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Via Email and US First Class Mail

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**RE: Cassadaga Wind Project
Host Town Local Laws**

Dear Counselors:

Thank you for providing the Towns' confirmation of Cassadaga Wind's assessment regarding which provisions of the Towns' local laws are procedural or substantive for purposes of the Article 10 analysis required in Exhibit 31. We appreciate the Town's coordination and attention to appropriately categorizing the Towns' applicable wind project regulations.

Based on the Towns' reply, our meeting with the Towns on April 6, 2016, and our subsequent discussions regarding the applicable Town laws, Cassadaga Wind believes we are in agreement that the following local ordinances, laws, resolutions, regulations, standards, and other requirements are of a procedural nature:

Town of Arkwright

- Permits Required §653 (C), (D), (F), (G) and (H)
- Creation of Wind Overlay Zone §656 (B)-(C)
- Creation of Wind Overlay Zones and Issuances of Special Use Permits §664(A)-(D)
- Application Review Process §658 (A)-(J)
- Fees §671 (A), (B) and (D)

Town of Charlotte

- Permits and Rezoning Required under Article VI, §618(B)(2)-(5) and (7)-(8)
- Wind Overlay District Rules §618(D)(2)-(3)
- Application Review Process §618(F)(1)-(10)
- Creation of Wind Overlay Districts and Issuance of Special Use Permits §618(L)(1)-(4)

Town of Cherry Creek

- Permits and Rezoning Required §5(C)-(E), (G)-(H)
- Application Review Process §9(A)-(J).
- Creation of Wind Overlay District and Issuance of Special Permits §15(A)-(D).
- Fees §28(A), (B), and (D)

In addition, based on the Towns' reply and our subsequent discussions regarding the Towns' laws, Cassadaga Wind believes we are in agreement that the following are all of the local ordinances, laws, resolutions, regulations, standards, and other requirements are of a substantive nature (unless identified later in this letter):

Town of Arkwright

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

Town of Charlotte

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

Town of Cherry Creek

- Permits and Rezoning Required §5(A),(B), (F)
- Applicability §6(A) & (C) (§6(B) is not applicable)

- Wind Overlay District Rules §7(A)
- Standards for WECS §10(A)(1)-(17)
- Required Safety Measures §11(A)-(F)
- Traffic Routes §12(A)-(C)
- Setbacks for Wind Energy Conversion Systems §13(A)-(F)
- Abatement §16(A)-(C)
- Limitations on Approvals; Easements on Town Property §17(A)-(B)
- Standards for Wind Measurement Towers §21(A)
- Fees §28(C)

The following local ordinances, laws, resolutions, regulations, standards, and other requirements were identified by Cassadaga Wind as procedural. However, the Towns have asserted that these laws are substantive:

Town of Arkwright

- Application for Wind Energy Conversion Systems §657(A)(1)-(20). Cassadaga disagrees that this section is substantive or that it contains “substantive requirements for information”. In enacting Article 10, the State occupied the field regarding all procedural requirements or local approvals which would otherwise apply to a major electric generating facility. NY Public Service Law § 172(1) states that “No state agency, municipality or any agency thereof may, except as expressly authorized under this article by the Board, require any approval, consent, permit, certificate or other condition for the construction or operation of a major electric generating facility with respect to which an application for a certificate hereunder has been filed.” Application requirements fall under the scope of this preemption; they are procedural submissions which must be made to a local government, for a local government's purposes. Cassadaga points out that much of the same information is required by both the Towns’ Application and the Article 10 Application and Cassadaga will be providing much of the information required under the Towns’ Application in the Article 10 Application. It is our understanding that based on additional discussions with the Towns, that this issue will be resolved by the Towns’ review of the application when it is submitted and confirmation that the required detail is sufficient.
- Noise and Setback Easements §663 (A)(1)-(3). Cassadaga disagrees that this section is substantive. However, Cassadaga intends to comply with the written consent and easement requirements in this section, as applicable.
- Creation of Wind Overlay Zones and Issuances of Special Use Permits §664 (A)-(D). Cassadaga disagrees that this section is substantive. The Creation of a Wind Overlay Zone is strictly procedural in nature. However, Cassadaga does agree that the Wind Overlay District is a substantive requirement in that it is a use restriction. We understand that the parties have resolved this by the Applicant agreeing to adhere to the substantive standards for Wind Overlay zones for turbine locations, except where noted, and asking the Siting Board to apply the Wind Overlay Zone to the Facility.
- Enforcement; Penalties and remedies for violation §673 (A)-(C). Cassadaga disagrees that this section is substantive. Enforcement and penalty provisions are procedural in nature and relate to the underlying permit, which is preempted by Section 172 of the PSL. The Article 10 Certificate will provide conditions for enforcement and compliance relating to the construction and operation of the Facility.

