, is not a good fit for our community....Given that a large utility scale project is a poor fit, we would like to see BP's rationale for ignoring our Plan and proposing to turn our community into something it does not want and that will be a</p>	<p>The Article 10 process offers a comprehensive one stop shop. To pursue multiple avenues for permitting a project would not be a desired route for the project. The Article 10 process represents a single permitting process that can be pursued for the entire Project.</p>	<p>BP’s response ignores the question. The question was not about one-stop shopping. Article 10 rules require BP to acknowledge that a Town has a Comprehensive Plan, which BP has done, but the rules also require BP to provide an explanation why the project they propose is incompatible with a community’s vision, which BP has not done.</p>

Town Comment	BP PSS Response	Town Response to PSS
detriment to our overall prosperity - a highly industrialized energy complex.		
9-25-12 We believe we are entitled to see the rationale for throwing aside our municipal prerogatives and trashing the Zoning Law that was designed in good faith and with expert consultation to protect the health, safety, and general welfare of our citizens.	CVWP appreciates the Town's feedback. The PSS document provides additional information about the Project.	Again, rules require an explanation, which BP chooses to ignore.
10-23-12 Comprehensive Plan states that the Town should avoid tall structures.	CVWP will take the Comprehensive Plan into consideration.	Ignoring a question seems to be the approach BP uses to handle an uncomfortable.
10-23-12: How can you ask the Siting Board to vacate Cape Vincent Zoning Law when you were given numerous opportunities to participate in the development of them?	We submitted a response in the June 2012 time frame to notify the Planning Board that we had seen the draft Zoning Law and would ask the Town to reconsider. As drafted at that time and as is currently drafted, the requirements are unduly unreasonable with respect wind turbine technology.	BP's June 2012 was a general indictment of our draft law. BP provided no suggestions, no indication of problematic sections, just a general comment of total displeasure. Furthermore, at the time of Cape Vincent's public hearing BP made no comment, either in writing or in person.
10-29-12: Why does BP now feel justified in asking the Article 10 Siting Board to presume any portion of our Law is unacceptable.	We submitted a response in the June 2012 time frame to notify the Planning Board that we had seen the draft Zoning Law and would ask the Town to reconsider. As drafted at that time and as is currently drafted, the requirements are unduly unreasonable with respect wind turbine technology. CVWP is not making presumptions. The Article 10 process represents a single permitting process that can be pursued for the entire Project.	Article 10 rules require BP to note the sections of the law that are considered unduly burdensome, as was outlined in Exhibit 31 of their PSS. However, at the time the Town was requesting comment on its draft law, BP provided nothing more than a general rebuke of the Town's law.

Exhibit 34 Electrical Interconnection

Comment - BP provides considerable detail regarding the electrical interconnection between their facility substation and the switching station and subsequent connection to the Lyme substation but provides NO INFORMATION relative to the interconnections between turbines within the facility. **The Town requests the Siting Board require all interconnections to be underground, similar to Wolfe Island's interconnection arrangement.**

Exhibit 35

2.35.1 Potentially Significant Adverse Impacts

"Significant exposure to high strength EMF has not been consistently shown to have negative health consequences. Due to a lack of credible evidence proving any impact from significant exposure to high strength EMF, as discussed in the NYSPSC Policy referenced above, generator interconnection lines are not considered to be hazardous to public health."

Comment - Although EMF may not be a hazard to human health, there is some evidence livestock are much more sensitive to adverse effects from EMF. Stray voltage is known to cause problems for livestock and poor production for dairy cows. Livestock is approximately ten times more sensitive to stray voltage than humans. **Therefore, because agriculture is an important economic resource to the area within the footprint of BP's Project, BP should be required to investigate the impact of stray voltage on livestock and other animals.**