- Permit Revocation §667(A)-(C). For the same reasons, Cassadaga disagrees with the Towns that this section is substantive. However, the Towns have stated a permit will not be issued this section is likely inapplicable.
- Use of Town Rights of Way – Local law No. 1 of 2015 regulating and creating a permitting system of use and cuts and openings in and under Town rights of way. Cassadaga disagrees that this section is substantive. However, Cassadaga will be entering into a Road Use Agreement with the Town and Cassadaga will not be placing any object, line, wire, pipe or other device in the Town’s right of way. Therefore Cassadaga believes this law is inapplicable.

Town of Charlotte

- Applications for Wind Energy Conversion System and Wind Overlay District §618(E)(1)(a)-(E)(1)(t). Cassadaga disagrees that this section is substantive or that it contains “substantive requirements for information”. In enacting Article 10, the State occupied the field regarding all procedural requirements or local approvals which would otherwise apply to a major electric generating facility. NY Public Service Law § 172(1) states that “No state agency, municipality or any agency thereof may, except as expressly authorized under this article by the Board, require any approval, consent, permit, certificate or other condition for the construction or operation of a major electric generating facility with respect to which an application for a certificate hereunder has been filed.” Application requirements fall under the scope of this preemption; they are procedural submissions which must be made to a local government, for a local government’s purposes. Cassadaga points out that much of the same information is required by both the Towns’ Application and the Article 10 Application and Cassadaga will be providing much of the information required under the Towns’ Application in the Article 10 Application. It is our understanding that based on additional discussions with the Towns, that this issue will be resolved by the Towns’ review of the application when it is submitted and confirmation that the required detail is sufficient.
- Noise, Height and Setback Easements; Variances §618(K)(1)(a)-(c). Cassadaga disagrees that this section is substantive. However, Cassadaga intends to comply with the written consent and easement requirements in this section.
- Creation of Wind Overlay Districts and Issuance of Special Use Permits §618(L)(1)-(4). Cassadaga disagrees that this section is substantive. The Creation of a Wind Overlay Zone is strictly procedural in nature. However, Cassadaga does agree that the Wind Overlay District is a substantive requirement in that it is a use restriction. We understand that the parties have resolved this by the Applicant agreeing to adhere to the substantive standards for Wind Overlay zones for turbine locations, except where noted, and asking the Siting Board to apply the Wind Overlay Zone to the Facility.
- Permit Revocation §618(O)(1)-(3). Cassadaga disagrees that this section is substantive. Enforcement and penalty provisions are procedural in nature and relate to the underlying permit, which is preempted by Section 172 of the PSL. The Article 10 Certificate will provide conditions for enforcement and compliance relating to the construction and operation of the Facility. However, the Towns have stated a permit will not be issued this section is likely inapplicable.

Town of Cherry Creek

- Applications for Wind Energy Conversion Systems and Wind Overlay District §8(A)(1)-(20). Cassadaga disagrees that this section is substantive or that it contains “substantive requirements for information”. In enacting Article 10, the State occupied the field regarding

all procedural requirements or local approvals which would otherwise apply to a major electric generating facility. NY Public Service Law § 172(1) states that “No state agency, municipality or any agency thereof may, except as expressly authorized under this article by the Board, require any approval, consent, permit, certificate or other condition for the construction or operation of a major electric generating facility with respect to which an application for a certificate hereunder has been filed.” Application requirements fall under the scope of this preemption; they are procedural submissions which must be made to a local government, for a local government's purposes. Cassadaga points out that much of the same information is required by both the Towns’ Application and the Article 10 Application and Cassadaga will be providing much of the information required under the Towns’ Application in the Article 10 Application. It is our understanding that based on additional discussions with the Towns, that this issue will be resolved by the Towns’ review of the application when it is submitted and confirmation that the required detail is sufficient.

- Noise and Setback Easements; Variances §14(A)(1)-(3). Cassadaga disagrees that this section is substantive. However, Cassadaga intends to comply with the written consent and easement requirements in this section.
- Creation of Wind Overlay District and Issuance of Special Permits §15(A)-(D). Cassadaga disagrees that this section is substantive. The Creation of a Wind Overlay Zone is strictly procedural in nature. However, Cassadaga does agree that the Wind Overlay District is a substantive requirement in that it is a use restriction. We understand that the parties have resolved this by the Applicant agreeing to adhere to the substantive standards for Wind Overlay zones for turbine locations, except where noted, and asking the Siting Board to apply the Wind Overlay Zone to the Facility.
- Enforcement; Penalties and remedies for violations §30(A)-(C). Cassadaga disagrees that this section is substantive. Enforcement and penalty provisions are procedural in nature and relate to the underlying permit, which is preempted by Section 172 of the PSL. The Article 10 Certificate will provide conditions for enforcement and compliance relating to the construction and operation of the Facility.
- Permit Revocation §18(A)-(C). For the same reasons, Cassadaga disagrees with the Towns that this section is substantive. However, the Towns have stated a permit will not be issued this section is likely inapplicable

Finally, Cassadaga Wind is providing an updated list of those substantive standards that it plans to request the New York State Siting Board rule are unreasonably burdensome in accordance with the PSL, Section 168, part e. The Application will provide additional basis for the relief sought from the Siting Board.

Town of Arkwright

- Permits Required §653 (A), (B), & (E) Cassadaga Wind will request that the Board waive the Wind Overlay Zone use restriction.

- Limits on Construction Activity Times – Pursuant to Article VI-A, §659(A)(14) of the Town of Arkwright Zoning Law, construction of the WECS shall be limited to the hours of 8 am to 8 pm, except for certain activities that require cooler temperatures than are possible during the day (subject to Town approval). The Applicant anticipates requesting to extend construction work hours for WECS to 5:30 a.m. to 10:00 p.m., on Monday through Saturday and 7:00 a.m. to 8:00 p.m. on Sunday, and allow a variance from these restrictions on a case by case basis upon request and with the approval of the On-Site Monitor with notice to the Towns.
- Required Safety Measures §660(A)-(G) – Unless the property owner submits a written request that no fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers.
- Abatement §665(A)-(C)- However, the Application will include a decommissioning plan consistent with the requirements of 16 NYCRR 1001.29.

Town of Charlotte

- Permits and Rezoning Required §618(B)(1), (2) & (6) Cassadaga Wind will request that the Board waive the Wind Overlay District use restriction.
- Limits on Construction Activity Times – Pursuant to Article VI, §618(G)(1)(n) of the Town of Charlotte Zoning Law, construction of the WECS shall be limited to the hours of 7 am to 8 pm, except for certain activities that require cooler temperatures than are possible during the day (subject to Zoning Board of Appeals approval). The Applicant anticipates requesting to extend construction work hours for WECS to 5:30 a.m. to 10:00 p.m., on Monday through Saturday and 7:00 a.m. to 8:00 p.m. on Sunday, and allow a variance from these restrictions on a case by case basis upon request and with the approval of the On-Site Monitor with notice to the Towns.
- Standards for WECS §618(G)(1)(q) – requirement that substation be screened from public view
- Abatement §618(M)(1)-(3)- However, the Application will include a decommissioning plan consistent with the requirements of 16 NYCRR 1001.29.

Town of Cherry Creek

- Permits and Rezoning Required §5(B), (F) Cassadaga Wind will request that the Board waive the Wind Overlay District use restriction.
- Turbine Height –§10(A)(13) the maximum total height of any WECS shall be 420 feet.
- Limits on Construction Activity Times – Pursuant to Article VII, Local Law 2 of 2011 §10(A)(14) of the Town of Charlotte Zoning Law, construction of the WECS shall be limited to the hours of 7 am to 8 pm, except for certain activities that require cooler temperatures than are possible during the day (subject to Zoning Board of Appeals approval). The Applicant anticipates requesting to extend construction work hours for WECS to 5:30 a.m. to 10:00 p.m., on Monday through Saturday and 7:00 a.m. to 8:00 p.m. on Sunday, and allow a variance from these restrictions on a case by case basis upon request and with the approval of the On-Site Monitor with notice to the Towns.
- Abatement §16(A)-(C)- However, the Application will include a decommissioning plan consistent with the requirements of 16 NYCRR 1001.29.

We appreciate the Towns' continued coordination and support for the Facility, and the time the Towns have spent in working through identifying the applicable local laws to the

Facility. We will be providing additional information to the Towns regarding the Project in the near future and we will coordinate with the Towns to ensure they have the necessary information regarding the Article 10 application.

Sincerely,



Handwritten signature of Jessica Ansert Klami in black ink.

Jessica Ansert Klami

cc: Town of Arkwright
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